

DISSENTING OPINION DALAM PUTUSAN PERKARA TINDAK PIDANA
KORUPSI EKSPOR BENIH BENING LOBSTER
(Tinjauan Yuridis Putusan Nomor: 26/Pid.Sus-TPK/2021/PN Jkt Pst)

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ABSTRAK

Dissenting opinion merupakan pranata yang membenarkan perbedaan pendapat hakim minoritas atas putusan pengadilan. Kebebasan hakim dalam menemukan hukum dan menyampaikan pendapat sebagaimana diatur dalam Pasal 5 ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, pada dasarnya merupakan bentuk ekspresi, kepribadian, pandangan, keilmuan dan keyakinan seorang hakim dalam memutuskan suatu perkara. Kebebasan inilah yang akan menimbulkan *dissenting opinion* dalam musyawarah pengambilan keputusan oleh majelis hakim. Berdasarkan hasil penelitian dan analisis data, ditemukan perbedaan pendapat (*dissenting opinion*) Majelis Hakim dalam Putusan Nomor: 26/Pid.Sus-TPK/2021/PN Jkt Pst. Hakim Mayoritas menyatakan bahwa Terdakwa terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana korupsi yang dilakukan secara bersama-sama sebagaimana diatur dalam Pasal 12 huruf a Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi Jo. Pasal 55 Ayat (1) Ke-1 KUHP Jo. Pasal 65 Ayat (1) KUHP, sedangkan Hakim Minoritas menyatakan bahwa Terdakwa hanya melanggar ketentuan Pasal 11 Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi Jo. Pasal 55 Ayat (1) Ke-1 KUHP Jo. Pasal 65 Ayat (1) KUHP. Penjatuhan pidana dalam putusan *a quo* tidak menyalahi hukum karena seluruh unsur pidana dalam Pasal 12 huruf a Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi Jo. Pasal 55 Ayat (1) Ke-1 KUHP Jo. Pasal 65 Ayat (1) KUHP telah terpenuhi. Namun, pidana yang dijatuhkan dirasa kurang maksimal dan kurang menimbulkan efek jera bagi Terdakwa maupun masyarakat. Metode pendekatan yang digunakan dalam penelitian ini adalah metode pendekatan yuridis normatif. Data yang digunakan adalah data sekunder yang terdiri dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier.

Kata kunci: *Dissenting Opinion*, Penjatuhan Pidana, Tindak Pidana Korupsi

DISSENTING OPINION IN THE VERDICT OF THE CRIMINAL ACTION OF
CORRUPTION OF LOBSTER LARVAE EXPORT
(Juridical Review of Verdict Number: 26/Pid.Sus-TPK/2021/PN Jkt Pst)

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ABSTRACT

Dissenting opinion is an institution that justifies the difference of opinion of minority judges on court verdicts. The freedom of judges in finding the law and adding opinions as regulated in Article 5 Paragraph (1) of The Indonesian Law Number 48 of 2009 on Judicial Power, is a form of expression, personality, views, and beliefs of a judge in deciding a case. This freedom will lead to a dissenting opinion in the decision-making deliberations by the panel of judges. Based on the results of research and data analysis, a dissenting opinion of The Panel of Judges was founded in Verdict Number: 26/Pid.Sus-TPK/2021/PN Jkt Pst. Majority Judges issued a decision stating that the Defendant was proven to be valid and the crime of corruption was carried out jointly same as regulated in Article 12 letter a of The Indonesian Law Number 20 of 2001 about Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes Jo. Article 55 Paragraph (1) The 1st of The Indonesian Criminal Code Jo. Article 65 Paragraph (1) of The Indonesian Criminal Code. However, in his legal considerations, it turns out that Minority Judges submitted a dissenting opinion which stated that the Defendant had only violated the provisions of Article 11 of The Indonesian Law Number 20 of 2001 about Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes Jo. Article 55 Paragraph (1) The 1st of The Indonesian Criminal Code Jo. Article 65 Paragraph (1) of The Indonesian Criminal Code. The punishment in *a quo* verdict doesn't violate the law because all the criminal elements in Article 12 letter a of The Indonesian Law Number 20 of 2001 about Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes Jo. Article 55 Paragraph (1) The 1st of The Indonesian Criminal Code Jo. Article 65 Paragraph (1) of The Indonesian Criminal Code has been fulfilled. However, the punishment imposed was deemed to be less than optimal and didn't create a deterrent effect for the Defendant and the community. The approach method used in this study is a normative juridical approach. The data used is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

Keywords: Dissenting Opinion, Criminal Imposition, Criminal Act of Corruption