

**Author:**

Nur Rahmah

**Affiliation:**

UIN Raden Intan Lampung.

**Corresponding author:**

[Nurrahmahhkm@gmail.com](mailto:Nurrahmahhkm@gmail.com)

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## THE PROBLEM OF THE JAKARTA HIGH COURT DECISION NUMBER 10 / PID. SUS-TPK/2021/PT DKI AGAINST Dr. PINANGKI SIRNA MALASARI, S. H., M. H

**Abstract:** Corruption is an extraordinary crime, and efforts to eradicate it must be taken seriously. In deciding corruption cases, judges must consider the consequences of the defendant's actions. Judges can decide cases, but this freedom is not absolute; the community must consider it. Thus, judges cannot act arbitrarily in deciding cases. Decree Number 10/Pid.Sus-TPK/2021/PT DKI regarding corruption cases committed by the Pinangki Prosecutor's Office has juridical considerations regarding the gender of the accused, which is used as one of the reasons for the reduction. The duration of detention is from 10 to 4 years. Therefore, many parties consider the consideration and consideration of Decision Number 10/Pid.Sus-TPK/2021/PT DKI is wrong. This study aims to analyze the validity of judges' decisions based on criminal liability and the validity of judges' rulings and court decisions. The results of this study show that the judge's consideration and verdict against the Pinangki Public Prosecutor are unreasonable.

**Keywords:** Pinangki, Judge's Verdict, Corruption

### INTRODUCTION

Corruption cases in Indonesia have often occurred, which is difficult to eradicate. Lack of awareness from the perpetrator and lack of faith can make the perpetrator lose and forget the sins he committed in the actions he committed, namely corruption; corruption can harm many parties, especially what often happens among honorable people who commit this corruption case; corruption can also occur due to the instigation of people around Corruption is a

misguided, evil, and destructive activity that is addictive to the perpetrators. Corruption is closely related to the nature of the crime, decency, circumstances, position in government agencies and agencies, the existence of gifts that lead to abuse of power, and political and economic factors. In order for this act of corruption to get legal justice, a court was formed consisting of judges who give decisions on a case, judges have an essential role, and judges should not side with someone because if the decision made by the judge is not by what the perpetrator did, it will make the community disappointed about it.

There were even KPK members who were supposed to handle the case but instead interfered and became suspects in the corruption case. Being given a position and trust as an anti-corruption state institution even disappoints the public with corruption cases that he committed; the position is not a benchmark to make someone trustworthy, but instead, the position actually makes people neglect their obligations, such as should have set a good example but instead set a very example terrible and can harm others, can even become a burden for the state due to behavior made by irresponsible individuals. Law enforcement on corruption has gone through a protracted process. Anti-corruption law enforcement efforts require serious action and political will from a strong government committed to fighting corruption. The role in eradicating corruption should not only come from the government that drafts and passes laws on corruption, but these regulations must be appropriate to contain vital legal elements and cause a deterrent effect for the perpetrators; law enforcement officials must also be courageous, fair, firm and professional in regulating problems about corruption.

A corruption case involving a public prosecutor named Pinangki Siruna Malasari; in this case, the public is very disappointed because a prosecutor is considered one of the professionals that can enforce the law instead commits corruption cases. Pinangki's case related to the transfer of *the case* from Bank Bali by Djoko Tjandra, and at that time, Djoko Tjandra was included in the Wanted List (DPO). However, Pinangki is known to meet Djoko Tjandra and receive gifts or promises of money from Djoko Tjandra with the intention that Pinangki's former lawyers as civil servants (officials) or law enforcement officials to take care of the fatwas of the Supreme Court (supreme court). Fatwa through the Attorney General's

Office so that the Panel of judges Djoko Tjandra with PK Decision No. 12 dated June 11, 2009, cannot be executed, and Djoko Tjandra does not serve his sentence when he returns to Indonesia after receiving a gift or promise of money from Djoko Tjandra. Then Pinagki, a former lawyer, exchanged US dollars for rupiah for IDR 4,753,829,000.00 (Four billion seven hundred and fifty-three million eight hundred twenty-nine thousand rupiahs) and used it for the personal needs of the defendant Pinangk (Supreme Court of DKI 2021).

Pinangki's actions are contrary to his duties as a prosecutor who has the authority and duty to implement the judge's decision and permanently bind the court's decision. Pinang's actions were initially sentenced to 10 years in prison and fined Rp. 600,000,000 (six hundred million rupiahs) from the Central Jakarta District Court. However, in the DKI Jakarta Supreme Court Decision Number 10/Pid.Sus-Tpk/2021/PT DKI, the Panel of judges changed the sentence from 10 years to only four years. The judge changed the decision for the following reasons. Because the defendant pleaded guilty and regretted his actions and was ready to give up his job and was therefore expected to continue to behave as a good member of society, the defendant was the mother of one child who was four years old. Years and should be to nurture and love her child from an early age so that the accused as a woman should receive attention, protection, and fair treatment whose actions the accused should not be separated from the participation of those who are partly responsible in such a way that the degree of guilt affects this decision. The court's decision disappointed the public because the sentence was not by the defendant's actions.<sup>1</sup> From the above statement can be found the formulation of the problem, namely: Is the judge's consideration in Decision No. 10/Pid. Sus-Tpk appropriate when it comes to criminal liability for corruption cases.

## RESEARCH METHODOLOGY

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<sup>1</sup> DKI Jakarta High Court, Agung Court Decision, Number 10/Pid.Sus-TPK/2021/PT DKI Jakarta. 2021 p 4

The research method used to write this journal uses normative legal research methods of legal research to determine the truth of whether legal rules are included in legal norms, whether legal norms, including obligations and sanctions, are included in legal principles, and whether one's actions are included in legal norms or legal principles.<sup>2</sup> This research is more oriented to the practical side, which is usually the resolution of concrete legal problems (exceptional legal cases) and in the form of disputes and only wants to know how and where a legal problem is regulated in law, which is done through research, legal facts, relevant laws and regulations and even cases related to the problem to be decided.<sup>3</sup>

By using literature theory taken from journals, books, judges' decisions, and other references related to the corruption case we are discussing, we can see whether the judge's decision is by the punishment of perpetrators who commit corruption or even turn around and are not by the I with criminal responsibility in this corruption case. Therefore, this study is made to find corruption cases committed by a prosecutor, namely Pinangki, and judges' odd decisions and not by the criminal responsibility of corruption cases in Indonesia.<sup>4</sup>

## RESULT AND DISCUSSION

In foreign languages, criminal liability is called *the oredenbaardheid*, or criminal responsibility, which leads to criminal punishment to know whether a person is accused or suspected is responsible for a criminal act committed or not committed. If someone commits a criminal act, whether the punishment obtained is in accordance or not with applicable laws, If the verdict given by the judge is not by the applicable criminal liability, it will lead to the view that the decision is unfair to some people or society.<sup>5</sup>

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<sup>2</sup><https://business-law.binus.ac.id/2019/08/25/penelitian-hukum-normatif-dan-penelitian-hukum-yuridis/> 07/11/2022

<sup>3</sup>Depri Liber Sonata, "Normative and Empirical Legal Research Methods: Distinctive Characteristics of the Method Researching Law," *Journal of Legal Sciences*, Vol 8 No 1 2014

<sup>4</sup>Groupthink

<sup>5</sup> Azalya Kyla Saffanah Senok, "Juridical Analysis of Corruption Crimes Committed by Pinangki Prosecutors", *Journal of Legal Research*, Vol 2 Number 1, p 43

In this case, hakim usually sets a prison sentence or fine for suspects who have committed a case; in this case, we will discuss a corruption case that befell a prosecutor, namely the Pinangki prosecutor; he was initially sentenced to 10 years in prison with a fine of Rp. 600,000,000, 00 (Six Hundred Million Rupiah) or equivalent to a six-month prison sentence of 6 months, Pinangki filed an appeal with a shocking verdict. Among the public, this verdict was unfair because it was considered that the sentence did not go according to the suspect's actions, issuing an appeal verdict of imprisonment for four years and a fine of Rp–600,000,000.00 (Six Hundred Million Rupiah) or equivalent to imprisonment for six months. The verdict was presented for various humanitarian reasons. <sup>6</sup> The appeal is an effort made by the defendant through his attorney because the defendant is unsatisfied with the court's decision.<sup>7</sup>

### **Judge's Judgment in Decision No. 10/Pid.Sus-TPK/2021/PT DKI Associated with Criminal Liability**

The emergence of decision Number 10 / Pid.Sus-TPK / 2021 / PT DKI due to a criminal act of corruption committed by one of the prosecutors, namely Pinangki, he served as a three-judge at the Attorney General's Office of the Republic of Indonesia, starting from a meeting with Djoko Tjandea who was on the wanted list of people (DPO) involved in Jessie cases Bank Bali. Corruption cases by Pinangki prosecutors are handled by the Central Jakarta District Court which is prepared with a cumulative framework and subsidiarity with charges namely Kesatu-Primair committing a criminal offense violating Article 5 paragraph (2) jo Article 5 paragraph (1) letter a U U No 31 of 1999 concerning the Eradication of Corruption Criminal Acts as amended by Law No. 20 of 2001, Kesatu-subsidair committed a criminal offense violating Article 11 U U No. 31 of 1999 concerning the eradication of corruption as amended by UU No 20 of 2001, Second, committing a criminal offense violating Article 3 Law Number 8 of 2010 concerning the prevention and eradication of money laundering, Third-Primair committed a criminal act violating Article 15 jo Article 5

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<sup>6</sup>Groupthink

<sup>7</sup> Azalya Kyla Saffanah Senok, "Juridical Analysis of Corruption Crimes Committed by Pinangki Prosecutors", *Journal of Legal Research*, Vol 2 Number 1, p 44

paragraph (1) letter a of Law Nompr 31 of 1999 concerning the eradication of corruption as amended by Law Number 20 of 2021, Third-subsidair committed a criminal offense violating Article 15 jo Article 13 of Law No mor 20 of 2001.<sup>8</sup>

The reason for the Public Prosecution to compile the charges as above is that the defendant (Pinangki Sirna Malsari), In early September 2019, Pinangki Sirna Malasari met Rahmat and Anita Kolopaking at the Japanese Restaurant of Grand Mahakam Hotel in Jakarta. At that time, Pinangki then introduced Anita Kolopaking, who works as a lawyer, to Rahmat. Pinangki asked Rahmat to introduce JokoS Tjandra. Moreover, Grace agreed to the request. As a follow-up, Rahmat contacted Joko S. Tjandra and revealed Pinangki's request. After seeing his photo with Pinangki as well uniform, prosecutor Joko S. Tjandra agreed on the meeting schedule. On November 12, 2019, Rahmat and Pinangki met Joko S Tjandra at The Exchange 106 in Kuala Lumpur, Malaysia. When they met, Pianangki claimed to be a prosecutor and stated that he could conduct a trial of Djoko Tjandra, namely a reassessment. Pinangki also spoke about the plan to receive a fatwa from the Supreme Court regarding the prosecution of Joko S. Tjandra was returned to Indonesia based on the decision of the Constitutional Court Number 33 of 2016, arguing that the Supreme Court Decision in the Bali Bank Cessie, which sentenced Joko S. Tjandra to 2 years in prison could not be executed because only the convicted person or his family had the right to apply for a PK.<sup>9</sup>On 19/11/2019 Pinangki Sirna Malasari met JokoS.T. again. Jandra However, this time, Pinangki Sirna Malasari, with Rahmat and Anita,met at The Exchange 2016 Kuala Lumpur Malaysia. At that time, Pinangki Sirna Malasari introduced Anita Kolopaking as

Joko S. Tjandra's lawyer. Anita Kolopaking also prepared a power of attorney and letter that said Joko S. Tjandra requested legal aid services for 200 thousand dollars. Joko S. Tjandra also approved and signed the document, a gift from Anita Kolopaking. Joko S. Tjandra requested this in the Pinangki Sirna Malasari meeting to prepare an action plan.

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<sup>8</sup> DKI Jakarta High Court, Agung Court Decision, Number 10/Pid.Sus-TPK/2021/PT DKI Jakarta. 2021 p 139

<sup>9</sup> Report on the Results of Public Examination of Decision Number 10/PID. SUS-TPK/2021/PT DKI Defendant Pinangki Sirna Malasari, p. 10

Then during the meeting at that time, Djoko Tjandra asked Pinangki to make an *action plan*, and at that time, Pinangki agreed by asking for a salary of USD 100 million (Rp. 1,559,800,000,000.00). However, Djoko Tjandra only agreed to USD 10 million (Rp. 155,980,000,000.00). Based on the agreement, the action plan failed. Something needed to be implemented even though Djoko Tjandra had given DP to Pinangki through the intermediary Andi Irfan Jaya of USD 500,000. Finally, in December 2019, Djoko Tjandra canceled the *action plan*.<sup>10</sup>

Then Pinangki was arrested and tried at the Central Jakarta Court, and the judge issued a verdict Number. 38/Pid.Sus-TPK/2020/PN Jkt.Pst who tried and declared that Dr. Pinangki Sirna Malasari, SH., MH. Legally proven and believed guilty of committing criminal acts of corruption, money laundering, and malicious consensus to commit corruption crimes and sentenced to ten years and a fine of Rp. 600,000,000.00 (six hundred million rupiahs) provided that if unable to pay, replaced with imprisonment for six months<sup>11</sup>

Then the defendant, through his legal counsel, appealed because there was an error in the Panel of judges of the first instance who reviewed the legal facts and concluded the case with the decision of the Tribunal. Hakim's first rank was even limited by law due to the non-fulfillment of the provisions of Article 197 paragraph (1) letter d of the Code of Criminal Procedure, which reads: " *Consideration prepared briefly regarding the facts and circumstances along with the evidentiary tools obtained from the examination at the trial on which the defendant is determined.* "The defendant then felt that there was an imbalance in criminal punishment. Namely, the defendant was sentenced to 10 (ten) years in prison, but Djoko Tjandra was only sentenced to 4 (four) years, 6 (six) months in prison, and Andi. Irfan Jaya was sentenced to 6 (six) months in prison.<sup>12</sup>

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<sup>10</sup>Ibid, p 14

<sup>11</sup> DKI Jakarta High Court, Agung Court Decision, Number 38/Pid.Sus-TPK/2020/PN DKI Jakarta. 2021, p 591

<sup>12</sup><https://yuridis.id/pasal-197-kuhap-kitab-undang-undang-hukum-acara-pidana/>  
17/12/2022

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The opinion of the First Judge of the appeal is correct, but there are still unreasonable considerations regarding the length of imprisonment imposed on the defendant. The judge considered it too harsh and fair if the crime was for 4 (four) years and a fine of Rp 600 million, further imprisonment of six months with the following considerations:

- a. The defendant pleaded guilty, apologized for his actions, and sincerely accepted that he would be fired from his job as a prosecutor and was expected to act like a good citizen.
- b. That the accused is the mother of a toddler
- c. (4 years old) entitled to the opportunity to be cared for and loved by their children in toddlerhood
- d. That the accused is a woman who deserves attention, protection, and fair treatment
- e. The defendant's actions cannot be separated from the involvement of other parties responsible for influencing the degree of error in this decision.
- f. Dominus Litus represents the state, and the government reflects a sense of social justice.<sup>13</sup>

The gender aspect of justice at the appellate level can be classified as a non-judicial aspect based on the criminal law doctrine. In Indonesia, the judge's consideration outside the law only concerns the background of the defendant's actions, the consequences of the defendant's actions, the defendant's condition, the socioeconomic status of the defendant, and the defendant's religious factors. Therefore, considering the Bandig Level Judge Panel is inappropriate if the consideration is related to gender. If viewed from the theory of criminal responsibility, using gender in deciding cases such as corruption cases is inappropriate. After all, the theory of criminal responsibility should not view a person who makes a mistake as a man or robber because everyone who makes a mistake must be responsible for his mistakes. The definition of the theory of responsibility is that The intentional punishment of a criminal determines whether a suspect or suspects are responsible for something, whether a crime has occurred or not. The criminal act he committed meets the characteristics of a criminal

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<sup>13</sup>Ade Nomi, "Matters that Mitigate the Verdict of the Corruption Court at the Jakarta High Court on behalf of Dr. Pinangki Sirna Malasari, Sh., Mh. (Decision Number: 10/Pid.Tpk/2021/PT Dki), *Article Pamulang University*, p 425

act according to the law. From an operational point of view, a person will be held accountable for his actions if these actions are against the law, and there is no reason to justify or deny the character for the crimes he committed unlawfully. Moreover, the ability to be responsible is responsible, and only a capable person can be responsible for his actions.<sup>14</sup>

The element of guilt of the criminal acts committed by the defendants is violating Article 11 of the Law on Tipikor, Article 3, and Article 15 of the Law on Money Laundering. Article 13 of the Law on Tipikor. As a prosecutor, the defendant must be responsible for distinguishing what is reasonable, legal, and illegal.<sup>15</sup> Article 3 of PERJA (Prosecutor's Conduct) No. PER-014/A/JA/11/2012 reads:

- a. Loyal and obedient to Pancasila and the 1945 Constitution of the Republic of Indonesia
- b. Act by applicable laws and regulations, uphold religious norms, decency, the decency that live in community life, and uphold human rights
- c. Report immediately to the leadership if they know anything that can harm the country.<sup>16</sup>

To find out whether the judge's decision or the judge's consideration is by his decision on the sanctions given to the prosecutor Pinangki Sirna Malasari, we can see aspects or approaches that judges usually use in deciding cases, one of which is in Pmessenger No. 10 / Pid-Sus-TPK / 2021 / PT DKI, which is as follows:

#### 1. Aspects of the Juridical Approach

Criminal punishment is like a moral education for defendants who have committed crimes to be aware and not repeat them. The punishment is an ordinary crime and does not torture the defendant then; criminal responsibility must also be by the behavior carried

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<sup>14</sup> Fitri Wahyuni, "*Basics of Criminal Law in Indonesia*", (South Tangerang: PT Nusantara Persada Utama: 2017), p. 67

<sup>15</sup> Groupthink

<sup>16</sup> Regulation of the Attorney General of the Republic of Indonesia Number Per-014/A/Ja/11/2012 concerning the Code of Conduct of Prosecutors, p. 4

out by the defendant at the time of trial. The judge handling the Pinangki case refers to Article 183 of the Code of Criminal Procedure, which stipulates that the conviction of the accused requires that his guilt is proven by at least two valid pieces of evidence; and by presenting two or more valid evidence; the judge was convinced that the crime took place and that it was the defendant who committed it.<sup>17</sup> Moreover, article 184 of the Code of Criminal Procedure states that this valid evidence is: Witness statements, expert statements, letters, instructions, etc., the testimony of the accused. Stelsel follows the evidentiary system of the Criminal Procedure Code *neighblich Wettelijk*; only legal evidence that can be obtained legally is used as evidence. This means that outside the regulation cannot be used as valid evidence. The defendant also presented mitigating witnesses through legal counsel. As well as evidence presented to the court in the form of bank statements, screenshots of Pinang Whatsapp chats, 1 unit of BMW X-1 along with documents and others. This led the judge to join the prosecution's indictment on the first indictment - the additional charge for violation of Article 11 of the Tipikor Law, the second indictment - the violation of Article 3 GwG, and the third charge - the additional charge of the offense - Section 15 already. Law on Corruption Article 5 paragraph 1 letter a of the Corruption Law.<sup>18</sup>

## 2. Aspects of the Philosophical Approach

Synonymous with truth and justice, the criminal justice system has the principle of equality before the law, which means that the perpetrators must be punished. He who steals must be punished, meaning that every thief must be punished without discrimination. In its decision in Case 10/Pid.Sus-TPK/2021/PT DKI, the Tribunal conveyed the legal aspects of imprisonment, taking into account the sex of the accused, which significantly reduced the prison sentence. The length of the sentence because of the sex of the defendant is considered a woman in need of attention, protection, and fair treatment. as in the decision of the First Judge and the Chairman, Article 11 of the Corruption Eradication Law No. 31 of 1999, as amended by Law No. 21 of 2001, related to the amendment of the

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<sup>17</sup><https://cekhukum.com/pasal-183-kuhap-kitab-undang-undang-hukum-acara-pidana/> Retrieved 17/12/2022

<sup>18</sup> Article 183 of the Code of Criminal Procedure

Corruption Eradication Law No. 31 violated in 1999 and amended by the second charge of anti-money laundering prevention violations and article 3 of the Prevention Law No. 8 of 2010 and the third secondary charge of violation of article 15 junction article 13 of Law No. 31 of 2010 concerning Abolition. Corruption Crime based on Law No. 20 of the Eradication of Corruption Crime No. 31 of 1999.<sup>19</sup>

### 3. Aspects of the Sociological Approach

From a juridical point of view, the causes of the crime can be known with the help of sociological aspects that also affect the form of punishment imposed by the judge on the accused. Law Enforcement Issues cannot be viewed solely from the perspective of laws and regulations. However, they must be viewed as a whole by combining all hair elements such as morality, behavior, and culture. The eruption has long been one of the crimes in Indonesia. The result of corruption is not only in the form of state financial losses but also violations of the social and economic rights of the wider community. Therefore, corruption is one of the crimes whose eradication must be carried out extraordinarily. The judge's consideration in the decision of case number 10/Pid.Sus-TPK/2021/PT DKI judges regarding gender and the defendants in the DKI decision are incorrect. Karen is a professional defendant as a prosecutor and needs to support government programs to organize and realize a clean country from corruption, collusion, and nepotism. The gender important to judges has nothing to do with a person's morals and behavior 1 paragraph 3 of PERMA no. 3 of 2017 defines gender as a term that refers to the position, duties, and responsibilities of men and women resulting from society's social and cultural conditions, which can also change according to time and place. So that both male and female perpetrators, when committing criminal acts, must be held accountable for their actions because they have caused harm to others. <sup>20</sup>We use literature theory by looking for writing sources by referring to journals, books, rulings, and laws and regulations related to the title of our journal as well as aspects used by judges in deciding cases in this Pinangki prosecutor

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<sup>19</sup>Girlfriend Permanasari, "Basic Analysis of Legal Considerations by Central Jakarta High Court Judge No. 10/Pid.Sus-TPK/2021/PT DKI", *Syntax Idea*Theft. 3, No 9, September 2021,

<sup>20</sup>Regulation of the Supreme Court of the Republic of Indonesia No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases with Law

case and problems that occur in judges' decisions which turn out to be in making decisions seen from the gender of the defendant which should not be in the theory of criminal liability. Done because someone who is considered to have committed a mistake must be punished relatively so that no party feels aggrieved by the decision because someone is convicted.

## CONCLUSION

Based on the discussion above, the things that can be concluded are:

- a. The judge's consideration of criminal liability in the DKI Jakarta High Court Decision Number 10/Pid.Sus-TPK/2021/PT DKI is unreasonable. K. Pinangki's actions contain errors by the principle of legality (see Article 1 Paragraph 1 of the Criminal Code) can be criminalized. The judge's opinion that commuted Pinangki's sentence from 10 (ten) years to 4 (four) years, and one of the facts that the defendant is a woman who must receive attention, protection, and fair treatment, is not appropriate if used in the trial—the decision on the length of imprisonment for the defendant. Using gender as a mitigating factor is incompatible with the principle of equality and criminal liability theory. Because Pinangki is the main perpetrator of the corruption case and not a companion, the sentence should be more severe than 4 (four) years.
- b. The reason for the DKI Jakarta High Court judge who decided far less, namely 4 (four) years in corruption cases as stated in Decision No. 10/Pid.Sus-TPK/2021/PT DKI, does not meet the sense of social justice. The reason is that the public criticizes the decision not to have a deterrent effect. The defendant committed three crimes that were separate acts, theoretically called *concursum*. The main punishment for *concursum* is the most severe punishment plus one-third of the most severe punishment. If Pinangki is found guilty of corruption, the judge should have sentenced him to more than 15 years to 20 years in prison. The sentence imposed for 4 (four) years is too light and does not exceed the third maximum sentence. In addition, Pinangki committed corruption and money laundering, both of which are extraordinary crimes because they are challenging to detect and detrimental to life values—society, nation, and state. Pinangki is also a prosecutor or police officer tasked with enforcing the law and providing justice for the

community, in this case, as a lawbreaker. Therefore, if he imitates and deepens the values and justice in society, the punishment imposed can be more severe because to provide a deterrent effect to the accused not to commit crimes again, he informs the public no. Committing the crime of corruption because it can be convicted makes it difficult for the defendant to repair even in prison, and seeks to eradicate corruption through punishment.

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