

**LEGAL REASONING OF JUDGE'S DECISION NO. 70/PID.SUS-TPK/2024/PN
JKT.PST. ON CORRUPTION IN THE MINING SECTOR FROM THE
PERSPECTIVE OF PROPHETIC LEGAL JUSTICE**

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ABSTRACT

As a state of law, Indonesia must guarantee legal certainty to its people. This article aims to analyze the considerations of the judges of the Central Jakarta District Court case number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. according to the view of prophetic legal justice, in addition to providing insight to judges so that they can create legal reasoning that supports legal certainty, both from the concept of legislation and the concept of legal justice. This research uses a juridical-normative approach method with data types in the form of primary and secondary data. The results of this study are first, the legal facts show that in this case the panel of judges who examined and tried case number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. did not heed the philosophical, juridical and sociological aspects in accordance with the rules on Corruption Punishment in giving a verdict against the defendant. Second, Indonesia as a state of law adheres to divine justice. The judge's decision number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. with the view of Prophetic Justice, the concept of prophetic justice encourages social, ecological, and spiritual responsibility in every legal policy, including in the natural resource sector.

Keywords: Corruption; Prophetic; Judge's Decision; Crime.

INTRODUCTION

Corruption is an extraordinary crime. This makes sense because corruption can have a significant negative impact on the economy of society and state finances.[1] Because corruption is an unusual crime, its handling must be similar. The definition of corruption is an evil

(criminal) act, especially a foul act, which can be bribery, immoral, depraved, and dishonest. Of course, what is meant here is the ethics or morals of the individual concerned.[2] Fockema Andrease asserts that the term “corruption” comes from the Latin *corruptio* or *corruptus*, which in turn comes from the earlier Latin word *corrumpere*. [3] From Latin, the term spread to many European languages, including English which has the word *corruption*, French which has the word *corruption*, and Dutch which has the word *corruptie* (*korruptie*). It is possible or can be assumed that the word *corruption* comes from the Dutch language which is translated into “*korupsi*” in Indonesian. Law Number 31 Year 1999 on the Eradication of Corruption as amended by Law Number 20 Year 2001 regulates corruption in Indonesia. The main legal basis in handling corruption crimes is this regulation. Some important aspects of this law are 1) Definition of Corruption Crime; 2) Types of Corruption Crime; 3) Legal Sanctions; and 4) Law Enforcement Agency.[4] In positive anti-corruption law, especially in Article 1 point 1 of the General Provisions Chapter of Law Number 30 of 2002, the definition of corruption is stated:

“Corruption is a criminal offense as referred to in Law Number 31 Year 1999 on the Eradication of Corruption as amended by Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 on the Eradication of Corruption”.

Indonesia’s deep-rooted corruption extends to the natural resources sector, causing huge losses to the country’s economy, morality, government integrity, and public trust in the rule of law. Corruption in the natural resources sector can have a more serious impact than other sectors, because it not only causes financial losses in the State Budget (APBN), but also has a negative impact on the environment, including humans, ecosystems and biodiversity. Chandra Hamzah said that corruption in the natural resources sector has the potential to hamper social equity, slow economic progress, and hinder sustainable development.[5] One example of corruption in this sector is the corruption scandal involving PT Timah, in which the husband of actress Sandra Dewi, Harvey Moeis, was also implicated. This tin trade case is in the public spotlight because it causes state losses of up to IDR 300 trillion. Many media outlets explained that Harvey Moeis, Sandra Dewi’s husband, and several other related parties were involved in illicit cooperation in the tin mining trade.

The Public Prosecutor in this case has calculated the economic loss caused by the criminal offense, including: 1) Costs for Environmental (Ecological) Losses amounting to IDR 183,703,234,398,100.00 (one hundred eighty-three trillion seven hundred three billion two hundred thirty-four million three hundred ninety-eight thousand one hundred rupiah); 2) Cost of Environmental Economic Loss amounting to IDR 75,479,370,880,000.00 (seventy five trillion four hundred seventy nine billion three hundred seventy million eight hundred eighty thousand rupiah); 3) Environmental Recovery Costs amounting to IDR 11,887,082,740,060.00 (one trillion eight hundred eighty seven billion eighty two million seven hundred forty thousand sixty rupiah). That the Minister of Environment Regulation No. 7/2014 on Environmental Losses due to Pollution and/or Environmental Damage is used as the basis for determining the environmental losses.

The judge who examined and tried the case handed down a verdict that was “considered” not proportional to the defendant’s actions and not in accordance with the legal system for prosecuting corruption cases in Indonesia, in his decision the judge only sentenced the defendant to six years and six months in prison and a fine of IDR 1,000,000,000.00 (one billion rupiah), in addition the panel also imposed a sentence in the form of compensation for state financial losses of IDR 210,000,000,000.00 (two hundred and ten billion rupiah). This verdict sparked controversy among the public, especially among legal experts, many of whom commented that the verdict handed down to the defendant Harvey Moeis was not in accordance with the prevailing laws and regulations in Indonesia.[6]

A law enforcement officer needs legal thinking to construct legal arguments. Thinking, using, controlling, or organizing something in the legal domain with intellect is known as legal reasoning. Legal reasoning refers to reasoning about the law, specifically the search for “intellect” regarding the law or the basis on which the judge gives a decision in a case. Judge of the Constitutional Court of the Republic of Indonesia M. Arsyad Sanusi quotes Golding’s opinion which provides an interpretation of “Legal Reasoning” as follows:[7]

“There are two ways to use the phrase “legal reasoning”: broadly and narrowly. Legal reasoning, in its broadest sense, refers to the mental processes judges use to reach conclusions regarding the issues they are considering. On the other hand, the reasons that support a choice

are associated with legal reasoning in its narrowest definition. Thus, legal reasoning in this particular context refers to the study of the logic of the decision, i.e. the relationship between the reasons (considerations, reasoning) and the conclusion and the correctness of the considerations or reasons used to justify the decision”.

So that in every case, the judge decides as the law on an unlawful act to be granted by the Panel of judges conducting Legal Reasoning or “Legal Reasoning” with the Panel of judges who make decisions using legal reasoning in every situation when the judge decides to make “new law” by developing the law (*rechtsvorming*), perfecting the law (*rechtsverifining*), forming an analogy (*rechtsanalogie*), or interpreting the law (*interpretatie*). In continental legal systems, this kind of action is known as legal discovery (*rechtsvinding*).[8]

Indonesia adheres to justice based on divinity, as stipulated in Article 2 paragraph (1) of Law No. 48/2009 on Judicial Power. Moeljatno once stated that science (including legal science) that is not accompanied by the science of divinity is incomplete, it can be concluded that legal justice must be based on divinity.[9]

Kelik Wardiono proposes to renew the epistemology of legal science through a prophetic paradigm approach. This approach seeks to integrate prophetic values into legal science, with the aim of creating a more just and civilized legal system. Justice is loaded with the meaning of divine values that animates a decision, so that the law not only functions as a means of social control but also as a means of improving human dignity and welfare and the environment.[10] The importance of applying prophetic justice in handling environmental crimes is that laws that are only oriented towards formal sanctions tend to ignore ecological aspects of justice. Therefore, the concept of prophetic justice encourages social, ecological and spiritual responsibility in every legal policy, including in the natural resources sector.

Many previous studies have examined the prosecution of corruption crimes in the natural resources sector, but there is still no one who examines the prosecution of corruption crimes in the natural resources sector according to prophetic legal justice. This research was conducted to find out and analyze the judges’ legal considerations in Decision Number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. according to the regulations for prosecuting corruption crimes in Indonesia and the Prophetic Legal Justice View in assessing the decision.

RESEARCH METHOD

The research method used is the normative legal method, which combines normative (doctrinal) legal analysis. This research prioritizes the discussion of legal norms and texts, but also examines issues in the study of jurisprudence or causes outside the law, such as history, economics, social issues, politics, and culture. The approaches used are statutory approach, conceptual approach, and case approach. The analytical technique used is the perspective of legal norms and behavior, namely looking for objective truth from legal facts, legal events, or events then connecting them with legal norms and court decisions, along with data sources relevant to the topic of this research, then describing and analyzing them in depth based on legal theories, and finally providing a final conclusion.[11]

Primary, secondary, and tertiary legal documents serve as sources of data and/or legal materials. The research method employed in this study is a literature review. This research employs qualitative descriptive analysis, which involves meticulous examination of the decision, thorough evaluation of the case, and discernment of the rationality of the legal basis and its characterization. The researcher's examination of the arguments and rationality of the procedural rules for the decision in the case is also a component of this research.[12]

RESULT AND DISCUSSION

Ratio Decidendi Analysis in Decision 70/Pid.Sus-TPK/2024/PN Jkt.Pst. According to the Corruption Law

The chronology of the case number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. stems from a major controversy involving unlawful smelter leasing activities, corruption and money laundering in the governance of tin commodities in the Bangka Belitung region. Harvey and his collaborators committed tremendous financial fraud and environmental damage, according to the AGO's investigation. In addition to financial losses, the state also suffered serious ecological losses. The public prosecutor in this case has calculated the economic loss caused by the criminal

offense. In this case the defendant violated Article 2 paragraph (1) jo. Article 18 of the Corruption Law Jo. Article 55 paragraph (1) to 1 of the Criminal Code as in the First Primair Indictment and Article 3 of Law Number 8/2010 on the Prevention and Eradication of Money Laundering Crimes Jo. Article 55 paragraph (1) to 1 of the Criminal Code as in the Second Primair Indictment. The public prosecutor in this case filed charges in the form of a sentence of 12 years imprisonment and a fine of IDR 1,000,000,000 and charged the defendant with restitution of IDR 210,000,000,000. In his verdict, the defendant was sentenced to six years and six months imprisonment and a fine of IDR 1,000,000,000 (one billion rupiah) by the judge who examined and tried the case. The panel of judges also imposed a penalty in the form of compensation for state financial losses of IDR 210,000,000,000.00 (two hundred and ten billion rupiah). In its consideration, the judge considered that regarding the criminal charges against the Defendant for 12 (twelve) years, the Panel of Judges will reduce it with the following considerations Considering, that it turns out that as a result of cooperation with 5 (five) private smelter companies with PT Timah Tbk, the state has benefited from tax revenues, royalties and reclamation guarantees.

Considering, that the spirit of the Corruption Law is asset recovery and in the case a quo, a number of assets have been confiscated from the Defendant and his wife and none of them have been returned to the Defendant, with the intention of serving as collateral for the payment of restitution obligations.

In other considerations, related to the mitigating circumstances of the defendant, the panel considered that the defendant behaved politely during the trial and the defendant has family responsibilities.

Prof. Barda emphasized that judges must consider the legal, philosophical, and sociological aspects of a case when making decisions. Philosophical aspects refer to understanding the nature of what has been done and how it was done, legal refers to the legal system that regulates what has been done. Sociology entails considering both the legal and social consequences of a judge's decision as well as how it will impact society.[13]

According to the facts in the trial of the case a quo, the panel of judges did not heed the punishment in accordance with the article charged to the defendant, namely Article 2 paragraph

(1) jo. Article 18 of the Corruption Law Jo. Article 55 paragraph (1) to 1 of the Criminal Code with a maximum sentence of life imprisonment or imprisonment of 4 (four) to 20 (twenty) years, and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). The Panel did not pay attention to the sentencing guidelines for corruption crimes contained in Perma No. 1 of 2020. In the Supreme Court regulation, for a perpetrator of a corruption crime, the punishment consists of 3 aspects, namely:[14]

- 1) State financial loss
- 2) Errors, impacts and benefits
- 3) Sentencing timeframe

That according to the facts in the trial the defendant's actions fall into the “highest” category in these 3 aspects, therefore according to the appendix to the Supreme Court Regulation Number 1 of 2020 the defendant should be sentenced to 16-20 (sixteen to twenty) years imprisonment and a fine of IDR 1,000,000,000.00 (one billion rupiah).

That in terms of sociology, namely as a result of the criminal act committed by the defendant, economic losses have occurred, namely covering 3 aspects, namely: Environmental (Ecological) Loss, Environmental Economic Loss, and Environmental Restoration. However, in the decision, the panel did not pay attention to the economic losses due to the criminal act, the panel considered that in accordance with the provisions of Article 18 paragraph (1) letter b of the Law on the Crime of Corruption, the amount of restitution should be equal to the property obtained from the crime of corruption, so the amount of restitution to be paid by the defendant is IDR 210,000,000,000.00 (two hundred and ten billion rupiah). In accordance with the provisions in Article 87 paragraphs (1) and (2) of the Law on Environmental Protection and Management, it is explained that perpetrators of environmental crimes are obliged to pay the cost of restoration or take concrete actions to improve the environment. Compensation is not only for third party economic losses, but also includes the cost of restoring the environment that has been damaged by criminal acts. However, this provision cannot be applied in this case because it contradicts the principle of *lex specialis derogat legi generali*, which states that if the legislator intends to enact a criminal provision as a special criminal provision or the provision will be different from the current special provisions, then the criminal provision is special based on the provisions of

Systematische specialtiet, or systematic specificity. According to Article 14 of the Corruption Crime Law, the most unique provision in this situation is the Corruption Crime Law. Therefore, in this case there is a need for legal reconstruction in the Corruption Law, it is hoped that in the future after this research is carried out, further research will be carried out which discusses the reconstruction of the Corruption Law.[15]

A Prophetic Perspective in Assessing Decisions on Corruption in the Field of Mining that Damages the Environment

Indonesia is a religious country, according to the first principle of Pancasila which reads “Belief in One God”. Law enforcement must also be based on the Almighty God, as stipulated in Article 2 paragraph (1) of Law No. 48/2009 on Judicial Power. Moeljatno once stated that science (including legal science) that is not accompanied by the science of divinity is incomplete, it can be concluded that legal justice must be based on divinity.

Justice conceptualized on Godhead can be based on Prophetic Legal Justice. Legal justice is a species of conformity rules; ideal standards of legal judgment; and standards of law enforcement judgment in the structural values of a given legal system, so legal justice is more often referred to as status justice to distinguish it from social justice.[16] Syed Naquib Al-Attas explains that the divine command to act with justice implies that human beings as individuals are created with a natural inclination (*fitri*) for justice and to know what justice means to him and to be able to act in accordance with the divine command.[17] According to Prof. Kelik Wardiono, the importance of applying prophetic justice in handling environmental crimes is that laws that are only oriented towards formal sanctions tend to ignore the ecological aspects of justice. Therefore, the concept of prophetic justice encourages social, ecological, and spiritual responsibility in every legal policy, including in the natural resources sector.[18]

Islam is a religion of *Rahmatan lil’alamin*, which means that Islam is a religion that brings mercy and compassion for the entire universe, not only for humans but also for all creatures, including the environment, animals and plants. This concept is based on Islamic teachings that emphasize justice, balance and compassion in all aspects of life. In accordance with the word of Allah in surah Al Baqarah verse 188:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ وَتَذُلُّوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ
تَعْلَمُونَ

Meaning: “*And let not some of you eat of the wealth of others among yourselves by unlawful means, and let not your property be brought before a judge, that you may eat of the wealth of others by way of sin, while you know.*”

According to the Qur’an, a deeper awareness of nature can help people to better understand and contemplate the power of Allah SWT, so that they can better utilize Allah SWT’s bounty for their own benefit. The main purpose of studying nature and caring for it is to strengthen faith and piety. As *khalifah* on earth, humans have a responsibility from Allah to protect and preserve it as one of their responsibilities.

According to Kuntowijoyo, there are three main aspects that must be seen, which include the principles of humanization, liberation, and transcendence. In the context of prophetic legal justice, these three aspects can be described with the following understanding:[19]

1. Humanization

Humanization, as defined by prophetic social science, includes the removal of materialism, dependency, violence, and hatred from humans. Humanization is in line with the principles of Western liberalism, which at its core is humanizing human beings. If Western culture is founded on the basis of theocentric humanism, then humanism in the prophetic concept is only added a little. Therefore, humanization cannot be fully understood without understanding the concept of transcendence that underlies it. In the case of the environment, or corruption crimes that involve losses and damage to the environment, we must consider the impact of the crimes committed, such as the right to health, decent living, clean water, etc.

2. Liberation

The liberation principles of prophetic social science are understood and placed within the framework of social science, which has a prophetic task to liberate humans from the harshness of poverty, exploitation of abundance, domination of oppressive systems, and hegemony of false

consciousness. This is because prophetic social science is liberated within the framework of theological teachings. Liberation in the legal context means freeing society from structural injustices, such as the exploitation of natural resources that harm the environment and local communities. In terms of criminal cases, judges must have the courage to make decisions that protect the interests of the wider community, not the interests of a handful of economically or politically dominant parties.

3. Transcendence

Transcendence is essential to provide meaning that will guide the purpose of human life. Islam can save a world that is dying because its people are trying to fulfill God's design and lack purpose and meaning, not because it lacks instruments or methods. Humans will be guided towards lofty human qualities through these divine transcendental values. When contextualized in law, the term "transcendence" describes the ethical and spiritual aspects of law. Judges must decide cases with the awareness that the law is not only a human rule, but also has moral and ethical responsibilities. In Natural Resources cases, Judges who adopt the value of transcendence will consider ecological responsibility as a mandate to preserve nature for future generations, rather than simply providing administrative penalties or fines.

That in case number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. the panel of judges should prioritize the Prophetic values of the three aspects above, especially in the aspect of restoring environmental damage due to criminal acts.

CLOSING

1. Conclusion

First, the legal facts show that in this case the panel of judges who examined and tried case number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. did not pay attention to the corruption law, the judge's consideration was considered too original and did not apply the theory of punishment according to Prof. Barda, namely looking at the three philosophical, juridical and sociological aspects in accordance with the corruption law, this resulted in the decision being too far from the guidelines for punishment for corruption in Indonesia and was considered not commensurate with the defendant's actions. Second, Indonesia as a state of law adheres to divine justice as

specified in Article 2 paragraph (1) of Law No. 48/2009 concerning Judicial Power, therefore it cannot be denied that in upholding legal justice based on divine values, especially in the concept of prophetic legal justice theory. In case number 70/Pid.Sus-TPK/2024/PN Jkt. Pst. the panel still has not applied the values of prophetic justice, especially in the 3 aspects described by Kuntowijoyo, namely humanization, namely rights concerning humanity; liberation, namely the interests of the wider community; and transcendence, namely the ethical and spiritual aspects of law. As a legal state that adheres to divine justice, it is required that the basis for decision making comes from divine values, namely in prophetic legal theory.

2. Suggestion

Based on the research findings that have been discussed, the author suggests research on legal reconstruction in the prosecution of corruption crimes, especially those involving aspects of Natural Resources.

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