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Application of Criminal Claims Below the Specific Minimum in Offenses Corruption Blackmail in Office

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ABSTRACT : In order to achieve a more effective goal of preventing and eradicating corruption, Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as already stated in the Law of the Republic of Indonesia amended by the Law of the Republic of Indonesia Number 20 of 2001 containing different criminal provisions with previous laws, one of which was to determine a specific minimum criminal threat, but in its implementation a special minimum criminal threat that clashes between the principle of legal certainty with the principle of justice and the principle of benefit Law, while the Public Prosecutor in carrying out the prosecution must also be able to realize certainty, the applicable law, justice and truth based on the law and observing religious norms, politeness, and decency, also must have human values, law, and justice that live in society, as observed Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Issue raised in this paper, namely how the Public Prosecutor can apply a criminal under the specific minimum in the offense of extortion corruption in office. The type of research used in this paper is a type of normative research which analyzes secondary data. This study explains the theoretical basis or criteria for the application of criminal charges under the special minimum in corruption offenses, extortion in office.

KEYWORDS: Criminal Prosecution, Special Minimum, Corruption Crime.

INTRODUCTION

In the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Article 2 clause (1) affirmed that:
"*The Prosecutor's Office of the Republic of Indonesia is a government institution that carries out state power in the field of prosecution and other authorities by law*".

Whereas in Article 2 clause (2) it is stated:
"*The power of the state as referred to in paragraph (1) is exercised independently", which in the explanation of the article states: it is stated that "independently" in this provision is in carrying out its functions, duties and authorities it is free from the influence of government power and the influence of other powers*".

The Prosecutor's Office as the controller of the case law process (*dominus litis*), has a central position in law enforcement, because the Prosecutor's Office can determine whether a case can be submitted to the Court or not based on the tools evidence according to the Criminal Procedure Code, apart from being a dominus litis person, the Prosecutor's Office is also the only one implementing agency for criminal decisions (*executive ambtenaar*).

In carrying out its duties and functions, the Prosecutor's Office of the Republic of Indonesia is based on the principles and norms, as in the general explanation of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, one of which is mentioned in the fifth paragraph as follows:
"In carrying out its functions, duties, and authorities, the Prosecutor's Office of the Republic of Indonesia as a government institution exercising state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and respecting religious norms, politeness, and decency, and is obligatory explore human values, law, and justice that live in society".

The Prosecutor's Office of the Republic of Indonesia is led by the Attorney General of the Republic of Indonesia based on Article 18 clause (1) of the Republic of Indonesia Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated:

"The Attorney General is the leader and the highest person in charge who controls the implementation of duties and authorities in the Prosecutor's Office, the Attorney General is also the highest leader and person in charge in the field of Prosecution."

Which means that the Attorney General is not only the highest leader in the Prosecutor's Office but also the highest leader of the prosecution field in any institution authorized by law.

Based on Article 30 clause (1) of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the task of the Prosecutor is to carry out prosecutions, carry out judges' decisions and court decisions that have obtained permanent legal force, supervising the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions, conduct investigations into certain criminal acts based on the law, complete certain case files and for that reason they can carry out additional examinations before being transferred to the court, which in its implementation is coordinated with investigators.

Meanwhile, in the provisions of Article 1 number 6 letter a of the Criminal Procedure Code, the Prosecutor is an official who is given the authority by this law to act as a Public Prosecutor and carry out court decisions that have been obtain permanent legal force, the Public Prosecutor also determines whether a case resulting from the investigation is complete or not to be transferred to a district court for trial, this is regulated in Article 139 of the Criminal Procedure Code.

When referring to the duties and authorities of the Prosecutor's Office in various prosecution systems that apply in various countries, it can be seen that the Prosecutor plays an active role in the investigation process to the prosecution as follows:

a. The Anglo Saxon System

In this system, although theoretically the police and the Prosecutor's Office have their respective powers, the police who conduct a case investigation are required to report it to the Prosecutor as early as possible, and require approval Prosecutors to carry out the prosecution. So in practice, the police must comply with the advice of the Prosecutor regarding collecting additional evidence from the beginning so that the case under investigation produces the expected results. In addition, the police must comply with the Prosecutor's decision to stop the investigation because the prosecution will be terminated.

b. The Anglo American System

In this system the Prosecutor is the most powerful official in the criminal justice system because the Prosecutor has a very large and significant influence on the actions of any criminal justice official. Besides that, the prosecutor's authority to sue or not to sue and to accept the suspect's confession in order to obtain an indictment which is lighter (*plea guilty*) is really very decisive. While in very heavy cases such as homicide, the Prosecutor leads the investigation either individually or together with the police at the scene of the crime. The country that implements this system is the United States.

c. The Continental Europe System

In this system the prosecutor is the main figure in the administration of criminal justice because it plays an important role in the decision-making process. Although in practice the police have reliable capabilities in the process of gathering evidence at the crime scene, they still depend on the advice and direction of the Prosecutor. This is because the Prosecutor is more proficient in juridical matters and has the exclusive primary right to contact the court. Even in countries that follow this system, where the Prosecutor does not carry out his own investigation, the Prosecutor still has broad prosecution discretion to determine whether or not to prosecute almost any criminal case.

Since 1963 in the framework of unity in the Prosecution policy, a guideline regarding the severity has been outlined in the sentence demanded by the Public Prosecutor namely in the Circular Letter of the Attorney General Number: I/SE/Secr/1963 dated January 3, 1963. However, with the passage of time, the policy is no longer in accordance with the development of the situation, there are many demands that there is no uniformity regarding the severity of the criminal charges filed by the Public Prosecutors against the same cases, both in types, conditions and motives. In addition, it is not uncommon for criminal charges submitted by the Public Prosecutor to be deemed too light, both in terms of the maximum criminal threat and in terms of the sense of justice that develops in society. Therefore, in 1985, the Attorney General's Circular Letter was issued Number : SE-009/J.A/12/1985 dated December 14, 1985 regarding Guidelines for Criminal Prosecutions and since the issuance of guidelines, the criminal charges to be submitted by the Public Prosecutor must go through the process of submitting a plan of claims in a hierarchical/tiered manner to the superior as the controller of the case which can be interpreted as a check and recheck process for approval or
given instructions if the criminal prosecution plan is deemed not to meet the guidelines in the Attorney General's Circular Letter (SEJA).

In carrying out its role as a state institution in the field of Prosecution, the Prosecutor's Office of the Republic of Indonesia participates in National Development, especially Legal and Bureaucratic Reform, as mandated by the Republic Act Indonesia Number 17 of 2007 concerning the National Long-Term Development Plan of 2005 - 2025, which in the law on page 42 states the realization of a democratic Indonesia, based on law and fairness is indicated by the following points, at number 1:

"The establishment of the rule of law and the enforcement of human rights based on Pancasila and the 1945 Constitution of the Republic of Indonesia and the establishment of a national legal system that reflects truth, justice, accommodation and aspirations. The creation of law enforcement regardless of one's position, rank, and position for the sake of the rule of law and the creation of respect for human rights".

The handling of cases handled by the Prosecutor or Public Prosecutor does not only deal with general criminal cases originating from the Indonesian Police Investigators or Civil Servant Investigators who are authorized by law but also on cases of special criminal acts such as corruption, customs and excise crimes, tax crimes and violations of human rights (HR).

Regarding the handling of corruption cases at the Prosecutor's Office of the Republic of Indonesia, guidelines for prosecution have been issued which have been amended several times following legal developments. As time passed, in 2010 the Attorney General issued a Circular Letter of the Attorney General of the Republic of Indonesia Number: SE-003/A/JA/2010 dated February 25, 2010 concerning Guidelines for Criminal Prosecutions for Criminal Acts of Corruption, this guideline is only devoted to corruption cases, which in essence are made to prevent or minimize disparities in prosecution special criminal cases of corruption. SEJA set regarding the benchmark for criminal charges based on the amount of state losses caused by the actions of the Defendant and refund of state losses. Almost simultaneously with the Circular Letter of the Attorney General of the Republic of Indonesia Number: SE-003/A/JA/2010, previously issued a Circular Letter of the Attorney General of the Republic of Indonesia Number: SE-001/A/JA/01/2010 dated January 13, 2010 concerning Controlling Handling of Corruption Crimes, in which case control is carried out through a series of processes that have been running so far less efficient and effective. With the granting of relaxation of case control in SE-001/A/JA/01/2010, it is hoped to increase the independence of the Public Prosecutor so that he does not just tend to rely on instructions for demands from superiors. The consequence is that with the granting of leniency in controlling cases, the policy on criminal prosecution guidelines must be more applicable and easy to implement in constructing criminal charges.

In relation to the duties carried out by the Public Prosecutor, the existence of The Claim Letter (requisitoir) is an important part of the criminal procedural law process. The Claim Letter (requisitoir) is made in writing and read out in court as referred to in Article 182 clause (1) letter c of the Criminal Procedure Code. The Claim Letter (requisitoir) includes the demands Public Prosecutor against the accused or criminal threats, either in the form of punishment or acquittal and arranged based on the facts revealed in the trial based on the examination of witnesses, experts, letters and statements of the defendant, this is different with the indictment submitted at the beginning of the trial, there is no criminal threat and it is compiled based on Examination stage of The News Investigation.

The law on eradicating corruption has been changed many times. Before there was a corruption law, The Criminal Code had already regulated this, especially the offense of bribery and embezzlement by civil servants. Many developed countries do not have special laws regarding corruption offenses, corruption offenses are regulated in the Criminal Code, such as the Netherlands, France, Japan, Germany etc. After Indonesia's independence (transfer of sovereignty), many people began to talk about its rampant corruption in Indonesia. The Central War Authority, issued a regulation regarding the eradication of corruption, namely the Central War Authority Regulation 9 April 1957 No. Prt/PM/06/1957, dated May 27, 1957, Number Prt/PM/03/1957 and dated July 1, 1957 Number Prt/PM/011/1957 and Law Number 24 Prp/1960[1].

In its implementation, it turns out that Law Number 24 Prp of 1960 has not yet achieved the expected results, so it had to be replaced again with Law Number 3 of 1971 concerning the Eradication of Corruption Crimes.

Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption seems to pay attention to the objective recovery of state losses, because this law includes and threatens additional penalties in the form of criminal sanctions payment of replacement money (pup) in Article 34 letter c. Even so, none of the provisions in Law Number 3 of 1971 which includes or relates to civil law instruments.

Meanwhile, Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption is declared no longer valid. On the basis of this MPR Decree Number XI/MPR/1998, then Law Number 31 of 1999 concerning the Eradication of Corruption crime which came into force on August 16, 1999, and was published in the State Gazette of the Republic of Indonesia 1999 Number 140.

However, later amendments were made to Law Number 31 of 1999 with the enactment of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and published in the State Gazette of the Republic of Indonesia of 2001 Number 134 which came into force. on November 21, 2001, which in the explanation on page 2 of paragraph 3 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes, it is stated *"In order to achieve a more effective goal of preventing and eradicating criminal acts of corruption, this law contains criminal provisions that are different from the existing law, namely determining the special minimum penalty, a higher fine, and the death penalty which is a*

[1] Andi Hamzah, Niniek Suparni, M.S. Anabertha, Delik-Delik Tersebar Di Luar KUHP Buku I Perundang-undangan Pidana, (Jakarta : Armawa, 2013), page 89

criminal burden. In addition, this law also contains imprisonment for perpetrators of criminal acts of corruption who cannot pay additional penalties in the form of compensation for state losses".

In a literature review that the Criminal Code only stipulates a general maximum and a special maximum and a general minimum, Article 12 paragraph (2) of the Criminal Code states that imprisonment for a certain period of time is a minimum of 1 (one) day and a maximum of 15 (fifteen) consecutive years. Article 18 paragraph (1) of the Criminal Code states that the minimum imprisonment is 1 (one day) and the maximum is 1 (one) year, while there is no maximum penalty in general. The two articles only regulate the general maximum and general minimum provisions in the Criminal Code, then the maximum in particular is contained in the articles without regulating the minimum in particular.

The general maximum provisions in the Criminal Code for imprisonment are for 15 (fifteen) consecutive years and for imprisonment for 1 (one) year while the provisions regarding the general minimum in the Criminal Code for imprisonment are for 1 (one) year and for imprisonment for 1 (one) day.

In the maximum system contained in the Criminal Code, there are arrangements regarding participation (delneeming), trials (poging), concursus, repetition (recidive) on the grounds of weighting and reducing the crime, in imposing the crime can be aggravated and alleviated, while in the special minimum system there are no guidelines governing this matter. Various threats of criminal sanctions are listed in the Criminal Code, so alternative threats are often applied in one article. In addition, there is no special minimum system for each criminal that includes these articles.

One of the offenses regulated in Law Number 20 of 2001 concerning amendments to Law Number 31 1999 concerning the Eradication of Criminal Acts of Corruption, namely the offense of extortion in office as stipulated in Article 12 letter e stipulates that the threat of imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp 1.000.000.000,00 (one billion rupiah), "*with an element of offense that is violated "a civil servant or state administrator who with the intention of unlawfully benefiting himself or another person, or by abusing his power to force someone to give something, pay, or receive a discounted payment, or to do something for yourself*". This article is a copy of Article 423 of the Criminal Code which together with Article 425 of the Criminal Code is called the Dutch delik knevelarij or English: extortion. Andi Hamzah gave the name "extortion in office", Moeljatno: "blackmail". Moeljatno's translation is not quite right, because there is another offense, namely Article 368 of the Criminal Code which actually the name is extortion or Dutch *afpersing* or English: blackmail. It is extortion in nature, but it must be carried out by civil servants, so it is an offense. The object of extortion can be in the form of money, payment money, it can also buy people's goods that are extorted at a reduced price, forced to discount. It could also be that the person's labor is without payment, for example, being forced to work on the garden, rice field, etc., without being paid wages[2].

For example, the application of the provisions of Article 12 letter e of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, namely as the decision of the Corruption Court at the Serang District Court Number: 6/Pid.Sus-TPK/ 2019/PN.Srg on October 1, 2019 on behalf of Defendant I Tb. Fatullah, SH bin Tb. Lukman, Defendant II Budiyanto bin Jamin and Defendant III Indra
Juniar Maulana bin Sahrani, the three defendants were indicted by the Public Prosecutor for violating Article 12 letter e of Law Number 20 of 2001 regarding amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) 1st Criminal Code or Article 12 letter g of Law Number 20 of 2001 concerning amendments to Law Number 31 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) of the 1st Criminal Code, where the Public Prosecutor and the Assembly The judge applies the punishment (*strafmaat*) under the specific minimum provisions of the said article.

Whereas based on this, there is a paradigm shift in law enforcement or the purpose of the law itself, namely between the principles of legal certainty (legal certainty) and the principle of justice (substantial justice), although normatively the law regulates the threat of a minimum criminal sentence, both imprisonment and a fine, but in practice only judges given the freedom to break through the minimum limits of threats that have been clearly regulated by reason or consideration of taste social justice (social justice) and moral justice, marked by the freedom of judges in making decisions outside criminal provisions regulated in laws and regulations through legal discovery (*rechtsvinding*) in order to answer positive law which is starting to feel no longer qualified to solve all legal problems or conflicts that exist in society and actual problems in society, judges must have the courage to "*pick up the era*" by acting progressively in interpreting positive legal material, this step is based on the Circular Letter of the Supreme Court Number 3 2015 in the legal formulation of the Plenary Meeting of the Supreme Court of the Republic of Indonesia in 2015 and the Circular Letter of the Supreme Court Number 3 of 2017 in the legal formulation of the Plenary Meeting of the Supreme Court of the Republic of

[2] *Ibid*, page 113

Indonesia in 2017, especially regarding the handling of Narcotics cases. Meanwhile, in cases of corruption crimes, since 2010 there has been the same decision
namely the decision of the Supreme Court Number 2399K/Pid.Sus/2010.

RESEARCH METHOD

The legal research that will be carried out by the author is normative legal research because it is carried out by examining secondary data only. The primary data will also be examined but only as a support for secondary data only. Legal research normative is library law research, which is done by examining library materials which are secondary data. Normative legal research methods or library law research methods are methods or methods used in legal research that is carried out by examining existing library materials.

DISCUSSION

The 1945 Constitution which implicitly regulates the existence of the Indonesian Prosecutor's Office in the State Administration System, as a body related to Judicial Power (vide Article 24 paragraph 3 of the 1945 Constitution in conjunction with Article 41 of Law No. 4 of 2004 concerning Judicial Power), with a very dominant function as a person with the Dominus Litis Principle, controlling the case process which determines whether or not a person can be declared a defendant and submitted to the Court based on the available legal evidence according to law and as an executive officer implementing court decisions and decisions in criminal cases.

Then in Article 1 point 13 of the Criminal Procedure Code which confirms that the Public Prosecutor is a Prosecutor who is authorized by law to prosecute. While in Article 2 of Law no. 16 of 2004 concerning the Indonesian Prosecutor's Office, which places the position and function of the prosecutor's office with a specific character in the constitutional system, namely as a government institution that exercises state power in the Prosecution Sector independently from the influence of any party's power. Prosecutors are functional officials who are appointed and dismissed by the Attorney General. In carrying out prosecution duties, the Prosecutor acts for and on behalf of the state, with confidence based on valid evidence and for the sake of justice and truth based on God The Almighty. In carrying out their duties and authorities, the prosecutor always acts based on the law and respects religious norms, decency, and morality and is obliged to explore human values, law and justice that live in society[3].

In the context of the purpose of punishment, the imposition of a criminal offense is broadly based on the actions of the perpetrator in the past or for interest in the future. If it departs from past actions, then the purpose of sentencing is as follows: retaliation, but if the orientation is for future interests, then the purpose of the crime is to improve the behavior of the perpetrator.

There are two conceptual views that have different moral implications from each other, namely the retributive view and the utilitarian view. The retributive view presupposes that punishment is a negative reward for the deviant behavior of citizens so that punishment is only as revenge for mistakes made on the basis of their respective moral responsibilities. The utilitarian view sees in terms of the benefits that are to be generated by punishment. On the one hand, punishment is intended to improve attitudes and behavior and on the other hand it is intended to prevent others from the possibility of committing similar acts[4].

What about the Prosecutor as the Public Prosecutor, the Prosecutor submits a criminal charge which will be submitted to the Judge. It is often the case that criminal decisions handed down by judges may have different results for the same type of crime. Public questions will arise when many corruption cases are decided with lighter crimes compared to theft crimes, so the assumption arises in society that the law always favors *the haves*.

The Public Prosecutor at the Serang District Attorney, in 2019 experienced the same conditions but different provisions the application of the article that was violated, namely Article 12 letter e of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, where at that time there was a catastrophic event tsunami in the Sunda Strait, Banten Province on December 22, 2018, which in essence the legal event was Defendant I TB. Fatullah, SH bin TB. Lukman as a civil servant at the Forensic and Medicolegal Installation at the Serang District General Hospital Dradjat Prawiranegara, Defendant II Budiyanto bin Jaimin and Defendant III Indra Juniar Maulana bin Sahrani as private parties from CV. Naufal Zaidan, has made a levy or fee to the families of the victims of the Sunda Strait tsunami, Banten Province, which should, according to the provisions, all costs incurred as a result of the Sunda Strait tsunami disaster in Banten Province be borne by the State. Each of which, based on the facts revealed in court, has taken a levy, namely Defendant I received an amount of Rp. 6.000.000, - (six million rupiah) and Defendant II received an amount of Rp. 600.000,- (six hundred thousand rupiah) while Defendant III received an amount of Rp. 350.000,- (three hundred and fifty thousand rupiah), but as long as each defendant has returned the money through the Public Prosecutor before the trial.

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[3] Bambang Waluyo, *Loc.Cit*, page 56

[4] Marcus Priyo Gunarto, *Sikap Memidana yang Berorientasi pada Tujuan Pemidanaan*, Mimbar Hukum Vol-21, Nomor 1, 2009, page 100- 101

So looking at the condition of the money obtained from corruption is relatively small and does not come from the Revenue Budget State Expenditure (APBN) or Regional Revenue and Expenditure Budget (APBD) and the money has been fully returned by the Defendants, the Public Prosecutor at the Serang District Attorney took steps to ask the Prosecutor for instructions The Supreme Court of the Republic of Indonesia in stages in accordance with the provisions of the Circular Letter of the Attorney General of the Republic of Indonesia Number: SE-003/A/JA/2010 concerning Guidelines Criminal Claims for Corruption Crimes. In the end, the Attorney General of the Republic of Indonesia gave instructions to the Public Prosecutor at the Serang District Attorney, to prosecute: Defendant I TB. Fatullah, SH bin TB. Lukman for 1 (one) year and 6 (six) months in prison, Defendant II Budiyanto bin Jaimin for 1 (one) year in prison and Defendant III for 1 (one) year in prison or prosecute the Defendants with a criminal under the special minimum provisions of Article 12 letter e Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which is under 4 (four) years.

CONCLUSIONS

1. That the paradigm of the purpose of punishment that has developed in people's lives has recently undergone a shift, no longer based on Absolute Theory or Revenge Theory, Relative Theory or Goal Theory and Combined Theory. Likewise with law enforcement, there is a paradigm shift not only based on the principle of legal certainty (legal certainty), but also to the principle of justice (substantial justice). Judges in deciding the case and the Prosecutor General in demanding have the same purpose or basis in deciding or demanding the length of the sentence (strafmaat), namely seeing the legal values and sense of justice that live in society. So that if justice can be obtained by deviating from the law and in fact injustice will arise if the provisions in the legislation is applied. Meanwhile, in the event that there are mitigating circumstances in such a way, if the penalty imposed within the special minimum limit becomes disproportionate to the level of guilt, then the special minimum criminal limit can be deviated, as the opinion of the Legal Experts has described previously. Therefore, the Public Prosecutor in the case based on the decision of the Corruption Court at the Serang District Court Number: 6/Pid.Sus-TPK/2019/PN.Srg dated October 1, 2019, charged the Defendants with charges below the minimum, specifically in the corruption offense of extortion in office.

2. There are different case criteria in deciding a sentence under the special minimum between the Court's decisions Agung Number 2399K/Pid.Sus/2010 with the decision of the Corruption Court at the Serang District Court Number: 6/Pid.Sus-TPK/2019/PN.Srg, namely in the Supreme Court's decision regarding the proceeds of corruption from the Regional Revenue and Expenditure Budget (APBD) or state finances, while in the decision of the Corruption Court at the Serang District Court related to the proceeds of corruption crimes originating from the public or illegal levies (extortion), but have the same considerations as well as the Public Prosecutor in the decision The Corruption Court at the Serang District Court Number: 6/Pid.Sus-TPK/2019/PN.Srg, that is, both see the relatively small losses incurred and the refund of the proceeds of corruption, in addition to considering aggravating and mitigating reasons, also both decisions take into account the sense of justice.

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