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IMPLEMENTATION AND IMPACT OF INDONESIA'S CORRUPTION SENTENCING GUIDELINES: LESSONS FROM THE UNITED STATES, ENGLAND, AND WALES

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ABSTRACT

The sentencing guidelines established by Indonesia's Supreme Court Regulation No. 1 of 2020 represent a strategic development in the country's penal system. Aimed at promoting proportionality, reducing disparity, limiting judicial subjectivity, and enhancing transparency, the said regulation marks Indonesia's first framework specifically governing sentencing for corruption offences. Assessing its application is therefore, essential to determine whether it achieves its intended objectives. This study employs a normative juridical method using conceptual, statutory, case, and comparative approaches. Its novelty lies in the discussion of the newly implemented sentencing guidelines in Indonesia, supported by an analysis of 17 corruption case decisions. The findings show that while the said regulation has contributed positively to proportionality, consistency, and transparency, several issues were identified. Specifically, 11 of the 17 decisions did not provide the *ratio decidendi* explaining the basis for sentence severity, and the seven imposed sentences outside the prescribed ranges were without sufficient justification. Variations in the imposition of fines were also found, with no clear reasoning for the amounts set. These issues highlight the need for stronger consistency in judicial application. Referencing practices in the United States, England, and Wales, this study suggests enhancing the implementation of the guidelines through establishing an independent sentencing body responsible for developing, evaluating, and providing training on sentencing guidelines, as well as incorporating factors such as criminal history, financial condition, and departure provisions. Practically, this study underscores key implications for policymakers and judges, particularly the need to strengthen judicial training, conduct periodic evaluations of sentencing outcomes, and refine existing guidelines to promote greater consistency and legal certainty.

Keywords: Sentencing guidelines of Indonesia, legal reform, sentencing disparity, proportionality, corruption crimes.

INTRODUCTION

Guidelines are commonly developed and implemented to direct the conduct of judges and how they adjudicate cases (Yee, Ismail, & Hussein, 2024). In Indonesia, the regulation governing sentencing guidelines has been addressed in the recently revised Indonesian Criminal Code (the new KUHP), enacted as Law No. 1 of 2023. Sentencing guidelines are crucial because they contain directives that embody the principles judges must consider when imposing criminal sanctions (Djawari, 2019). However, the guidelines in the KUHP remain general and do not provide concrete directives for determining sentences, despite calls for such clarity in earlier studies (Irmawanti & Arief, 2021; Mulyadi, Yahya, & Budi Suhariyanto, 2019).

Previous research has specifically underscored the need for sentencing guidelines for state officials involved in corruption cases, considering the gravity of such offenses (Muhammad Azman Ng, Ayub, & Abdul Rahman, 2022). These infractions of the law should result in more severe and consistent criminal sanctions (Milono, 2014). To address this gap, Supreme Court Regulation No. 1 of 2020 concerning Sentencing Guidelines was issued on July 24, 2020, to guide judges in determining sentences for cases charged under Articles 2 and 3 of the Anti-Corruption Law (SC Regulation 1/2020). This regulation was introduced as an effort to prevent sentencing disparity and to uphold legal certainty, justice, and proportional benefit when sentencing individuals prosecuted under these provisions. Under this regulation, judges are required to sequentially consider the following stages:

1. The category of financial or economic loss to the state;
2. The degree of culpability, impact, and benefit;
3. The sentencing range;
4. Aggravating and mitigating circumstances;
5. The imposition of the sentence; and
6. Other provisions related to the sentencing

Overall, SC Regulation 1/2020 reflects the effort of the Supreme Court to address sentencing disparity in corruption cases. It marks a new era of acknowledging sentencing guidelines that encompass various aspects judges must consider when determining an appropriate punishment for the wrongdoer.

However, the existence of such sentencing guidelines has also generated varied responses from legal experts. Some argue that the provisions in SC Regulation 1/2020, which set minimum and maximum penalties for specific criteria under Articles 2 and 3 of the Anti-Corruption Law, restrict and contradict the principle of judicial discretion in sentencing (Mihardi, 2020). Furthermore, sentencing guidelines designed to promote consistency, i.e., aimed at reducing disparity, are criticized for undermining the principle of individualized sentencing, as each case is understood to have unique characteristics requiring judicial discretion (J. V. Roberts, Sanchez, & Marder, 2018). In line with this critique, earlier studies emphasized that sentencing frameworks which failed to account for the characteristics of the offense or the offender—factors essential to achieving fair punishment—tend to produce unjustifiable sentencing outcomes (Anderson, Kling, & Stith, 1999).

Given these criticisms, no evaluation has yet been conducted to empirically assess the implementation of the sentencing guidelines under SC Regulation 1/2020. As it is the first regulation in Indonesia governing sentencing guidelines, an evaluation is necessary to determine how such a guideline may promote proportional sentencing. Studying its implementation will also provide empirical grounding to respond to the criticisms that have emerged.

Against this backdrop, the present article examines how SC Regulation 1/2020 has been applied by judges when handing down sentences in corruption cases. Accordingly, this research is guided by the following two central questions:

1. To what extent have judges adhered to the sentencing structure mandated by SC Regulation 1/2020?
2. What substantive and procedural deficiencies arise from its implementation that warrant reform?

These questions help focus the discussion and provide a clearer analytical direction.

In addressing these questions, this research discusses the impact of the enactment of SC Regulation 1/2020. It also examines ideas related to the identified deficiencies, with the overriding aim of optimizing efforts to produce proportional and equitable sentencing decisions. Reformulating the sentencing guidelines is expected to be one of the measures to address existing problems in law enforcement. Sentencing guidelines have also been implemented in various countries, including the United States, the United Kingdom, and Hong Kong. The legal instruments in these countries have resulted in more rational and proportional decisions, helping counter the tendency toward excessive punishment (Frase, 2005). To enrich normative discussions for future practices in Indonesia, this study further incorporates a comparative analysis with the United States—pioneer of structured sentencing systems—and England and Wales, jurisdictions that employ guideline-based sentencing rooted in common law traditions. These countries were selected because their sentencing guidelines are mature, empirically evaluated, and widely referenced in comparative criminal justice scholarship, thereby providing valuable benchmarks for assessing and refining Indonesia's own developing framework.

METHODOLOGY

This study adopted a normative legal methodology, incorporating conceptual, statutory, case study, and comparative approaches. As a qualitative inquiry, it involved the collection and analysis of data to elucidate key legal concepts, viewpoints, and experiences. Accordingly, the normative analysis was conducted through an examination of primary sources, including legislation and judicial decisions, while secondary sources consisted of legal commentaries, academic journals, and scholarly writings to substantiate the findings and provide a comprehensive legal analysis.

With respect to the case study approach, this research reviewed 17 court decisions issued by the First Instance Courts *(Pengadilan Negeri).* The 17 decisions were selected using purposive sampling, focusing on corruption cases adjudicated between 2021 and 2023 that explicitly applied—or should have applied—the sentencing framework under Supreme Court Regulation No. 1 of 2020. This approach ensured that the sample reflected the earliest wave of decisions issued after the Regulation's enactment, thereby making it sufficiently representative for identifying emerging implementation patterns. These cases were obtained from the website of the Indonesian Supreme Court Decisions Directory.

The cases were then analyzed based on the SC Regulation 1/2020 to extract patterns and findings regarding how the Regulation has been implemented thus far. The analysis followed a structured case-analysis procedure consisting of the following three steps: (1) identifying sentencing components—such as categorization of offense severity, assessment of aggravating and mitigating factors, and measurement of loss—based on the Regulation; (2) systematically extracting and coding judicial reasoning using a predefined coding scheme; and (3) comparing outcomes against the thresholds and sentencing ranges mandated by the SC Regulation 1/2020. Data were coded manually using thematic categorization to ensure consistent interpretation across cases.

Furthermore, the analysis was supplemented by a comparative study of three countries, namely the United States, England, and Wales, to reference potential measures that could further support the implementation of the SC Regulation 1/2020 in Indonesia. Mindful of the differences in legal systems and judicial practices between Indonesia and these jurisdictions, this paper compared only the aspects of sentencing guidelines applicable in each respective country.

To ensure validity and reliability in normative qualitative interpretation, this study has employed triangulation of sources, namely legislation, judicial decisions, and academic commentaries; cross-checking of coded categories; and consistency review by comparing analytical results across the 17 cases. These measures strengthened the accuracy and credibility of the interpretive process.

However, this study also acknowledged that there were several limitations. First, the sample was limited to 17 first-instance corruption decisions within a three-year period, which might not fully capture long-term implementation trends. Second, the manual coding process, although systematic, might have involved interpretive subjectivity inherent in normative legal analysis. These limitations were taken into account when formulating the conclusions and recommendations of this research.

RESULTS

Contextualizing SC Regulation 1/2020 in the Indonesian Legal Framework

Before assessing how SC Regulation 1/2020 has been implemented by the judiciary, it is important to understand where this regulation is positioned within Indonesia's legal framework. This understanding assists in analyzing the implications that may arise from its implementation, including whether any inconsistencies—if found—can be partly explained by the hierarchical status this regulation holds within the Indonesian legal system.

The essence of sentencing guidelines, or the issue of imposing punishment *(straftoemeting)*, is not extensively explored in Indonesian criminal law studies. The *Wetboek van Strafrecht*, or the old Indonesian Criminal Code (the old KUHP), does not contain general sentencing guidelines (*straftoemetingsleiddraad*). Instead, what exists are sentencing provisions (*straftoemetingsregels*), which do not hold the same normative function as principles meant to guide judicial consideration.

Arief (2011) argues that the term "sentencing guidelines" warrants examination because it may carry different meanings depending on the context. The term is closely tied to sentencing objectives and rules. In fact, all criminal law provisions contained in the Criminal Code and other statutes outside the Code essentially serve as guidelines for the sentencing process. Therefore, sentencing guidelines may encompass a broad range of elements, from overarching principles that govern sentencing to more specific rules guiding judges in determining penalties for particular cases.

Soedarto (1986) defines sentencing guidelines as directives prepared by the legislature, containing principles that judges must consider in sentencing, while Saleh (1978) views sentencing guidelines as a "way of viewing" a case—an approach that provides judges with a framework for considering various aspects of an incident. This includes the seriousness of the offense and the manner in which it was committed, as well as the characteristics of the offender, such as age, intelligence level, and the circumstances surrounding the crime. By considering these factors, judges can make more holistic and just decisions. This suggests that sentencing guidelines function not as rigid rules but as a framework helping judges understand the broader context and determine an appropriate sentence.

Adji (1980) conceptualizes sentencing guidelines as a list of "checking points" useful in the sentencing process. This list highlights maximum points associated with both the act and the offender, as well as each category of crime. In this conception, sentencing guidelines are calculative, detailing each element of the offense and the offender, allowing the judge's sentencing decision to be quantified and summed. Such guidelines offer quantitative certainty and enable parties to predict outcomes based on predetermined checking points. However, the logical consequence of this model is that judicial discretion becomes constrained, as all aspects are tightly regulated and predetermined. In other words, judges cannot freely exercise their judgment because the guidelines are inherently "rigid."

Based on these perspectives, it can be concluded that sentencing guidelines consist of several types and carry distinct normative implications, which are as illustrated in Table 1.

Table 1

Various Types of the Term Sentencing Guidelines

No	Type	Description	Reference
1.	Provisions in the Criminal Code (KUHP) and Other Laws	A Comprehensive set of criminal law regulations providing the legal framework for sentencing.	KUHP & related laws
2.	Certain Principles of Law	Certain principles that require judges to consider various factors in a structured manner for fair and consistent sentencing.	Articles 53, 55, 57 & 59-63 of the New KUHP
3.	Judicial Approaches	Judicial approaches refer to perspectives that helps judges to consider or view different dimensions of a case to produce more holistic and just decisions.	Articles 54, 56 & 58 of the New KUHP
4.	Parameters	Calculative guidelines detailing the maximum points for each category of crime, the elements of act and the offender, thus, enabling quantitative calculation and summation of sentences.	SC Regulation 1/2020

Drawing from the legal discourse, the SC Regulation 1/2020 categorically constitutes a parameter-type sentencing guideline within the Indonesian legal framework. From Indonesia's independence until at least July 24, 2020, sentencing guidelines as defined in points 2 to 4 of Table 1 did not exist in any applicable legislation. Sentencing was carried out through the application of rules contained in the

Criminal Code (KUHP) and other related laws, consistent with point 1 of Table 1. It was only on July 24, 2020, that sentencing guidelines corresponding to point 4 of Table 1 began to be implemented through the SC Regulation 1/2020. However, their applicability is limited solely to offenses punishable under Articles 2 and 3 of the Anti-Corruption Law.

Under Article 3 of the SC Regulation 1/2020, judges are required to follow these guidelines when determining sentence severity and must provide clear reasoning in their decisions. The mandatory nature of these guidelines obliges judges to adhere to structured sentencing stages and explicitly explain the considerations underlying the sentence imposed.

Sentencing guidelines, as defined in points 2 and 3 of Table 1, were later incorporated into the Indonesian criminal justice system through the enactment of Law No. 1 of 2023 concerning the new Criminal Code (the new KUHP), specifically in Part One (Articles 51 to 63), which regulates sentencing guidelines. According to the Academic Draft of the Bill on the new Criminal Code, one of the foundational ideas underlying the formulation of sentencing objectives and guidelines is to provide controlling, monitoring, and guiding functions in the imposition of sentences (Badan Pembinaan Hukum Nasional, 2015).

The Application of the SC Regulation 1/2020 against Corruption Offenders

Fundamentally, the Anti-Corruption Law stipulates the minimum criminal penalties that may be imposed on a defendant in a corruption case. The inclusion of specific minimum penalties—absent in the old KUHP—aims to reduce sentencing disparities and underscore the gravity of corruption offenses (Nugroho, 2018). However, despite several statutes outside the Criminal Code prescribing specific minimum penalties, sentencing disparities continue to occur due to the relatively broad gap between minimum and maximum sanctions. For example, Article 2 paragraph (1) of the Anti-Corruption Law sets a minimum imprisonment term of four years and a maximum of 20 years, resulting in a 16-year disparity between the two. Several studies have documented sentencing disparities in corruption cases, including research by the Legal and Judicial Research and Development Center of the Supreme Court in 2010 (Mahkamah Agung Republik Indonesia, 2010), Indonesian Corruption Watch in 2014 (Langkun, Bahrain, Wassef, Wahyu, & Asram, 2014), and Anugrah Rizki Akbari et al. 2017 (Akbari, Saputro, & Marbun, 2017). To address this issue, the Supreme Court sought to reduce disparities by establishing sentencing guidelines through the SC Regulation 1/2020, which was aimed at minimizing the likelihood of inconsistent sentencing outcomes.

The SC Regulation 1/2020 provides judges with structured guidance in imposing sentences for cases prosecuted under Articles 2 and 3 of the Anti-Corruption Law, narrowing the sentencing range through the application of specific case criteria. The Regulation requires judges to undertake a six-step assessment, introduced as “Stage I” through “Stage VI,” before imposing a sentence in their ruling. First, judges classify the category of state financial or economic loss. Second, they assess the degree of culpability, impact, and illicit gain, each categorized as high, medium, or low. Third, based on these assessments, judges select the applicable sentencing range from the matrix provided in the Regulation. Fourth, they evaluate aggravating and mitigating circumstances, including recidivism, courtroom behavior, post-offense conduct, and treatment of evidence. Fifth, judges determine the precise sentence within the selected range by weighing these circumstances. Sixth, they consider additional relevant provisions, such as leniency for cooperating offenders and rules governing cumulative offenses, allowing adjustments to the final penalty. Notably, the sentencing guidelines in this Regulation do not diminish judges’ authority to impose additional penalties in accordance with statutory provisions.

Table 2 provides a review of corruption case rulings following the implementation of the SC Regulation 1/2020.

Table 2

Decisions on Corruption Crimes under Articles 2 and 3 of the Anti-Corruption Law Post-SC Regulation 1/2020

No	Case Number	Amount of Loss	Category	Imposed Sentence	Sentencing Range According to Supreme Court Regulation No. 1 of 2020	Ratio Decidendi of Sentencing Stages According to SC Regulation 1/2020
1	17 / Pid.Sus-TPK / 2022 / PN Mam	Rp73,200, 768.76	Very Light	1 year and 6 months imprisonment and a fine of Rp50,000,000	In Accordance	No
2	40 / Pid.Sus-TPK / 2022 / PN Pbr	Rp185,318, 942.02	Very Light	1 year and 10 months imprisonment and a fine of Rp50,000,000	In Accordance	No
3	47 / Pid.Sus-TPK / 2023 / PN Pal	Rp235,500, 000.00	Light	4 years imprisonment and a fine of Rp200,000,000	In Accordance	No
4	36 / Pid.Sus-TPK / 2022 / PN Plk	Rp277,664, 897.00	Light	1 year and 6 months and 1 year imprisonment respectively and a fine of Rp50,000,000 each	No	No
5	7 / Pid.Sus-TPK / 2021 / PN Bgl	Rp281,063, 000.00	Light	1 year and 3 months imprisonment and a fine of Rp50,000,000	No	No
6	81 / Pid.Sus-TPK / 2022 / PN Smg	Rp348,938, 730.00	Light	4 years imprisonment and a fine of Rp200,000,000	In Accordance	Yes
7	7 / Pid.Sus-TPK / 2023 / PN Plg	Rp422,796, 850.46	Light	2 years imprisonment and a fine of Rp50,000,000	No	No
8	38 / Pid.Sus-TPK / 2022 / PN Amb	Rp581,826, 060.00	Light	7 years imprisonment and a fine of Rp300,000,000	In Accordance	Yes
9	47 / Pid.Sus-TPK / 2022 / PN Pdg	Rp835,181, 563.00	Light	5 years imprisonment and a fine of Rp250,000,000	In Accordance	No
10	36 / Pid.Sus-TPK / 2021 / PN Jmb	Rp892,455, 900.00	Light	2 years and 6 months imprisonment and a fine of Rp100,000,000	No	No
11	35 / Pid.Sus-TPK / 2022 / PN Plk	Rp975,140, 390.00	Light	4 years imprisonment and a fine of Rp300,000,000	In Accordance	Yes
12	12 / Pid.Sus-TPK / 2021 / PN Mtr	Rp1,395, 556,760.00	Moderate	8 years imprisonment and a fine of Rp300,000,000	In Accordance	Yes
13	72 / Pid.Sus-TPK / 2022 / PN Srg	Rp1,414, 935,567.00	Moderate	1 year imprisonment and a fine of Rp50,000,000	No	No
14	30 / Pid.Sus-TPK / 2022 / PN Smg	Rp1,952, 014,335.00	Moderate	5 years and 6 months imprisonment and a fine of Rp400,000,000	No	Yes
15	75 / Pid.Sus-TPK / 2021 / PN Sby	Rp25,000, 000,000.00	Moderate	4 years imprisonment and a fine of Rp200,000,000	No	No
16	74 / Pid.Sus-TPK / 2022 / PN Sby	Rp28,365, 000,000.00	Severe	8 years imprisonment and a fine of Rp200,000,000	In Accordance	No
17	15 / Pid.Sus-TPK / 2022 / PN Plg	Rp64,059, 481,096.01	Severe	12 years imprisonment and a fine of Rp1,000,000,000	In Accordance	Yes

Notes. Indonesian Supreme Court's Decision Directory, 2021 (Mahkamah Agung Republik Indonesia, 2021).

Based on the 17 corruption cases examined, only 10 decisions (58.82%) complied with the sentencing ranges prescribed by the SC Regulation 1/2020, while seven decisions (41.18%) fell outside the required range. In contrast, compliance with the requirement to provide a ratio decidendi for each sentencing stage was even lower: only six cases (35.29%) presented structured reasoning consistent with the Regulation, whereas 11 cases (64.71%) did not.

When disaggregated by loss category, the average sentences imposed showed notable disparities. For "very light" cases, the average imprisonment term was 1 year and 8 months, with fines consistently set at IDR 50 million. In "light" cases, the average imprisonment increased to 3 years and 7 months, but the fines varied substantially, ranging from IDR 50 million to IDR 300 million, indicating inconsistency in financial penalties despite similar loss values. "Moderate" cases demonstrated even wider variations, with imprisonment terms ranging from 1 year to 8 years, suggesting that judges did not uniformly apply the structured sentencing indicators. For "severe" cases, the sentences ranged from 8 years to 12 years, reflecting stronger alignment with the sentencing framework, although ratio decidendi compliance remained uneven.

A trend analysis from 2021 to 2023 indicates that compliance did not consistently improve over time. Cases from 2021 showed low adherence to both sentencing ranges and ratio decidendi requirements. While some improvement was evident in 2022 with increased use of structured sentencing reasoning, the pattern regressed again in 2023, when several decisions fell short of the Regulation's mandated reasoning structure. This irregular pattern suggests the absence of a sustained institutional shift toward consistent application of the SC Regulation 1/2020.

Decisions that followed the SC Regulation 1/2020 show proportional sentencing for cases with similar characteristics, supported by adequate reasoning regarding the basis for the severity of the sentence. This can be seen in District Court Decision No. 17/Pid.Sus-TPK/2022/PN Mam and District Court Decision No. 40/Pid.Sus-TPK/2022/PN Pbr (for very light state losses), as well as District Court Decision No. 47/Pid.Sus-TPK/2023/PN Pal, District Court Decision No. 81/Pid.Sus-TPK/2022/PN Smg., and District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk (for light state losses).

From the data in table 2, similar sentencing categories still result in different penalties, as shown in Decisions No. 35/Pid.Sus-TPK/2022/PN Plk and No. 38/Pid.Sus-TPK/2022/PN Amb. The reasons for these differences are found in the considerations of these decisions and they are as shown in Table 3.

Table 3

Comparison of District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk and District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb

Category	35/Pid.Sus-TPK/2022/PN Plk	38/Pid.Sus-TPK/2022/PN Amb
State Loss	Light	Light
Culpability	Moderate	High
Impact	Low	Low
Gain	Moderate	High
Imposed Sentence	4 years imprisonment and a fine of Rp300,000,000	7 years imprisonment and a fine of Rp300,000,000

Notes. Indonesian Supreme Court's Decision Directory, 2021 (Mahkamah Agung Republik Indonesia, 2021).

Referring to the considerations of these two decisions, although both cases involve state losses within the same range, in District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb the judge assessed the defendant's level of culpability and gain as high. In contrast, in District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk, the judge assessed the defendant's level of culpability and gain as moderate. The ratio decidendi of these aspects provided transparency to the public, enabling them to understand and justify why the imprisonment penalty in District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb was more severe than that in District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk.

However, despite the objective under Article 3 of the SC Regulation 1/2020 to prevent differences in sentencing for similar crimes without sufficient consideration and to require judges to provide reasons when determining the severity of a sentence, there remain corruption cases in which the imposed sentence does not align with the prescribed sentencing range and is not accompanied by a ratio decidendi of the sentencing stages in accordance with the SC Regulation 1/2020. This is evident in the following court decisions: District Court Decision No. 36/Pid.Sus-TPK/2022/PN Plk, District Court Decision No. 7/Pid.Sus-TPK/2021/PN Bgl, District Court Decision No. 7/Pid.Sus-TPK/2023/PN Plg, District Court Decision No. 36/Pid.Sus-TPK/2021/PN Jmb, District Court Decision No. 72/Pid.Sus-TPK/2022/PN Srg, District Court Decision No. 30/Pid.Sus-TPK/2022/PN Smg, and District Court Decision No. 75/Pid.Sus-TPK/2021/PN Sby.

A closer examination of these seven cases of non-compliance reveals several common patterns which included the following: the absence of a transparent calculation of aggravating and mitigating factors as required under the sentencing stages, the judicial tendency to rely primarily on general considerations rather than the structured sentencing indicators mandated by the SC Regulation 1/2020, and inconsistencies in correlating the severity of the criminal act with the prescribed sentencing range. These recurring characteristics show that divergences from the Regulation are not isolated incidents, but reflect a broader issue in the practical application of the sentencing guidelines.

Following these case studies based on how each has applied the sentencing guidelines under the SC Regulation 1/2020, a pattern emerges that underscores the importance of implementing the guidelines within the Indonesian criminal justice system.

Promoting Proportionality and Minimizing Sentencing Disparities

Proportionality in sentencing has garnered attention from various sectors concerned with criminal justice. Theoretically, proportionality reflects the concept of justice manifested in the criminal justice system's ability to balance the seriousness of the crime with the punishment imposed on the offender (Furramani & Guli Hoti, 2022). The principle of proportionality is rooted in the idea of fairness within the legal system, which aims to uphold individual rights while ensuring societal well-being as a whole (Ucaryilmaz, 2021). Failure to consider this principle can lead to public skepticism about the objectivity of sentencing and diminish the attainment of justice in a criminal case (Hirsch, 1992).

According to Saleh (1978), sentencing guidelines provide judges with direction to consider various aspects of an incident, including the severity of the crime, the method of execution, individual characteristics such as age and intelligence, and the circumstances under which the crime was committed. These factors render the sentencing process more rational and consistent, ensuring that sanctions are appropriate, proportionate, and uniform (Fitz-Gibbon, 2016). Sentencing guidelines also offer a framework for judges to follow, ensuring that punishments correspond to the severity of the offense and the culpability of the perpetrator (Raphael, 2014).

Proportionality remains fundamental to sentencing and the administration of justice, even within restorative justice approaches where consistency and proportionality are prioritized (Tiarks, 2019). Sentencing guidelines that govern decision-making based on objective criteria can reduce the likelihood of disparities in sentencing (Painter-Davis & Ulmer, 2020). Disparities in criminal law may lead to demoralization and anti-rehabilitation attitudes among convicts who receive harsher penalties than others in similar cases. Moreover, such disparities can undermine public trust in the judiciary, potentially prompting behaviors such as vigilante justice and weakening institutions responsible for upholding justice in Indonesia (Aditama & Yudiantara, 2023). This creates a domino effect that threatens the stability of legal and social systems.

Studies of corruption decisions that have applied sentencing guidelines (see Table 1) demonstrate that the severity of sentences imposed aligns with the gravity of the crimes committed. Furthermore, for crimes of similar severity (within the same level), the sentences imposed fell within a reasonably consistent range across different decisions. Therefore, sentencing guidelines, as stipulated in the SC Regulation 1/2020, are expected to reduce disparities in sentencing that often occur due to the absence of standards or guidance for judges in determining the type and severity of penalties.

Minimizing Judicial Subjectivity

Respecting the principle of sentencing proportionality is challenging in practice. Judges face highly complex considerations regarding the criminal threat and factors associated with offenders before they can determine the type and duration of the sentence to be imposed. When judges are not bound by clear guidelines, their decisions can be influenced by subjective factors such as personal bias, emotions, or external pressures, which may result in inconsistent and unfair sentencing outcomes (Cohen & Yang, 2019). The absence of guidelines also poses the risk of arbitrary decision-making. The use of sentencing guidelines can help standardize punishments and make them independent of factors that should not influence sentencing, such as a judge's mood or personal opinions (Kiejnich-Kruk, Twardawa, & Formanowicz, 2023). Sentencing guidelines can also help prevent arbitrary or discriminatory sentencing practices that may arise from unchecked discretion (Johnson, Ulmer, & Kramer, 2008).

Examining District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk and District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb, it can be observed that in both cases, the judicial panel thoroughly considered justifications regarding the type and severity of the sentence based on objective factors, devoid of unnecessary subjectivity. This demonstrates that the imposed sentences were grounded in objective assessments based on the same approach.

Fundamentally, judicial independence is a crucial principle in the legal system to ensure that court decisions are made fairly and based on the law. This includes independence in performing judicial duties without interference from external parties, including political pressure or interventions unrelated to the case being adjudicated (Adonara, 2016). By maintaining their independence, judicial bodies can uphold principles of justice and provide legal certainty to the public (Berggren & Gutmann, 2020). In the context of sentencing, this independence allows courts to carefully consider all the relevant aspects of a case and make decisions based on law and justice, without being influenced by irrelevant external factors such as public opinion or media pressure, political influence, financial incentives, or corruption.

The existence of sentencing guidelines does not conflict with judicial independence or the principle of judicial freedom in imposing sentences. Judicial freedom to impose sentences remains intact, but guided application through sentencing guidelines assists judges across different regions in Indonesia in basing their decisions on a unified approach. This demonstrates that sentencing guidelines can complement judicial independence by providing a structured framework for decision-making (Singh, 2023). Judicial discretion in adjusting sentences while maintaining consistency across different cases is a delicate balance facilitated by sentencing guidelines (Mallett, 2015).

Additionally, recognition of the principle of judicial independence and judicial discretion is reflected in the establishment of mechanisms that allow judges to depart from guidelines or provisions set by the sentencing guidelines if they deem that adherence to these guidelines would result in injustice. Differences in the sentencing ranges applied by judges in similar cases indicate that, in principle, as long as judges provide clear and rational justifications, they are permitted to exceed the numerical limits set by these sentencing guidelines—a concept known in other countries (e.g., the United States and the United Kingdom) as "departure."

Transparency and Accountability in Sentencing

Transparency and accountability are widely recognized as core components of good governance. These principles—together with adherence to the rule of law—constitute foundational values that prevent arbitrariness and reinforce the integrity of public institutions (Mahmod & Kamal, 2013). Building on this broader governance framework, empirical studies further demonstrate that transparency holds an especially critical role in the judicial context. Research by Grimmelikhuijsen & Klijn (2015) shows that judicial transparency plays a crucial role in fostering public trust, which is necessary for the voluntary acceptance of judicial decisions. Trust in judges is closely linked to the transparency of their actions, as transparent processes are believed to enhance trust within the community. Moreover, transparency in judicial decision-making is vital to ensuring the legitimacy and moral authority of these decisions (Pearson, 2020).

Reducing undue disparity and promoting stability and predictability in sentencing are primary goals of sentencing guidelines (Bradley-Engen, Damphousse, & Smith, 2009). Krasnostein & Freiberg (2013) emphasize that unjustifiable disparities become easier to identify in jurisdictions with sentencing guidelines that adopt an “outcome consistency” approach, resulting in more consistent sentencing patterns. In other words, when clear guidelines exist on how sentences should be imposed for similar cases, it becomes easier to assess whether a judge’s sentencing decisions are appropriate and fair.

This was demonstrated in the case study of District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb and District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk. Although both cases involved similar levels of state financial losses, the judge in District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb determined that the defendant’s level of culpability and benefit gained from the crime were high. Conversely, in District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk, the judge assessed the defendant’s level of culpability and benefit as moderate. The narrative considerations of these aspects provide transparency to the public, allowing them to understand and justify why the prison sentence in District Court Decision No. 38/Pid.Sus-TPK/2022/PN Amb was more severe compared to District Court Decision No. 35/Pid.Sus-TPK/2022/PN Plk.

Thus, sentencing guidelines are crucial for implementation within the Indonesian criminal justice system. The sentencing guidelines for corruption offenses under Articles 2 and 3 of the Anti-Corruption Law represent the first such guidelines to be applied in Indonesia. A study of decisions following the implementation of the SC Regulation 1/2020 reveals positive developments in sentencing practices for corruption offenders. Therefore, similar sentencing guidelines are also necessary for other types of crimes, not only corruption offenses.

Weaknesses in Indonesia's Current Sentencing Guidelines for Corruption Offenses: A Comparison with the United States, England, and Wales

Post-implementation studies of the SC Regulation 1/2020 reveal that the sentencing guidelines set forth therein still have deficiencies, as follows:

Unstructured Sentencing Considerations under the SC Regulation 1/2020

Article 3(c) of the SC Regulation 1/2020 requires judges to consider the reasoning behind determining the severity of the sentence. However, several decisions fail to structure their sentencing considerations according to the stages or criteria outlined in the regulation. This issue was found in 11 out of 17 corruption crime decisions examined, as shown in Table 1.

Lack of Consideration of Criminal History

The analysis also shows that some decisions did not consider the defendant's criminal history, as seen in Decision No. 75/Pid.Sus-TPK/2021/PN Sby. Although the SC Regulation 1/2020 does not classify criminal history as a primary factor that must be considered, this aspect is still important for assessing the defendant's personal circumstances and the likelihood of recidivism.

Inconsistent Fine Determinations

The study of 17 decisions found significant variations in the fines imposed. For example, in Decision No. 35/Pid.Sus-TPK/2022/PN Plk, which involved a minor offense, the defendant received 4 years' imprisonment and a fine of IDR 300 million. Meanwhile, in Decision No. 74/Pid.Sus-TPK/2022, involving a serious offense, the defendant received 8 years' imprisonment, but only an IDR 200 million fine. In comparing these two cases, the lighter offense carried a higher fine, while the more serious offense carried a lower one. Yet, no reasoning or justification for the fines imposed was found in either decision.

Insufficient Justification for Sentencing Departures

The SC Regulation 1/2020 provides sentencing with ranges based on offense levels and criteria. Of the 17 decisions studied, seven imposed sentences that deviated from these ranges. However, upon examining these decisions, no reasoning or justification was provided for the deviations from the guidelines set out in the SC Regulation 1/2020.

The variations in the amounts of fines and the deviations from the sentencing guidelines can partly be attributed to the categorical position of the SC Regulation 1/2020 within the Indonesian legal framework. Although Supreme Court regulations are binding on judges, this regulation may encounter certain legal principles that permit judges to independently determine an appropriate sentence, such as the principle of judicial discretion.

Based on these findings, a comparative study of countries that have more established and advanced practices in implementing sentencing guideline frameworks is necessary. This step is crucial for identifying concepts grounded in sound principles and for enabling a more holistic and comprehensive analysis. Such an approach will help ensure that criminal law reforms achieve their intended objectives and align with the needs of both society and the state. In the present study, the comparison is carried out with the United States, England, and Wales. In addition, integrating comparative insights with Indonesia's institutional, legal, and socio-political context is essential to ensure the feasibility and sustainability of proposed reforms.

Establishment of an Independent Body Responsible for the Development, Evaluation, and Training of Sentencing Guidelines

The United States Sentencing Commission (USSC) plays a central role in shaping federal sentencing practices in the United States. As a bipartisan body, the USSC is tasked with developing and evaluating sentencing guidelines that provide a structured framework for judges in determining appropriate penalties for federal offenders (Craun & Silver, 2023). Another key function of the USSC is to provide judges, attorneys, and other stakeholders in the criminal justice system with training and education on federal sentencing guidelines (Hamilton, 2021).

Similarly, in England and Wales, the formulation and publication of definitive sentencing guidelines fall under the authority of the Sentencing Council for England and Wales (Lousley, 2020). The Sentencing Council operates as an independent, non-departmental public body within the Ministry of Justice's arm's-length structure. Its primary responsibilities include formulating and overseeing sentencing guidelines, evaluating their impact on judicial practices, and, when requested by the government, reviewing the effects of legislative and policy proposals on sentencing. The Council is also responsible for enhancing public understanding of sentencing, including the dissemination of information on practices in both magistrate courts and the Crown Court.

In contrast, Indonesia currently lacks a dedicated body or institution specifically responsible for sentencing guidelines. In general, sentencing guidelines are addressed in the new KUHP, which is scheduled to come into effect in 2026, while the guidelines for Articles 2 and 3 of the Anti-Corruption Law are governed through the SC Regulation 1/2020. If Indonesia intends to consistently develop and implement sentencing guidelines across its criminal justice system, the establishment of an independent body tasked with developing and evaluating these guidelines is essential. In practical terms, such an institution would be responsible for providing continuous training for judges, standardizing sentencing practices across jurisdictions, and functioning as a central hub for monitoring and assessing the effectiveness of sentencing guidelines in real cases.

Drawing from the models of sentencing commissions in the United States, England, and Wales, a comprehensive commission should not solely consist of judges, but should also involve prosecutors, attorneys, prison officials, public policy experts, research institutions, and other relevant stakeholders within the criminal justice system. These members contribute broader perspectives and provide insights into the social, psychological, and criminological dimensions of sentencing. Their input ensures that sentencing guidelines reflect broader societal considerations, including public safety, rehabilitation, and victims' rights. The commission's mandate should extend beyond developing sentencing guidelines to include conducting research and collecting data so that it functions as an information hub on sentencing-related issues, while also providing judges, prosecutors, attorneys, correctional officers, and other relevant actors with training.

Although adopting the full model of sentencing commissions from the United States or the United Kingdom may not be feasible in the near term due to differences in political structure, administrative capacity, and budget allocation, Indonesia can gradually implement a phased approach. This could begin with the establishment of a small advisory body integrated into the Supreme Court and later evolve into a fully independent commission.

This phased approach is important given that post-implementation studies of decisions following the SC Regulation 1/2020 indicate that several corruption cases still faced several issues, the decisions failed to adhere to the prescribed guidelines, did not align with the sentencing ranges, and lacked narrative reasoning consistent with the regulation's required sentencing stages. Examples include the following: District Court Decision No. 36/Pid.Sus-TPK/2022/PN Plk, District Court Decision No. 7/Pid.Sus-TPK/2021/PN Bgl, District Court Decision No. 7/Pid.Sus-TPK/2023/PN Plg, District Court Decision No. 36/Pid.Sus-TPK/2021/PN Jmb, District Court Decision No. 72/Pid.Sus-TPK/2022/PN Srg, District Court Decision No. 30/Pid.Sus-TPK/2022/PN Smg, and District Court Decision No. 75/Pid.Sus-TPK/2021/PN Sby. For policymakers, these patterns highlight the need for an evaluative mechanism capable of identifying systemic shortcomings. For judges, structured guidance and training can help reduce interpretive disparities and foster uniformity across courts.

The establishment of an independent body or institution would support judges with the provision of education and training on the application of sentencing guidelines. This would ensure that judicial decisions align with the guidelines. Evaluation of the implementation process is also essential to ensure that both the regulation and its application achieve their intended objectives. Even jurisdictions with long-standing guideline systems, such as the in United States, continue to encounter deficiencies that require refinement (Chanenson & Arty, 2022; Gunawan & Sholehuddin, 2023). Thus, continuous improvements can be facilitated by an independent institution responsible for the development and evaluation of sentencing guidelines.

Evaluation of Factors Considered by Judges in Sentencing

The current sentencing guidelines in Indonesia—both the general framework under the new KUHP and the specific provisions in SC Regulation 1/2020—outline several factors that judges must consider before imposing a sentence. The new KUHP requires consideration of at least 11 aspects for individual legal subjects, which intent, motive, purpose, and personal history, and 10 aspects for corporate legal subjects, such as the harm caused, the frequency of criminal acts, and the involvement of public officials. Meanwhile, the SC Regulation 1/2020 emphasizes financial or economic loss to the state, the level of culpability, impact, and benefit as the primary determinants in calculating sentence severity.

In comparison, the United States places substantial emphasis on criminal history as a central factor in sentencing (Hester, 2021). The SC Regulation 1/2020, however, does not treat criminal history as a mandatory component in determining sentencing ranges; it is considered only as part of aggravating or mitigating circumstances.

The emphasis placed on criminal history in the U.S. guidelines serves an important communicative function—signaling that repeated criminal behavior will result in progressively harsher penalties, thereby supporting the objective of general deterrence (Julian V. Roberts, 2002). Reflecting on this practice, criminal history becomes a relevant consideration for determining appropriate sentencing ranges. Additionally, the sentencing guidelines in England and Wales include the offender’s cooperation with the prosecution as a factor that may justify a reduction in sentence.

Drawing from these comparative insights, a re-evaluation of the factors currently considered in Indonesia’s sentencing guidelines is necessary. Incorporating a more holistic set of considerations can improve the comprehensiveness of judicial reasoning and lead to more proportional and equitable sentencing outcomes. In practical terms, expanding these factors would support judges in articulating clearer ratio decidendi, reduce sentencing disparities, and enhance judicial accountability.

From a feasibility standpoint, Indonesia could initially integrate additional factors—such as criminal history and cooperation with law enforcement—into specific guidelines for corruption or narcotics cases before extending them to broader categories. This phased approach would make reform more manageable and sensitive to contextual challenges.

Imposition of Fines

According to the SC Regulation 1/2020, the determination of the range of fines is based on assessments of the level of financial loss, culpability, impact, and benefits derived from the criminal act. The defendant’s economic condition is not a factor in determining the range of fines, but may be considered as an aggravating or mitigating circumstance. This differs from the approach in England and Wales, where Section 125 of the Sentencing Act 2020 requires that fines, in addition to reflecting the seriousness of the offense, must also take into account the circumstances of the case, including, in particular, the financial situation of the offender.

Table 4

The Range of Fines in the Sentencing Guidelines of England

	Starting Point	Range
Fine Band A	50% of relevant weekly income	25-75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75-125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125-175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200-300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300-500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500-700% of relevant weekly income

Notes. General Guideline: Overarching Principles Issued by the Sentencing Council (Sentencing Council, 2019).

The new Indonesian Criminal Code requires judges to consider the financial situation of the defendant, which includes actual income and expenses, when imposing fines. Assessing fines not only based on the seriousness of the offense, but also on the defendant’s financial capability is particularly beneficial for guidelines applied to specific offenses, such as those regulated under the SC Regulation 1/2020.

By considering the defendant’s financial situation in the process of determining fines, it serves several important purposes. First, it reflects the defendant’s capacity to participate in social and cultural activities that may incur financial costs (Downward, Rasciute, & Kumar, 2020). Second, it ensures proportionality by preventing fines from imposing excessive burdens on individuals who may already be economically vulnerable, such as the unemployed (Koehne & Kuhn, 2015). Third, fines adjusted to the defendant’s financial circumstances embody principles of fairness, proportionality, and consistency in sentencing, as demonstrated in studies on levels of fines in the Magistrate Courts of England and Wales (Raine & Dunstan, 2009). Considering financial capability ensures that fines remain meaningful, fair, and executable as intended.

For judges, this approach enables the imposition of individualized sentences that remain aligned with proportionality principles. For policymakers, it underscores the need to integrate economic data frameworks to support accurate evaluation of offenders’ financial conditions. Given Indonesia’s institutional constraints, adopting models similar to income-based fines in England and Wales should be carried out gradually—beginning with high-volume offenses or pilot courts before their broader implementation.

Departure Provisions

Both the United States and England incorporate departure provisions in their sentencing guidelines. These provisions allow judges to deviate from the sentencing guidelines if adhering to them would result in an unjust outcome for the case at hand (Warren et al., 2020). Departure provisions are essential for ensuring justice and equal treatment for offenders whose circumstances may not be fully accommodated by the guidelines (Johnson et al., 2008). They permit judges to depart from standard sentencing recommendations when specific case factors justify such deviation, thereby addressing individual circumstances that fall outside the scope of the guidelines (Johnson, 2005). This flexibility allows judges to consider a broader range of factors, resulting in more appropriate sentences and preventing sentencing from becoming overly rigid (Cole, Rydberg, & Cassidy, 2021). In implementing such provisions, judges are required to provide clear and rational reasons for any deviation from established guidelines.

The SC Regulation 1/2020 does not contain departure provisions. Such provisions are important for respecting judicial independence, as they give judges the discretion to deviate from the recommended sentencing approach or range to address individual circumstances that may not be fully captured by existing guidelines (Farrell, 2004). Therefore, incorporating departure provisions into Indonesia’s sentencing guidelines is crucial. These mechanisms provide judges with controlled flexibility to account for broader case-specific factors and may generate new insights that can inform future revisions of the guidelines. Moreover, cases involving departures can serve as important evaluative material for bodies responsible for developing sentencing guidelines, as they help to identify deficiencies and areas for improvement.

Practically, departure provisions would enable judges to handle exceptional cases without undermining overall guideline consistency. For legal practitioners, clear departure mechanisms enhance predictability while preserving the ability to raise case-specific considerations. However, the feasibility of adopting such provisions requires institutional safeguards, such as mandatory written justifications and the periodic review of departure decisions by a supervisory body, to ensure that flexibility does not lead to arbitrariness.

Considering the weaknesses and evaluative points identified in the SC Regulation 1/2020—Indonesia’s first regulation governing sentencing guidelines—updates to several of its provisions are necessary. Sentencing guidelines must be grounded in comprehensive and accountable legal principles. By revising the provisions of SC Regulation 1/2020, the criminal justice system can be strengthened to achieve its primary objective of creating proportional and equitable sentencing.

Strengthening the institutional framework, expanding the factors considered by judges, incorporating socioeconomic considerations, and introducing departure provisions collectively offer a practical roadmap for Indonesia to develop a more coherent and context-sensitive sentencing framework. While informed by comparative practices, these reforms must remain tailored to Indonesia’s legal culture and institutional readiness, and can be realistically implemented through phased regulatory updates and sustained judicial training initiatives.

CONCLUSION

The SC Regulation 1/2020 represents Indonesia's first regulation addressing sentencing guidelines, albeit limited to offenses under Articles 2 and 3 of the Anti-Corruption Law. Studies have shown that this regulation has had a positive impact in promoting proportionality, enhancing consistency, and increasing transparency and accountability in judicial decision-making processes. These guidelines help ensure that imposed sentences reflect justice, reduce judicial subjectivity, and strengthen public trust in the judicial system. Therefore, similar sentencing guidelines are necessary for other offenses beyond corruption. Nonetheless, 11 out of the 17 decisions still failed to include considerations (ratio decidendi) regarding the basis for determining the severity of the sentence, and seven out of the 17 judgments imposed sentences that did not align with the range of sentencing set out in the SC Regulation 1/2020, and they did not provide sufficient justification. The imposition of fines also varied across cases, yet no justification was provided for determining the amount of fines imposed. This underscores the need for further efforts to ensure more consistent application.

Comparative studies of sentencing systems in the United States, England, and Wales underscore the need for establishing an independent body or institution in Indonesia. Such a body would be responsible for developing, evaluating, and providing training on sentencing guidelines for judges and other relevant law enforcement officials, and therefore, consistency in the application and development of existing guidelines. Additionally, considering criminal history, the financial condition of the offender, and implementing departure provisions in sentencing are significant recommendations. By adopting these measures, Indonesia's sentencing system is expected to be more responsive to societal needs, and be able to create more proportional and holistic justice.

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