

JURIDICAL ANALYSIS OF FUNDAMENTAL CONSIDERATIONS OF THE JUDGE ON DEFENDANT'S ATTITUDE AT THE TRIAL

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JURIDICAL ANALYSIS OF FUNDAMENTAL CONSIDERATIONS OF THE JUDGE ON DEFENDANT'S ATTITUDE AT THE TRIAL (A CASE STUDY OF PT SURABAYA DECISION NUMBER 519/PID/2022/PT SBY)

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Abstract

This research aims to determine the relevance of the principle of judicial independence in deciding or considering the judge's verdict on the defendant in criminal cases under trial. It also aims to identify the legal basis that judge used in delivering the verdict. This study used a normative research method, from various legal principles, legal systems, and statutory regulations. The specific case under investigation involved an issue of injustice that occurred during the trial, where the judge granted leniency to the defendant based on their courteous behavior during the trial. The focus of this research is on aspects that may be considered for leniency by the judge, one of which is the defendant's polite behavior during the trial. Polite behavior is not explicitly regulated in criminal law, making it necessary to further investigate the judge's considerations in granting leniency to defendants who behave politely during the trial. This research is based on Law Number 48 of 2009 concerning the judiciary.

Keywords: *Judicial Power; The Relevance of Freedom of Judge; Be Polite*

1. INTRODUCTION

The judge's consideration is the most important aspect in achieving the value of a decision based on justice and ensuring legal certainty in that decision. Before stating a verdict, the judge must carefully consider the benefits for all parties involved, ensuring that their deliberations are accurate and grounded in justice. If a judge's consideration is not accurate, and just, they may be overturned by the Court of Appeals of the Supreme Court.¹ In this consideration, judge has the freedom to make considerations, both mitigating and aggravating circumstances for an offender. The constitutional principle of judicial independence grants judge the autonomy of judicial power, which is contained in the 1945 Constitution as one of the institutions owned the rule of law state. The hierarchy of judges is one of the state administrators appointed by the state as well as giving authority and duties to carry out the judicial power itself.²

This research focuses more on the consideration of judges who provide criminal relief for defendants who behave politely in court. The judge in granting leniency to the accused is a form of the concept of the freedom in giving a decision as if the attitude and

¹ Arto Mukti, "Practice of Civil Cases in Religious Courts," *Practice of Civil Cases in Religious Courts*, 2004, 243.

² "Explanation of Article 17 of Law Number 8 of 1981 Concerning Criminal Procedure Code," no. 1(nd): 76.

emotions of the defendant are commendable. Then, this can alleviate the defendant's sentence. Harahap argued that the attitude and emotions of the defendant can be seen and considered by the judge, whether the defendant's personality during the trial is good or bad.³

Article 8 paragraph (2) Law Number 48 of 2009 concerning judicial power confirms "in considering the severity of the crime, the judge is obliged to concern to the good and evil nature of the defendant". In addition, Article 58 explains "In using criminal rules, the personal circumstances of a person, which abolishes, reduces, or aggravates the imposition of a sentence, are only considered on the maker or helper concerned.

The judge's decision in making a decision must consider at least four conditions, namely: (a) There is a crime, (b) Concerning the reasons as well as the basic purpose of committing a crime, (c) How to carry out a crime, (d) Looking at the moral values of the accused of committing a crime, (e) Looking at the curriculum vitae and economic factors.⁴

In assessing the perpetrator's actions which can be stated to be criminal acts. According to Muljatno, judges have the principle of freedom and legality (Principle of Legality). This is the principle determining every criminal act that must be determined by law at least by a rule of law that has been in force for the accused before the person is prosecuted for his actions.⁵

The researcher raises the issue concerning the verdict of the Mojokerto District Court decision trial where the researcher assessed the results of the decision as not based on justice because the judge granted criminal leniency to the defendant solely based on his polite behavior during the trial. Initially, the case was carried out by one of the police officers named Bripda Randy Bagus Hari Sasongko, who was proven to have instructed and coerced the termination of the pregnancy of his own girlfriend, named Novia Widyasari.

The case started with the victim allegedly committed suicide by ingesting a potassium-based poison, it was suspected that the victim Novia Widyasari was desperate to commit suicide because she was pregnant with the suspect. From the results of the investigation, it was found that the victim had 2 (two) times aborted the baby she was carrying by taking an abortion drug, the first abortion was carried out by the victim when the fetus was several weeks, but it was unsuccessful. Then, the suspect, Randy Bagus Hari Sasongko, bought an abortion drug worth Rp. 1,500,000.00 and asked the victim to take the medicine, which caused the bleeding. It was suspected that the victim felt hurt, eventually chose to commit suicide beside her father's grave.⁶

As a result of the defendant's crime, the judge stated that Randy Bagus Hari Sasonko had violated based on Article 348 paragraph 1 to 1 jo and Article 56 paragraph 2 of the Criminal Code. From the results of the First Level trial for the crime committed by the

³ Harahap and Sofyan Syafri, "Crisis Analysis of Financial Statements," 2013, 484.

⁴ Barda Nawawi Arief, "Problems of Law Enforcement and Crime Control Policies," *Law Enforcement Problems and Crime Control Policies*, 2001, 23.

⁵ Moh Mujibur Rohman et al., "Principles of Criminal Law," 2023.

⁶ PotensiBandung.com, "CHRONOLOGY Of Forbidden Love Randy Bagus Hari Sasongko And Novia Widyasari To End Drinking Cyanide Poison," PotensiBandung.com, 2021, <https://potentialbadung.mind-rakyat.com/events/pr-1623159647/kronologi-cinta-terlarang-randy-bagus-hari-sasongko-dan-novia-widyasari-ti-berujung-minum-poison-cyanide?page=3>.

defendant Bripda Randy Bagus Hari, the judge gave a verdict of 2 (two) years in prison. Concerning the injustice from the results of the First Level trial, the prosecutor submitted an appeal to the Second Level Court so that he expected justice, especially a decision first level lighter than the prosecutor's demands. The First Instance Judge considered that the defendant was polite and had never been previously punished as a factor in the judge's reason for granting sentence relief to the defendant.⁷

The judges of the Second Instance Court considered that they disagreed with the decision given by the First Instance Court because the criminal decision was too light, and not in accordance with the crime committed by the defendant. Moreover, the defendant was a member of the police who was actually one of the law enforcers. From the results of the decisions of the judges at the first instance according to the judges at the Second Level Court, it would greatly offend the sense of justice in society, especially since the victims were women who were very vulnerable to becoming victims of crime. From the results of the judgment at the Second Level Court, the judges gave a verdict on the defendant with a sentence of five (5) years in prison.

The consideration of the judge who gave relief was only because he was polite in court. Then, it will contradict justice and even create an imbalance in sentencing because being polite in court is an obligation for everyone.⁸ The researcher gives his opinion that he does not agree if being polite in court can be used to reduce criminal penalties, because being polite during trial is an obligation for every case, both law enforcers and the defendant himself.

2. METHODS

This type of research used normative juridical and empirical juridical based on the value system of legal principles of the rules of law and examined the object of people's behavior as a result of the existing system of norms. Empirical juridical research in this study was carried out using direct interviews with the selecting judges of the Supreme Court, regarding the effectiveness and impact arising from the considerations of judges who provide polite relief to defendants of crimes. This study used a normative and empirical approach that examined legal principles, legal rules and regulations, and objects of people's behavior. This research prioritized and focused on the object of social behavior from the current norm system. Sources of data used in this research primary data and secondary data. Primary data is data obtained from the results of empirical research, which is obtained from the results of field research through the interview method.⁹ This research was conducted using the interview method with one of the high-ranking judges at the Supreme Court of the Republic of Indonesia, Ibnu Basuki Widodo.

⁷ AFP

⁸ Enrico Simanjuntak, "Journal of Law and Justice," *Journal of Law and Justice* 6, no. 3 (2017): 387.

⁹ Mukti Fajar and Yuianto Achmad, "Dualism of Normative & Empirical Legal Research," 2004.

This study used secondary data derived from literature studies by examining and researching those related to the problem or mentioned in legal material.¹⁰ Primary Legal Materials are library materials related to statutory regulations which consist of the 1945 Constitution, Pancasila, Law Number 48 of 2009 concerning Judicial Power, The Criminal Code (KUHP), and Supreme Court Decision. Secondary legal material is material that is related to primary legal material and assists in the research process, namely scientific journals related to this research, research results related to this research and the internet is the official website for public opinion on the prevailing legal system.

Data collection techniques in normative juridical law research were obtained through document studies and empirical juridical research through interviews. Document study, namely collecting documents and data required in research problems and then intensely examined so that they can support and add to the trust and evidence of a case. Meanwhile, the interview is a process of interaction and communication by conducting direct questions and answers between researchers and respondents to obtain information. The researcher provided questions to high sorting judges at the Supreme Court of the Republic of Indonesia.

Primary data and secondary data obtained in this study were analyzed in a prescriptive and descriptive qualitative manner, namely general data about legal conceptions in the form of legal principles, postulates and teachings (doctrines), and expert opinions as well as public opinion arranged systematically as an arrangement of facts. This research analysis method used deductive logic for normative juridical research and inductive logic for empirical juridical research.⁹ Deductive logic means a way of thinking that departs from the understanding that something that applies to the whole event or group/type, also applies to each element in the event of that group/type. Meanwhile, inductive logic is a way of thinking that departs from specific/certain knowledge or individual facts that are structured to draw general conclusions.

3. RESULTS AND DISCUSSION

Legal Regulation Regarding the Judge's Consideration to Grant Leniency to the Defendant who Behaves Politely During the Trial

The judge's consideration is the result of a criminal record of a fact revealed in court. Every decision handed down by a judge, whether at the District Court, High Court, or Supreme Court judges, must be based on justice for each litigant. Herman Bakar gave an idea in the form of a judge being God's right hand in the world. They are a society of professionals who are paid handsomely to practice operating the Justice System of a country.¹¹ The judge's consideration is divided into two types, namely juridical and non-juridical. As for the judge's considerations that can be used as juridical considerations are as follows:

1. Public Prosecutor's Indictment
2. Defendant's Statement
3. Evidence Items
4. Witness Statement

¹⁰ Maria SW Sumardjono, "Guidelines for Making Research Proposals," *Yogyakarta: Faculty of Law UGM*, 1989, 24.

¹¹ Herman Bakar, "Ethics of the Legal Profession: Pagutan, Creed, Crystal Hammer of Neo-Atlantean Judges," 2018, 21.

5. Criminal Laws and Regulations

The consideration of the juridical judge is the consideration of the decision results which is based on the facts that have been revealed in the trial. From these facts, the law is present in determining the matters that must be contained in the decision. Meanwhile, the judge's non-juridical considerations can be seen from the reasons behind the defendant's criminal act. As for the judge's considerations that can be used as non-juridical considerations, namely:¹²

1. Consequences of the Defendant's Actions
2. Defendant's Condition
3. Role or Position of the Defendant.

After the inclusion of several elements of the judge's considerations, both juridical and non-juridical in nature, the judge will continue with considerations that can be aggravating or mitigating to the defendant. According to Article 50 paragraph (1) of the Judicial Powers Act, it is explained that "A court decision must not only contain the reasons and basis for the decision, it also contains certain articles of the relevant laws and regulations or unwritten sources of law which are used as the basis for adjudicating. The elucidation of the article above believes that judges may not look at it from a normative perspective, such as juridical or non-juridical, but it is expected that judges in their considerations must be based on a broader and deeper understanding of law. In fact, the judge in determining consideration of factors that can be used as aggravating or mitigating factors must be based on the judge's conviction that has been stated in the statutory regulations. The Criminal Code (KUHP) has regulated factors that can be used as aggravating or mitigating considerations, namely:¹³

1. Factors that can be used as aggravating punishment:
 - a. Position
 - b. According to Article 52 of the Criminal Code, position is a factor that can be used as aggravating matter on the defendant because if someone is entrusted with a position, then it is an obligation that must be carried out.
 - c. Repetition (*Recidive*)
Repetition or Recidive is an act of a defendant who commits a repeat crime, in which the perpetrator has been sentenced to a criminal sentence but cannot repair or prevent the crime so that he commits another crime.
 - d. Merger of criminal acts (*Samenlop*)
According to book 1 chapter VI of the Criminal Code Articles 63-71. Consolidation of Criminal Acts is a criminal act committed by a defendant or suspect and is proven to have committed a criminal act concurrently with other criminal acts.
2. Factors that can be used as mitigating sentences:
 - a. Attempt to commit a crime

¹² Sugali, "Juridical Considerations," n.d., <https://sugalilawyer.com/pertimbangan-yang-juridical/>.

¹³ Mandaladitya, "Any Matters That Eliminate, Reduce or Aggravate Crime," 2017, <https://www.dictio.id/t/hal-whatsaja-yang-menghapuskan-mengurangi-atau-mematkan-pidana/3507>.

Article 53 explains that the attempted perpetrator is a condition where the perpetrator commits a crime but the crime has not been completed. This article also explains that the maximum sentence for attempted perpetrators can be reduced by $\frac{1}{3}$ (one-third) or if the crime is punishable by death or life imprisonment, the perpetrator can be sentenced to a maximum of 15 years in prison.

b. Assistant

Article 56 emphasizes that those who deliberately provide assistance at the time the crime is committed and those who deliberately provide the opportunity, means or information to commit the crime, then these things are factors that can mitigate the sentence.

c. People Who are Under the Age

According to Article 45 of the Criminal Code, the offender can be given criminal relief for people who are not yet capable of age and have been proven to have committed a crime.

Legal arrangements for defendants who behave politely in court are not regulated in criminal laws and regulations but in the Supreme Court Decision. The judge's considerations before deciding on a sentence for a criminal offense on the perpetrator. First, the judge must concern to the nature of juridical and non-juridical. Second, the judge considers things that can be aggravating and mitigating for the defendant. Then, from these considerations, the new judge can pass a verdict on the perpetrator of the crime. The Supreme Court's decision confirms the factors that can be considered by the judge based on jurisprudence. The Supreme Court's Decision Number 2658 K/PID.SUS/2015 and Number 752 K/PID/2006 of 2006 explains that there are several reasons for the defendant to be provided leniency, as follows:¹⁴

1. The accused behaved politely in court;
2. The defendant confessed openly what he had done;
3. The accused has never been convicted;
4. The defendant regretted his actions.

The Relevance of the Principle of Judicial Independence in Granting Leniency Verdict to the Defendant's Behavior during the Trial: A Case Study of PT SURABAYA Decision Number 519/PID/2022/PT SBY

The principle of freedom of judges is a principle of freedom possessed by judges to carry out the course of justice. The judge must be free to examine and try cases without interference or other powers, so that the judge is free to determine considerations which will later be used as a decision in examining and trying the accused. Based on Article 3 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power that "In carrying out their duties and functions, judges and constitutional judges are required to maintain independence". Oemar Seno Adji gave the idea "if a court is free and not affected by

¹⁴ Ayutia Nurita, "Being Polite in Court Reduces Punishments, These are the Facts," *Ministry of Finance of the Republic of Indonesia*, 2022, <https://www.djkn.kemenkeu.go.id/artikel/baca/14847/Berlaku-Sopan-di-Pemadilan-Ringkankan-Hukuman-Ini-Facts.html>.

anything, then that is a form of condition for a rule of law".¹⁵ This idea is reinforced by the statement of Law Number 48 of 2009 Article 1 Paragraph 1 concerning judicial power which means that independent power is defined as judicial power which has the function of running the judiciary in order to enforce the law on the basis of justice based on Pancasila and the 1945 Constitution.

Before giving a decision, judges must be able to pay attention to considerations that will later become a decision product, and if the judges feel sufficient in examining the case they are facing, then it is time for the judge to give a decision on the crime committed by the defendant. In giving a judge's decision, it must be based on the law and based on the judge's own beliefs. As for the issue of the judge's own conviction, it is not easy for the judge to fulfill his duties. Mulyatno gave the opinion that "the judge's belief is a belief in himself, that the judge has no doubts at all from the belief that was described to him on the basis of evidence".¹⁶

However, in making decisions based on the freedom of judges, judges need to concern to the limit, namely the principle of legality because it has a function to limit the freedom of judge so that judge does not exercise arbitrary freedom in carrying out his duties. Frans Magnis Suseno gave the idea that with the presence of freedom and independence of judicial power from any party, it is expected that the judiciary can better control the law on state power in order to prevent and reduce abuse of authority or power.¹⁷

The Criminal Procedure Code (KUHP) Law Number 8 of 1981 Article 183 has explained that a judge may not impose a sentence on a person unless it is proven that he has two (2) valid pieces of evidence for his belief that the crime actually occurred due to the actions of the defendant. The freedom of judges to make decisions must be based on law, not freely in the sense of being free without any restrictions because the function of creating laws that regulate criminal acts is only to regulate people's lives to create true justice. Article 54 The concept of the Draft Criminal Code has set guidelines for sentencing judges in making decisions. Through this article, judge cannot give arbitrary decisions so that in making decisions, he must pay attention to several points and are expected to create a true sense of justice. Article 54 of the Draft Criminal Code concept explains that judge must consider several aspects, namely:

1. Motives of criminal offenses
2. The objective and motive of the offender committing a crime
3. The attitude of the perpetrator
4. How did the perpetrator commit the crime
5. The attitude and actions of the perpetrator after committing a crime
6. Social, economic conditions, and life history of the offender
7. The influence of the perpetrator's crime on the victim and the victim's family
8. Forgiveness from the victim or family
9. Legal values based on justice in society

¹⁵ S. Adji, "Free Judicial State of the Law," *Free Judicial State of the Law*, 1980, 01.

¹⁶ President of the Republic of Indonesia, "The Criminal Code," *Ministry of Justice* 5, no. 1 (1958): 1–133.

¹⁷ Franz Magnis Suseno, "Searching for a Figure of Democracy A Philosophical Study," 1995, 1–133.

10. The crime committed in a planned manner or not

In the case being investigated by the researcher, the decision given by the Second Level Court already reflects justice because its decision describes a decision that looks at the impact and influence of the crime of the defendant's crime on the victim, and society, so that the legal value of the decision is based on community justice. In fact, every judge's decision that utilizes freedom and independence when making decisions is based on justice, so that judge must be careful and wise in studying, considering, deciding, and being able to resolve cases that are currently happening. Besides, judges must be able to limit themselves so that arbitrary decisions do not occur and executive government system can be good and fair for the community to be implemented. Ibnu Basuki Widodo argues "In imposing a decision, of course, one must look at the minimum and maximum criminal threats and the quality of the defendant's actions whether the defendant's actions caused serious or minor injuries to those around them, so that judges in using their freedom are still limited by laws and regulations and not using freedom that causes arbitrary decisions".¹⁸

4. CONCLUSION

The judge consideration who gave leniency to the defendant only to be polite was not actually regulated in the Criminal Code but on the jurisprudence of the Supreme Court Decision Number 2658 K/PID.SUS/2015 and Number 752 K/PID/2006 of 2006. Before giving a decision on the defendant, the judge should prioritize the impact factor or influence on the family or community for the defendant's crime, especially if the defendant is a police officer who actually has a duty as a law enforcer, and if because the judge uses the principle of freedom arbitrarily, it will lead to a bad judgment from the community and cannot create high justice. Concerning to a case of PT SURABAYA Decision Case Study Number 519/PID/2022/PT SBY, the high court judge does not agree with the results of the first level decision. Moreover, the judge's consideration at the first level only assesses decency as well as have not been previously convicted, which becomes a factor for granting leniency in the sentence. In some cases, the sentence imposed is even lower than the prosecution's demand. Therefore, the high court judges considered that the court's decision of first instance did not reflect a sense of justice for the community and even the judges considered it very offensive to the sense of justice, especially for women.

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¹⁸ "Interview with Judges of the High Court of the Supreme Court," nd

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