

## Legal Considerations *Judex Factie* Acquittal and Guilty Judgments by *Judex Juris*

Faisal Abdaud<sup>1\*</sup>, Wahyudi Umar<sup>1</sup>, Ahmad Rustan<sup>1</sup>, Sung Ming Hsi<sup>2</sup>

<sup>1</sup> Faculty of Law, Universitas Muhammadiyah Kendari, Kendari, Indonesia

<sup>2</sup> Financial and Economic Laws, Asia University, Taichung City, Taiwan

\* Corresponding E-mail: [faisal.abdaud@umkendari.ac.id](mailto:faisal.abdaud@umkendari.ac.id)

Submitted: 11-11-2023; Reviewed: 03-01-2024; Revised: 24-01-2024; Accepted: 16-02-2024

DOI: [10.18196/jphk.v5i1.18145](https://doi.org/10.18196/jphk.v5i1.18145)

### Abstract

The corruption case involving the former North Konawe regent, Aswad Sulaiman, was acquitted by the Kendari Corruption Court in 2017, according to decision Number 56/Pid.Sus-TPK/2016/PN.Kdi. While the Supreme Court Cassation decision number 1964 K/PID.SUS/2017 decided that Defendant Aswad Sulaiman was proven legally and convincingly guilty of committing a crime by jointly committing an ongoing criminal act of corruption, imposing a prison sentence of 6 years and an IDR 200 million fine. If not paid, it will be replaced with imprisonment for 6 months, punished for producing a compensation of IDR 3,310,639,545 (three billion three hundred ten million six hundred thirty-nine thousand five hundred and forty-five rupiah). This study focuses on the legal ratio of the panel of judges in imposing an acquittal in the corruption case Number 56/Pid.Sus-TPK/2016/PN.Kdi and decision number 1964 K/PID.SUS/2017. This study used normative legal research with a statutory approach and a case approach, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was last amended by Law Number 20 of 2001. The results are that the recovery of state financial losses must be investigated as the starting point that the defendant has committed corruption by not releasing him from criminal responsibility but only as a basis for mitigating considerations for the defendant. The judges deciding this case have at least gone through 3 stages: constating, qualifying, and constituting.

**Keywords:** Corruption; *Judex factie*; *Judex juris*

### 1. Introduction

Corruption in Indonesia occurs systematically (Putra & Linda, 2022) and is widespread, not only detrimental to state finances but can also detrimental to state finances, and can hamper economic growth and the continuity of national development so that corruption violates social and economic rights. This was, as stated in a limited way in the preamble to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes juncto Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

The old order and new order eras have now passed, and the pulse of state life in the current era is felt healthy when transparency is a segment in government policy making. Still, even that step is not enough to overcome corruption crimes. Corruption is increasingly thriving with a variety of new modus operandi. In essence, corruption is not something unique to Indonesia and most countries in the world have been hit by corruption problems, and corruption is widespread, both in industrial and developing countries (Drani, 2020).

Criminal acts of corruption are not only committed by state administrators between countries but also by state administrators with other parties such as family, cronies, and businessmen business people, thus damaging the foundations of social, national, and state life, and endangering the existence of the state (Lubis, Dhevi, & Yasid, 2020). Corruption is part of the behavior carried out by Government officials and other people engage in corruption for different reasons. Still, it has the same goal, namely anticorruption is an unethical act that damages the foundations of good government (Drani, 2020).

Judges have an important role in every court, both general justice and corruption criminal justice. Judges in the trial process are required to be impartial to one of the parties or not to act in a way that could hurt the public's legal feelings, resulting in the public distrusting the judiciary. Judges have an important role in every judicial process and are always required to sharpen their conscience sensitivity, moral intelligence, and professionalism to implement the law and achieve justice which is realized in every decision that can be accounted for to God Almighty, and to the public (Agustin & Astuti, 2022).

A good judge's decision is certainly not just the formulation, of course but must be supported and in accordance with material aspects. The judge's decision must be full of scientific theories, especially in the fields of formal law and material law that can be applied in the trial examination appropriately and correctly. Then it can be poured in a form of decision that can fulfill a sense of justice and provide legal certainty as well can provide benefits to interested parties and the community (Budiastuti, 2019). Judges in their duties to examine, assess and try a case must able to reflect on each article text contained in the law for then linked to the facts of the incident discovered in the trial a judge's decision containing considerations of justice that are full of values philosophical, considerations of sociological justice and considerations of juridical justice (Suwito, 2017).

One of the corruption cases that has caught the public's attention in Southeast Sulawesi is the corruption case involving the former North Konawe regent Aswad Sulaiman, whom the Kendari Corruption Court acquitted. This case began with the discovery of state financial losses from constructing the North Konawe regent's office of IDR 2.3 billion. However, the handling seemed slow in the legal process, and even Aswad Sulaiman had to hold the suspect title for months.

The refund made by Aswad Sulaiman of IDR 2.3 billion during the ongoing investigation process became one of the reasons Aswad Sulaiman was not detained. In his decision, Aswad Sulaiman was acquitted by the Panel of Judges at the Corruption Crime Court at the Kendari District Court. At the same time, Article 4 of the Corruption Crime Law states that State financial or economic losses do not abolish punishment. This fact indicates an alleged misinterpretation of laws and regulations, which are used as the basis by judges in providing arguments for legal considerations and trial facts in their decisions.

This research aims to identify, know, and analyze the legal ratios of the panel of judges in imposing acquittals in the corruption case Number 56/Pid.Sus-TPK/2016/PN.Kdi. and What is the legal ratio of the Supreme Court in imposing a

guilty verdict on Decision number 1964 K/PID.SUS/2017. Using the theoretical aspect is expected to contribute to legal scientists' thoughts in corruption cases. In contrast, the practical aspect is expected to provide understanding for judges in decision-making in corruption cases.

## **2. Methodology**

The type of research used in this research was normative research. Normative legal research is finding the rule of law, legal principles, and legal doctrines to answer legal issues (Abdullah & Chalim, 2017) and court decisions (Amiruddin & Asikin, 2012). The approach used was the statute approach (Rini, 2018) and the case approach. To support this type of research as above, then the method is used statutory approach (statute approaches). The statute approach examines all laws and regulations related to the legal issues being handled. At the same time, the case approach studies cases related to the issues that have become court decisions with permanent force (Marzuki, 2010).

## **3. Result and Discussion**

Judges are the last foundation for justice seekers. Even judges are sometimes called God's representatives on earth. Therefore, in their decisions, they reflect the values of justice based on divine principles. Sometimes, justice is interpreted subjectively, as stated by Eva Achjani Zulfa in her book "Shifting the Criminal Paradigm," that a decision made by a judge, fair or not, will depend on whose view. The acquittal or acquittal will be considered fair according to the defendant but unfair to the victim or society, and vice versa; the decision to convict the perpetrator will seem unfair to the perpetrator. Still, it will be relative to the victim or society because of convicting the perpetrator. However, if the crime's value is not balanced with the crime he committed, it will still be considered unfair to the victim and society (Rinaldi, 2022).

However, the decision can be studied based on legal principles objectively from an academic and scientific perspective because the judge is an ordinary human being who cannot escape various temptations and challenges. In deciding cases, judges do logical reasoning to develop a provision in a law that no longer sticks to his words but still must pay attention to the law as a system (Ariyanti, 2019).

The following is a study of the decision and the legal ratio of the acquittal in No.56/Pid.Sus-TPK/2016/PN. Kdi involving the former North Konawe regent Aswad Sulaiman and the Supreme Court Cassation decision number 1964 K/PID.SUS/2017, where Defendant Aswad Sulaiman was proven legally and convincingly guilty of committing a crime by jointly committing a criminal act of corruption.

### **3.1. Case Position**

The defendant, as the District Head of North Konawe, was elected based on the Decree of the Minister of Home Affairs of the Republic of Indonesia No: 131.74-276 of 2011 dated April 12, 2011, concerning the dismissal of the Acting Regent of North Konawe and the Ratification of the Appointment of the North Konawe Regent of Southeast Sulawesi Province. On January 13, 2011, Ahmad Yani Sumarata, SP., M.Si, as

the Head of the Public Administration Section at the Regional Secretariat of North Konawe Regency, was appointed as Budget User Authority (KPA) and Commitment Making Officer (PPK) for the continued development activities of the Regent's Office building North Konawe Phase III of 2011, based on North Konawe Regent Decree Number 22 of 2011, signed by Drs. H. Thamrin Patoro, MBA, MM as Acting Regent of North Konawe with a budget of IDR 4,870,000,000.- (four billion eight hundred and seventy million rupiah) from North Konawe district APBD funds for the 2011 fiscal year.

On April 27, 2011, at the Regent's office, the defendant, as the Regent of North Konawe, received H. Siodinar, S.IP, as the field executor of PT Voni Bintang Nusantara and ordered H. Siodinar, S.IP to continue the work on the continued construction of the North Konawe regent's office building, summoned and ordered Ahmad Yani Sumarata, SP, M.Sc to draw up a contract for the continued construction of the North Konawe regent's office building phase III for the 2011 fiscal year. Ahmad Yani Sumarata, SP, M.Sc, told the defendant that he had deposited a folder containing letter Number 134 /PUM/V/2011 dated April 25, 2011, regarding approval in principle for the direct appointment of the continued development activities for the North Konawe regent's office building Phase III of the 2011 fiscal year.

After the defendant read and examined letter Number 134/PUM/V/2011 of April 25, 2011, from Ahmad Yani Sumarata, SP, M.Si, he signed letter Number 602.2/414/2011 dated April 27, 2011, which had been prepared by Ahmad Yani Sumarata, SP., M.Sc. in the folder, which contains the approval for the direct appointment of the continued development activities of the North Konawe Regent's office phase III for the 2011 fiscal year without going through a government administration mechanism in the form of initials from the Regional Secretary and Assistant and handing over to Ahmad Yani Sumarata, SP., M.Sc for immediately followed up without going through a tender process, which should be under Presidential Regulation Number 54 of 2010 concerning government procurement of goods and services which requires the implementation of these activities to be carried out through a tender process.

In total, the funds from the project work reached IDR 7,180,639,545.- (seven billion one hundred eighty million six hundred thirty-nine thousand five hundred forty-five rupiah) while under the contract value that should have been paid IDR 4,870,000,000 (four billion eight hundred seventy million rupiah), so there is a difference of IDR 2,310,639,545,- (two billion three hundred ten million six hundred thirty-nine thousand five hundred and forty-five rupiah). As a result of the defendant's actions, the state suffered a loss of IDR 2,310,639,545.- (two billion three hundred and ten million six hundred thirty-nine thousand five hundred and forty-five rupiah), according to the report on the results of the audit on calculating state losses from the Supreme Audit Agency (BPK) or at least that amount.

### **3.2. Indictment**

In this case, the indictment formulated by the Public Prosecutor (JPU) used the concept of formulating a subsidiary indictment because the crime that occurred had an

effect, and the consequence involved several provisions stipulated in the Corruption Crime Act.

The pattern of formulating the indictment using the Subsidiarity Indictment model is intended so that if the Primary indictment is not proven, then what will be proven next is the Subsidiary indictment, or if the Primary indictment is proven, then the Subsidiary indictment does not need to be proven. The following are the indictments of the public prosecutor.

a. Primary indictment

The defendant's actions violated the provisions in Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning the Eradication of Acts Corruption Jo Article 64 Jo Article 55 paragraph (1) to 1 of the Criminal Code.

b. Subsidiary Indictment

The defendant's actions as stipulated and punishable under Article 3 in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts Corruption Jo Article 64 Jo Article 55 paragraph (1) to 1 of the Criminal Code.

### **3.3. Analysis of the Exemption of the Kendari Corruption Court (*judex factie*)**

Before this case was transferred to court, the Defendant, Aswad Sulaiman, returned the money to the Southeast Sulawesi High Prosecutor's Office in the amount of the difference in overpayment for the Regent's Office construction project based on findings from the Supreme Audit Agency (BPK) of IDR 2,310,639,545 (two billion three hundred and ten million six hundred thirty-nine thousand five hundred and forty-five rupiah), because the Defendant Aswad Sulaiman felt pressured/forced to return the money if it was not returned the defendant would be detained.

In the statement of the defendant stated that he did not receive a single rupiah from the findings of the BPK, then *a'contrario* (Juanda, 2017) if the defendant felt that he did not participate in enjoying the loss of the state's finances, why was the defendant willing to return the money, and why was it not returned immediately? After BPK found state financial losses.

Furthermore, normatively, Article 4 of the PTPK Law, returning State financial losses does not eliminate crime, in the sense that when a person has been summoned and examined for allegedly committing a criminal act of corruption and then returning all State financial losses in the process, it cannot eliminate the threat crime against him so that in the writer's opinion it would be inappropriate if in consideration of the panel of judges stated that the defendant had not been proven legally and convincingly guilty of committing a crime as charged in the Primary and Subsidiary indictments even though the defendant had returned a total of 2.3 billion more to the prosecutor, does not directly confirm that the payment of the money is at least a form of acknowledgment that should be studied and explored more deeply.

The formulation of the primary indictment by the Public Prosecutor using Article 2 paragraph 1, this article is a *lex generalis* or genus of all the provisions contained in the PTPK Law, including the abuse of authority as a *lex specialis* or species as stipulated in Article 3 of the PTPK Law as a formulation subsidiary indictment.

In the Public Prosecutor's Charges, the basis for his charge is not to use Article 2 paragraph 1 but tends to prove a subsidiary charge, namely Article 3, regarding abuse of power. Based on the facts revealed in the trial, the consequences of the criminal offense were lighter than the primary charges. However, in their decision, the panel of judges stated that the defendant was not proven to have committed a crime as charged by the Public Prosecutor.

In the facts of the trial, the overpayment of IDR 2,310,639,545 (two billion three hundred ten million six hundred thirty-nine five hundred forty-five rupiah), Siodinar admitted that the overpayment entered PT Vony Bintang Nusantara and Siodinar signed a letter of absolute responsibility (SKTJM) stating they would return the payment. Meanwhile, in another part, Siodinar's witness statement stated that he did not return the overpayment because he had never enjoyed the money. Likewise, the defendant's denial in his statement stated that he had never received a penny of the overpaid money.

Another side that is interesting to analyze based on legal logic is Siodinar as the executor of the construction of the Regent's office using the company PT Vony Bintang Nusantara, owned by Arnold Lili (Director), without a power of attorney as well as without the basis of rights/borrowing certificate, in his testimony before the trial, Siodinar was a successful team from the Defendant Aswad Sulaiman so that from this relationship it would be related to the direct appointment process by the defendant who was a form of abuse of authority with the nuances of nepotism, because of his position or position as North Konawe Regent.

Evidence of direct appointment as in the letter of approval for direct appointment Number 602.2/414/2011 dated April 27, 2011, which was signed by Defendant Aswad Sulaiman and preceded by a Letter of Appointment directly by Thamrin Patoto as Acting. Regent of North Konawe. However, in his statement, Defendant Aswad Sulaiman denied the direct appointment letter dated April 27, 2011, stating that he had never known about the letter's existence. The defendant only found out after an examination by the BPK (decision p.124), while the Public Prosecutor presented the letter as evidence. In Number 8 (decision on p. 3 and p.126), the judges considered by direct appointment based on Certificate Number 602.2/414/2011 dated April 27, 2011, which Aswad Sulaiman signed.

Clarifying the letter, Ahmad Yani Sumarata and Rafiuddin, who were presented as witnesses at the trial, in principle denied the letter by stating that on April 27, 2011, Defendant Aswad Sulaiman was not at the place but was in Bau-Bau to attend the main event for the anniversary of SULTRA's anniversary on the 27th In April 2011, the defendant Aswad Sulaiman was in Bau-Bau from April 23 to April 28, 2018 (Decision Page 84). The panel believed that they did not find any convincing legal facts that it was the defendant who issued letter Number 602.2/414/2011 dated April 27, 2011, but

the public prosecutor presented the letter as one of the types of evidence and had shown it before the panel of judges which was given number 8 (evidence number 8).

Another part that missed the panel's consideration was the testimony of Defendant Aswad Sulaiman, who stated that during his tenure as Regent, he had never met Siodinar (decision p.124). 46, 47, 48 and p. 51) even Siodinar, in his statement before the court, stated himself as the Success Team of the Defendant Aswad Sulaiman during the election of North Konawe Regent (decision p. 48). So that these relationships are logically legal, they can be interpreted as an integral part of the smooth running of all processes in the Phase III Regent's office development project by way of direct appointment, which violates the provisions in Presidential Regulation Number 54 of 2010 concerning the procurement of government goods and services which require the implementation of government activities through a tender process.

The direct appointment of the construction of the Phase III Regent's office was because the construction was a continuation that technically constituted a single construction unit whose nature of responsibility could not be broken down from work that had been carried out previously. The construction of the Regent's office and the testimony of other witnesses by Ahmad Yani Sumarata should have been an important point for the judges in their considerations so that they did not see the matter partially but examined it to find out who could be legally accountable.

The series of cases illustrates the irregularities in government administration services from the Konawe Utara district government related to the disbursement of 20%, 71%, 95%, and 5% without further scrutiny by officials involved in the disbursement, resulting in overpayment. Furthermore, returning state financial losses should not be a reason for the panel of judges to release the defendant from all legal entanglements. However, this can be used as material for mitigating considerations for the defendant, Aswad Sulaiman.

The following is a legal construction that should be based on the facts of the trial, Article 3 Jo. Article 18 of PTPK Law jo. Article 55 paragraph (1) 1 of the Criminal Code, with its elements which are briefly described as follows:

1. Elements of each person;

What is meant by everyone is a human (person) as a legal subject (Dyah, 2014) who can and can be held accountable for all forms of actions that conflict with the rule of law. For these elements, no human error (error in persona) is found;

2. Benefit oneself or another person or a corporation;

These provisions are only alternatives, not cumulative, where one of them is the act committed. These elements can already be fulfilled. For example, the person does not benefit, but the benefit is another person or a corporation or vice versa. This advantage is reflected in the difference in payments worth approximately 2.3 billion.

3. Misusing the authority, opportunity, or means available to him because of his position;

Whereas based on the testimony of the witness Siodinar, who explained that Siodinar was part of Aswad Sulaiman's successful team and the executor of the construction of the North Konawe Regent's office using PT Voni Bintang Nusantara

was owned by Arnold Lili (Director) without using a company loan power of attorney, so this illustrates a strong relationship with those who backed up Siodinar. Drs. Alimuddin, M.Si stated that as the head of the DPPKAD Service, he had reported both verbally and in writing to Aswad Sulaiman and approved the report on the disbursement of the funds.

Furthermore, the panel of judges stated that with letter Number 602.2/414/2011 dated April 27, 2011, regarding the approval for a direct appointment signed by the Defendant Aswad Sulaiman, taking into account the testimony of the witness Ahmad Yani Sumarata that on April 27, 2011, he had never appeared before Aswad Sulaiman with Siodinar, this statement refuted the statement put forward by Siodinar who stated the opposite that on that date together with Ahmad Yani Sulaiman confronted the Defendant Aswad Sulaiman, then the defendant summoned Ahmad Yani Sumarata through his adjutant, then the Defendant Aswad Sulaiman asked about PT Voni's contract, Ahmad Yani Sumarata conveyed to the defendant that something had been deposited yesterday. He was shown a folder with a floral pattern and then taken by Ahmad Yani Sumarata, who handed it over to the defendant and signed by the defendant.

The signing became the basis for PT Voni Bintang Nusantara to carry out the work. At the same time, the direct appointment letter signed by Thamrin Patoro contained 3 (three) buildings: the Regent's office, the Regional Government Hall, and the Great Mosque in the sense of one letter with three development contracts and the direct approval of the work contained in one letter.

This authentic fact illustrates something unusual; each direct appointment should receive a direct appointment letter for each person appointed as executor of the work. So, letter 602.2/414/2011, dated April 27, 2011, signed by Aswad Sulaiman, confirmed that the tender winner for the construction of the Regent's office was PT Voni Bintang Nusantara. As for letter 602.2/414/2011, dated April 27, 2011, the original cannot be shown. In line with the testimony of the witness Ahmad Yani Sumarata, even if he had submitted the letter to Siodinar, it would have been a photocopy. Regarding the date of the letter explained, the defendant denied that defendant was not present on that date.

The date of correspondence can sometimes be arranged in such a way, although not on the day the letter was issued, or the day the letter was signed. According to Siodinar, Ahmad Yani Sumarata confronted the defendant on that date, and the defendant signed the letter. The testimony of the Siodinar confirmed that the defendant, with his knowledge, gave consent and facilities that violated the provisions.

Jurisprudence in Decision of the Supreme Court of the Republic of Indonesia No. 42/K/Kr/1965 dated January 8, 1966, which states: an act, in general, can lose its nature as against the law not only based on a provision in the Legislation but also based on the principles of justice or unwritten law and is general in nature includes three factors, namely (1) the state is not harmed, (2) the public interest is served and (3) the defendant does not benefit (Wijaya, 2020). However, there was a state financial loss of more than 2.3 billion in this case.



### 3.4. Analysis of Supreme Court Decisions at Cassation Level (*judex juris*)

Regarding the Kendari Corruption Court acquittal, the prosecutor's office took legal action by filing a cassation at the Supreme Court. Against a decision on a criminal case rendered at the final level by a court other than the Supreme Court, the accused or public prosecutor may submit a request for an appeal to the Supreme Court except for an acquittal." (Handoko, 2018) in conjunction with the decision of the Constitutional Court through its decision Number 114/PUU-X/2012 states that the phrase "except for acquittals" as stated in Article 244 of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) is contrary to the 1945 Constitution of the Republic of Indonesia.

In the Attorney General's legal efforts, the Supreme Court granted the Public Prosecutor's Cassation request, that the *judex factie*/Corruption Court had misapplied the law or applied legal regulations improperly, acquitting the defendant from the Primary Indictment on the basis that elements against the law committed acts to enrich themselves, themselves or other people, or a corporation because there were no facts of the defendant's actions violating the law and there was an addition to the defendant's assets as well as the result of the defendant's actions which had caused an increase in the wealth of another person or a corporation cannot be proven by the Public Prosecutor/Prosecutor (*vide*, District Court Decision Page 69).

Furthermore, the *judex facti* legal considerations cannot be justified according to law because the defendant's actions constituted an unlawful act and enriched himself or another person or a corporation as regulated and determined in Article 2 of the Law of the Republic of Indonesia concerning the Eradication of Corruption Crimes in the primary charge with the following legal reasons and considerations.

The defendant was the Regent of North Konawe for the 2011-2016 period under the Decree of the Minister of Home Affairs of the Republic of Indonesia Number 131.74-267 of 2011 dated April 12, 2011, in the Continuing Development Activities for the North Konawe Regent's Office Building Phase III for the 2011 budget year from APBD funds amounting to IDR 4,870,000. 000.00 (four billion eight hundred seventy million rupiah) approved by the Regent of the previous period, Thamrin Patolo, in the ways referred to in the indictment of the Public Prosecutor/Prosecutor, there was a criminal act of corruption. The state suffered a loss of IDR 2,310,639,545.00 (two billion three hundred ten million six hundred thirty-nine thousand five hundred and forty-five rupiah), according to the BPK audit.

According to the Regent's Decree, phase III development funds continued constructing the North Konawe Regent's Office building. Previously, it was IDR 4,870,000,000 (four billion eight hundred seventy million rupiah), while based on the BPKP audit, payments made and approved by the defendant as the budget user reached IDR 7,180,639,545 (seven billion one hundred eighty million six hundred thirty-nine thousand five hundred forty-five rupiah).

Whereas the facts at the trial prove that each payment is based on the stages of payment made by Drs. Alimuddin, M.Sc., reported to the Defendant as Regent/Budget User, and the payment of 5% retention rights was also reported to the defendant.

Thus, the entire construction process of the North Konawe Regent's Office Building and the payment process is 100% known and approved by the defendant. Thus, the defendant overpays IDR 2,310,639,545.00 (two billion three hundred ten million six hundred thirty-nine thousand five hundred and forty-five rupiah) to PT Voni Bintang Nusantara.

The facts at the trial proved a state loss of IDR 2,310,639,545.00 (two billion three hundred ten million six hundred thirty-nine thousand five hundred forty-five rupiah) based on the BPKP audit, the overpayment to PT Voni Bintang Nusantara and the Defendant as the Regent and the Budget User, knew during the payment process that the Expenditure Treasurer carried out because each payment stage was reported to the defendant.

Thus, the Public Prosecutor's Primary indictment of violating Article 2 Paragraph (1) of Law Number 31 of 1999 against the Defendant has been proven, and the defendant is a responsible person as the Head of Government and Budget User, which at any time or stage of payment is reported to the defendant.

The defendant's actions against the law enriched the defendant and others, increasing wealth or becoming rich. Siodinar, SP, or PT Voni Bintang Nusantara illegally obtained an overpayment of IDR 2,310,639,545.00 (two billion three hundred ten million six hundred thirty-nine thousand five hundred and forty-five rupiah).

As a result of the defendant's actions, he had a causal relationship legally, which resulted in a significant loss to the state finances, amounting to IDR 2,310,639,545.00 (two billion three hundred ten million six hundred thirty-nine thousand five hundred and forty-five rupiah) based on the report from the Supreme Audit Board of the Republic of Indonesia.

Because the elements against the law, enriching oneself or another person or a corporation have been fulfilled, all elements in Article 2 (1) of the Law of the Republic of Indonesia Number 31 of 1999 Juncto Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Crime The Corruption Crime in the Public Prosecutor's primary indictment has been sufficiently fulfilled, so that the Subsidiary indictment does not need to continue its examination in the quo case.

In this consideration, the Supreme Court also considered mitigating matters, namely that the State Losses have been returned. Article 4 of the Law on the Eradication of Corruption Crimes states that the return of state losses does not abolish the crime but merely becomes material for consideration by the panel of judges in deciding the case, namely by providing relief in the decision (Gunawan, Mas, & Madiung, 2023) for the good faith of the suspect/defendant.

Observing the *judex fatie* (Kendari Corruption Court) and the *judex juris* (Supreme Supreme Court), the panel of judges in deciding this case has at least gone through 3 stages:

1. Stating is seeing, acknowledging, or justifying the occurrence of an event proposed by the litigants (Isnantiana, 2017). In this case, the judge confirms whether the events proposed are true. To get to the consistency the judge must have more certainty first so that it's not just a guess or shallow conclusion. Judge need and use the means to prove the certainty of the truth the event it controls (Nizar,

Amiruddin, & Sabardi, 2019). The evidence in Article 184 paragraph (1) of the Criminal Procedure Code and the electronic evidence in Article 26 A of Law Number 20 of 2001 are the evidence submitted by the Public Prosecutor and the evidence submitted by the defendant through his legal counsel. This stage has been carried out by the *judex factie* Kendari Corruption Court. Still, in their decision, the panel of judges did not find two pieces of evidence as proof parameters in the minimum principle of proof (*bewijs minimum*) that proof of at least two pieces of evidence is added to the judge's conviction as in Article 183 of the Criminal Procedure Code or known as the *negatief wettelijk bewijs* theory, so that the defendant was acquitted. Furthermore, the public prosecutor took cassation legal efforts against the acquittal.

2. Judges qualify at this stage by assessing concrete events that are considered to have occurred or finding laws for concrete events (Haykal, 2018). After the facts have been known and examined, the judge must determine whether an act or certain actions may be considered unlawful. In this case, the judge must refer to the applicable laws and regulations. In this case, the *judex factie* judge at the Kendari Corruption Court considered that the actions charged by the public prosecutor in the indictment for both the primary and subsidiary charges did not have sufficient evidence, so the *judex factie* acquitted the defendant.
3. Construing (Hariyanto & Pradnya Yustiawan, 2020), If the judge has determined the facts and qualified the actions that occurred, the next task is to construct the case. This task includes determining the legal norms that apply in the case, deciding which legal norms are applicable and binding on the case, and determining the sanctions or penalties that will be imposed according to the mistakes or violations considered to have occurred. In this case, the decision of the Supreme Court of Justice (*judex juris*), which examines the law from the *judex factie*, decided that from a series of examinations and considerations of the legal efforts made by the Public Prosecutor in the memory of cassation, the judge himself 1) stated that the Defendant Drs. ASWAD SULAIMAN P.M.Si (former Regent of North Konawe, has been proven legally and convincingly guilty of committing the crime of "Jointly Committing Corruption and Continuing Crimes, 2) Sentenced the defendant against the defendant therefore with imprisonment for 6 (six) years and a fine of IDR 200,000,000.00 (two hundred million rupiahs) and if the fine is not paid, it will be replaced by imprisonment for 6 (six) months; 3) Punish the Defendant to pay Substitute money in the amount of IDR 2,310,639,545.00 (two billion three hundred ten million six hundred thirty-nine thousand five hundred forty-five).

#### 4. Conclusion

Based on the results, the authors concluded that the panel of judges was not careful in examining the facts of the trial and tended to consider the information in favor of defendant Aswad Sulaiman. The judge should have been more careful in exploring the recovery of State financial losses in the investigation process as a starting point that the defendant had committed a criminal act of corruption by not releasing him from criminal responsibility but only being the basis for mitigating considerations

for the defendant. The corruption case involving the former North Konawe regent Aswad Sulaiman, who was acquitted by the Kendari Corruption Court in 2017, in decision Number 56/Pid.Sus-TPK/2016/PN.Kdi. While the Supreme Court Cassation decision number 1964 K/PID.SUS/2017 decided that Defendant Aswad Sulaiman was proven legally and convincingly guilty of committing a crime by jointly committing the crime of continuing corruption, imposing a prison sentence of 6 years and a fine of IDR 200 million. If the fine is not paid, it will be replaced with imprisonment for six months, punishing the defendant to pay a compensation of IDR 2,310,639,545.00 (three billion three hundred and ten million six hundred thirty-nine thousand five hundred and forty-five rupiahs), the Supreme Court also considers mitigating matters, State Losses have been returned, with Article 4 of the Law on the Eradication of Criminal Acts of Corruption that returns state losses does not abolish crime, but merely becomes material for consideration by the panel of judges in deciding cases, namely by providing relief in decisions. The panel of judges in deciding this case has at least gone through 3 stages: Constating, qualifying, and constituting.

### References

- Abdullah, N., & Chalim, M. A. (2017). Kedudukan dan Kewenangan Notaris dalam Membuat Akta Otentik. *Jurnal Akta*, 4(4).
- Agustin, L. A., & Astuti, P. (2022). Analisis Yuridis Perkara Jaksa Pinangki (Studi Kasus: Putusan No. 10/Pid.Sus-Tpk/2021/PT DKI. *Novum: Jurnal Hukum, In Press*(Syarat SPK (10)).
- Amiruddin, & Asikin, Z. (2012). *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada.
- Ariyanti, V. (2019). Kebebasan Hakim dan Kepastian Hukum dalam Menangani Perkara Pidana di Indonesia. *Mahkamah: Jurnal Kajian Hukum Islam*, 4(2).
- Budiastuti, S. R. (2019). Implikasi Konsep Utilitarianisme dalam Penegakan Hukum Tindak Pidana Narkotika: Kajian Putusan Pengadilan Negeri Yogyakarta Nomor 389/Pid.Sus/2015/PN.Yyk. *Jurnal Wacana Hukum*, 25(2), 16. <https://doi.org/10.33061/1.jwh.2019.25.2.3003>
- Drani, F. N. (2020). Penyelesaian Korupsi dengan menggunakan Restoratif Justice. *Jurnal Penelitian Hukum De Jure*, 20(4), 605. <https://doi.org/10.30641/dejure.2020.V20.605-617>
- Gunawan, J. A. H. E., Mas, M., & Madiong, B. (2023). Analisis Putusan Pengadilan Negeri Mamuju Nomor: 01/Pid.Sus-Tpk/2019 Kaitannya Dengan Pengembalian Kerugian Negara Dalam Tindak Pidana Korupsi. *Indonesian Journal of Legality of Law*, 5(2), 417–428. <https://doi.org/10.35965/ijlf.v5i2.2618>
- Handoko, R. (2018). Tinjauan Yuridis Kasasi Terhadap Putusan Bebas Dalam Sistem Pemidanaan Di Indonesia. *Spektrum Hukum*, 15(2), 208. <https://doi.org/10.35973/sh.v15i2.1118>
- Hariyanto, D. R. S., & Pradnya Yustiawan, D. G. (2020). Paradigma Keadilan Restoratif Dalam Putusan Hakim. *Kertha Patrika*, 42(2). <https://doi.org/10.24843/KP.2020.v42.i02.p06>

- Haykal, M. R. (2018). Analisi Yuridis Penerapan Unsur Melawan Hukum Materiil dalam Putusan Mahkamah Agung atas Extraordinary Crime pada Tindak Pidana Korupsi Pasca Putusan Mahkamah Konstitusi Nomor: 003/PPU-IV/2003. *Majalah Ilmiah Warta Dharmawangsa*, (55).
- Isnantiana, N. I. (2017). Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan. *ISLAMADINA*, 18(2), 41. <https://doi.org/10.30595/islamadina.v18i2.1920>
- Juanda, E. (2017). Penalaran Hukum (Legal Reasoning). *Jurnal Ilmiah Galuh Justisi*, 5(1), 157. <https://doi.org/10.25157/jigj.v5i1.316>
- Lubis, M. A., Dhevi, R. S., & Yasid, M. (2020). Penegakan Hukum Terhadap Aparat Sipil Negara Yang Melakukan Pelanggaran Hukum Dalam Mewujudkan Good Governance. *Jurnal Darma Agung*, 28(2). <https://doi.org/10.46930/ojsuda.v28i2.649>
- Marzuki, P. M. (2010). *Penelitian Hukum*. Jakarta: Kencana Prenada.
- Nizar, M., Amiruddin, & Sabardi, L. (2019). Ajaran Kausalitas dalam Penegakan Hukum Pidana (Studi Putusan Mahkamah Agung Nomor 498 K/PID/2016). *Jurnal Education and Development*, 7(1).
- Putra, N. R., & Linda, R. (2022). Impact of Social Change on Society From the Crime of Corruption. *Integritas: Jurnal Antikorupsi*, 8(1), 13-24. <https://doi.org/10.32697/integritas.v8i1.898>
- Rinaldi, F. (2022). Proses Bekerjanya Sistem Peradilan Pidana Dalam Memberikan Kepastian Hukum Dan Keadilan. *Jurnal Hukum Pespublica*, 21(2).
- Rini, N. S. (2018). Penyalahgunaan Kewenangan Administrasi Dalam Undang Undang Tindak Pidana Korupsi. *Jurnal Penelitian Hukum De Jure*, 18(2), 257. <https://doi.org/10.30641/dejure.2018.V18.257-274>
- Suwito, S. (2017). Putusan Pengadilan Tindak Pidana Korupsi yang Menerobos Ketentuan Pidana Minimum Khusus sebagai Bentuk Penemuan Hukum oleh Hakim. *Khairun Law Journal*, 1(1), 48-61.
- Wijaya, W. (2020). Kewenangan Diskresi Mengenai Peluang Sikap Tindak Administrasi Negara Dalam Perberdayaan Hukum Progresif. *Masalah-Masalah Hukum*, 49(2), 148-159. <https://doi.org/10.14710/mmh.49.2.2020.148-159>