

Position of Judge's Consideration in Imposing Criminal Sanctions (Analysis of Fair Law Implementation)

Dr. Drs. Muzakkir, SH.,MH.,M.Pd

Lecturer at Langsa State Islamic Institute, Langsa, Aceh, Indonesia

Abstract

*The research entitled *The Position of Judges' Consideration in Imposing Criminal Sanctions (Analysis of Fair Law Implementation)*. The judge's decision must contain the reasons and basis for the decision, also contain certain articles from the relevant laws and regulations or unwritten sources of law that are used as the basis for adjudicating as stated in Article 50 paragraph (1) of Law Number 40 of 2009 concerning Judicial Power. This paper contains the results of the author's thoughts and studies regarding what things influence judges in deciding cases and whether the basic considerations of judges in deciding cases are in accordance with the principles of justice based on Pancasila, and how to apply the principles of justice based on Pancasila in cases. Based on Law Article 5 (paragraph 1) of Law Number 40 of 2009 concerning Judicial Power, that a judge must find the law (*reshtvinding*) in the face of a vacuum in the rule of law or the rules are not clear. The process of law formation by judges as law enforcers in the application of general regulations to concrete legal events and the results of legal findings become the basis for making decisions. In the implementation of justice, a judge decides cases indiscriminately, even though the defendant is a law enforcement officer.*

Keyword: *judge's consideration, criminal sanctions*

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I. Introduction

In realizing a prosperous, just and prosperous Indonesian society that is materially and spiritually evenly distributed based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the quality of Indonesian human resources as one of the national development capital needs to be maintained and improved continuously, including the degree of welfare. The development of society in Indonesia is increasing rapidly. The lifestyle of the people has also changed. The changes that occur automatically encourage the emergence of criminal acts that are increasingly disturbing the community.

Judges in deciding cases must be wise in accordance with applicable principles. Because as law enforcers, judges have the main task in the judicial field, namely to receive, examine, decide, and settle every case submitted to him. With such a task, it can be said that judges are the core implementers who functionally carry out judicial power. Therefore, its existence is very important and a determinant in upholding law and justice through its decisions.¹

All judge/court decisions must contain the reasons and basis for the decision, also contain certain articles of the relevant legislation or unwritten legal sources that are used as the basis for adjudicating as stated in Article 50 Paragraph (1) of Law Number 48 Year 2009 About Judicial Power. Court decisions must be objective and authoritative and must be supported by reasons or considerations why the judge arrived at that decision. The reasons or considerations are the responsibility of the judge to the community for the decision.²The judge's decision not only represents the intellectual value and wisdom of the judge who decides it, but will be part of a legal source that contains constructive principles for future legal developments.³

¹ Bambang Sutiyo, 2006, *Metode Penemuan Hukum – Upaya mewujudkan Hukum Yang Pasti dan Berkeadilan*, UII Press, Yogyakarta. P. 5.

² Sudikno Mertokusumo, 2003, *Mengenal Hukum Suatu pengantar*, Liberty, Yogyakarta. P. 138.

³ Syaiful Bakhri, 2014, *Sistem Peradilan Pidana Indonesia Dalam Perspektif Pembaruan, Teori, Dan Praktik Peradilan*, Pustaka Pelajar, Yogyakarta. P. 219.

Court decisions are a social institution, because they have a function in regulating people's lives at large through the legal rules they regulate, even further, judge decisions can become a medium for social change. Therefore, decisions that are considered fair for the parties are always remembered as a constructive legal breakthrough.⁴ Justice is one of the goals of every legal system, even the most important goal. Therefore, the author is interested in writing about "**The Position of Judges' Consideration in Imposing Criminal Sanctions (Analysis of Fair Law Implementation)**." This writing became interesting for the author due to several reasons that really attracted the author's interest, namely what really were the things that influenced judges in deciding cases. Because many judges' decisions are then met with resistance from the community and what underlies the judge's considerations in deciding cases is in accordance with the principles of justice based on Pancasila, while on the other hand the author wants to see how the application of the principles of justice based on Pancasila in cases decided by judges.

A. Factors Influencing Judges' Decisions in Imposing Criminal Decisions Against Criminal Actors

The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a State of Law. In line with these provisions, one of the important principles of the rule of law is the guarantee of an independent judiciary, free from the influence of other powers to administer justice to uphold law and justice. According to the system of the 1945 Constitution, the judicial power as a state administrator is one of the state administrative bodies, in addition to the MPR, DPR, President and BPK. As a state administrator, the composition of judicial power is different from that of other state administrators. Judges' powers consist of the highest judicial power and lower judicial powers. Meanwhile, other state administrative bodies only consist of one structure.

The judge's decision in imposing a crime against a criminal act is influenced by external and internal factors that can influence the behavior of judges in resolving cases. External factors, for example, government pressure for the sake of creating interests concerning the authority of the government or for other interests. Sometimes the government intervenes in certain cases and there is also pressure from certain groups to impose their will or interfere in the trial.

Keneth J. Mejer said that in the Indonesian constitutional system, the doctrine of the separation of power "Trias Politica" as proposed by Montesque is not adhered to. However, with the amendments to the 1945 Constitution, it can be said that Indonesia is building a legal doctrine regarding the separation of powers and the authority of each power is possible to check for other powers so that they can balance each other in equality and equality, in order to create harmonization of power. (harmonization of power) is in balance or 'checks and balances among power', to prevent arbitrariness or abuse of power.⁵

If the judge does not have a strong personality and is not firm in his stance as an enforcer of law and justice, then this external pressure can have a profound effect on making a decision. An ideal judge's decision is if it contains elements of Gerechtigkeid (justice), Zweckmassigkeit (benefit), and Rechtssicherheit (legal certainty) proportionally (Radbruch, 1946:30).⁶

The pressure of the situation also affects the judge internally, the pressure of this situation is a situation that must be faced by the judge in carrying out his duties. Not unlike other members of society, a judge as a member of society also holds a certain position in it. This particular position cannot be determined or desired autonomously by the people concerned. What a judge wants to do or wants can be fully determined by himself, but it also depends on the values and structure of society.

How a judge can resolve the "conflict" or "pull-and-tear" between Gerechtigkeid, Zweckmassigkeit, and Rechtssicherheit in adjudicating a case is an art. How to make a fair decision, but not to deviate from the rule of law, or how to make a fair decision, but not to deviate from the rule of law, or how to make a decision by obeying the rule of law, but not sacrificing justice? Judges must try to create a balance between the three elements of the Idee des Rechts. To seek a balance between the three elements of the Idee des Rechts proportionally is not easy. It is an art or a trick in itself. If justice is more important, legal certainty is sacrificed. If legal certainty comes first, justice is sacrificed.⁷

According to H.M. Luthfie, S.H., internal factors that can influence judges in making a decision are:

a. Subjective

An a priori attitude of behavior, often when judges try a case from the start, they are preoccupied with a prejudice or suspicion that the suspect or defendant is guilty, so that they must be punished or declared as the wrong party. This attitude is clearly contrary to the principle that is upheld in the judiciary, namely the principle

⁴ *Ibid.* P. 220.

⁵ Zainab Ompu Jainah, Kapita Seleta Hukum Pidana, Tira Smart, Tangerang, 2018, P. 151.

⁶ Sudikno Mertokusumo, Teori Hukum, CV.Maha Karya Pustaka, Yogyakarta, 2019, P. 26.

⁷ *Ibid.*, P. 27.

of presumption of innocence. The attitude of emotional behavior, the behavior of judges who are easily offended or angry will be different from the behavior of judges who are understanding, patient and thorough in handling a case, this will clearly affect the results of their decisions. Arrogant behavior, judges who have an arrogant attitude feel that they are powerful and smarter than others, often influencing their decisions. Moral, this factor is a very vital foundation for law enforcement and justice, especially judges.

b. Objective

Social, Cultural, and Economic Background, a judge's social background influences the judge's behavior. In a sociological study, it shows that judges who come from high social status have different ways of looking at a problem that exists in society, when compared to judges who come from lower to middle social status environments. The culture or education of a judge also influences a judge's decision. Judges who come from a harsh and liberal cultural environment will certainly be different in handling a case compared to judges who come from a culture that is smooth, loose, and familial. The education of a judge also influences his behavior. A judge who diligently attends additional education, such as upgrading, courses or even continuing education at a higher level will certainly have more basic considerations in deciding a case, compared to a judge who only relies on his law degree education. One more thing that influences judges' behavior a lot is the economic background. As an ordinary human being who has to provide for his life and his family, economic factors often affect his mindset. It could be because of economic pressure, a judge who initially had a strong commitment, gradually weakened his stance and became pragmatic. At the most severe level, this factor can even encourage judges to dare to take wrong actions just for the sake of obtaining material rewards. This factor, of course, is not absolute, because judges who uphold the code of ethics for judges' honor cannot be influenced by any factors, including economic pressure. Professionalism which includes knowledge, insight, and expertise supported with thoroughness is a factor that influences the way judges make decisions. This problem of professionalism is also often associated with a code of ethics in the judiciary, therefore judges who handle a case by adhering to professional ethics will certainly produce decisions that are more accountable, when compared to judges who do not heed professional ethics. Even though both have the same goal, namely resolving cases, enforcing the law and providing justice.⁸

These factors, according to the author, are very relevant if they are associated with criminal convictions for narcotics abuse. If a judge has an a priori, emotional, or arrogance attitude, then the sentence may be aggravated. However, if a judge has a wise and wise attitude, then the judge will consider many factors, especially in terms of social values and human values, which can cause the judge to impose a sentence that can relieve the defendant.

The defendant's polite attitude, the defendant's long future, and the reasons the defendant committed a crime or abused narcotics would certainly be used as the basis for separate considerations by the judge. A defendant who is being punished for the first time due to miscommunication, of course the imposition of sanctions will be different from a defendant who has been convicted repeatedly. A defendant who has been sentenced for the first time and sentenced to a lighter sentence by the judge, the judge has an assessment that the defendant's behavior can still be corrected.

Even though they are bound by a strict system, judges and the judiciary are not identical with judicial machines that can work systematically or mechanically in resolving cases. The real reason is very clear and simple, firstly because judges are human beings who can work with their minds, so that in solving a case it is not enough to just rely on thinking power and skills in operationalizing the law, but also based on morals that arise from their conscience.

Various cases can affect the judge's decision, but this of course still depends on many factors, such as the situation and condition of the community, the monitoring system and others. Another most decisive factor is the attitude of the judges themselves in dealing with these cases.

According to Pompe ("...based on the character of criminal law and criminal procedural law as public law, if there is any doubt about something, the Public Prosecutor and the Judge try to dispel that doubt with an investigation. After an extensive investigation the case is still uncertain, the defendant must be found guilty"). Pompe's opinion is based on the adage, in dubio pro lege fori that if there is doubt, the judge still punishes the defendant.

H.M. Luthfie, S.H., said that the types of cases in court, if they are related to the judge's condition, which can affect the outcome of the decision, can be explained as follows:

When it comes to the professionalism of judges, there are simple cases and difficult cases. For judges who are professional (in terms of adequate and experienced skills), the variety of cases is not a problem, but for judges who are still lacking in experience, it will be very influential in handling difficult cases. If it is associated with the spirit of the judge, then there are interesting cases and open new challenges. Cases like this can spur

⁸ Bambang Sunggono, *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2002, P. 46.

judges' enthusiasm to learn, develop, and try to finish as well as possible. On the other hand, if there are cases handled that are monotonous and routine, it can cause boredom for judges. If it is related to the personality of the judge, then there are cases that involve the object of a small, high-risk, and strict case. However, there are also cases involving large object cases that are not at risk, in the sense of keeping the possibility of colluding. For judges who have strong personalities and firmly adhere to their commitments as law enforcement and justice, then these types of cases have no effect, because the goal is how to decide cases in the best and fairest way.⁹

In imposing a crime against the perpetrator of a crime, not only paying attention to or assessing the defendant outside the court, in the sense of the defendant's behavior in the community as explained by the testimony of the witness, but also paying attention to the defendant's behavior at trial.

B. Basis for Judges' Consideration in Deciding Cases

In Indonesia, the principle of freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Power, hereinafter referred to as the Law on Judicial Power, where it is formulated that judicial power is the power of an independent state to administer justice to uphold law and justice. The principle of freedom of judges includes the freedom for judges to formulate legal considerations, known as legal reasoning, which is carried out by a judge in deciding a case he is trying.

Judges are state officials who exercise judicial power as regulated by law. Judges are referred to in Article 1 number 5, number 6, number 7 and number 9 of the Law on Judicial Power.

The freedom of judges contextually has 3 (three) essences in carrying out judicial power, namely:¹⁰

1. Judges are only subject to law and justice;
2. No one including the government can influence or direct the decision to be handed down by the judge; and
3. There are no consequences for the judge's personality in carrying out their judicial duties and functions.

According to the Law on Judicial Power, judges' considerations are the thoughts or opinions of judges in making decisions by looking at things that can relieve or burden the perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision.

The judge is the personification of the judiciary, in making a decision on a case in addition to being required to have intellectual ability, a judge must also have high morals and integrity so that it is expected to reflect a sense of justice, guarantee legal certainty and can provide benefits to the community. The theory of the purpose of justifying the judge to impose a crime is:

- 1) Absolute Theory or the theory of vengeance (Vergeldingstheorien)
- 2) Relative or Objective Theory (Doeltheorien)
- 3) Combined Theory (Verenigingstheorien)¹¹

Article 53 of the Judicial Powers Act is the legal basis for a judge in carrying out his duties to decide a case, that it must be based on various considerations that can be accepted by all parties and do not deviate from existing legal rules, which is called legal considerations or legal reasoning.

Formulating and compiling legal considerations or legal reasoning must be careful, systematic and in correct and good Indonesian. The legal considerations must be complete, containing facts of events, legal facts, formulation of legal facts, application of legal norms in positive law, customary law, jurisprudence and legal theories and others, based on aspects and methods of legal interpretation, even a judge can make discoveries. appropriate law in compiling arguments or reasons that form the legal basis for the judge's decision.

In the concept of normative error, the judge may impose an action, even if the crime is proven and the defendant is guilty of committing it. In addition, reproach or punishment may not be carried out, if the judge decides to grant a pardon. In his decision, the judge may state that a person is proven guilty of a crime by mistake, but does not impose a sentence on him.¹²

For judges, legal reasoning is useful in making judgments in deciding a case. A judge before making his decision must pay attention to and try how much he can lest the decision to be handed down allows new cases to arise. Decisions must be complete and not lead to new cases. The task of the judge does not stop with

⁹ *Loc.cit.P.* 46.

¹⁰ Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, (Jakarta: Sinar Grafika, 2011), *P.* 104.

¹¹ Andi Hamzah, *Asas-asas Hukum Pidana*, Rineka Cipta, 2008, *P.* 31.

¹² Mahrus Ali, *Asas-asas Hukum Pidana Korporasi*, PT.Raja Grafindo Persada, Jakarta, 2013, *P.* 141.

just passing a decision, but also completes it until its implementation. In civil cases, judges must assist justice seekers and try their best to overcome all obstacles and obstacles in order to achieve a simple, fast and low cost trial.¹³

Legal reasoning of judges is closely related to the main task of a judge, which is to receive, examine and adjudicate and settle every case that is brought to him, then the judge examines the case and finally adjudicates which means giving the interested parties their legal rights. Thus the importance of legal reasoning of a judge in deciding a case in court, therefore it is very interesting to know about legal reasoning in making case decisions.

Legal considerations carried out by a judge are also one of the duties and obligations of judges, namely the obligation to explore, follow, and understand legal values and a sense of justice that lives in society. This becomes material that is processed to make legal considerations. It is also implied that a judge in carrying out his duties can make legal discoveries or *rechtvinding*.

Based on the Law on Judicial Powers Article 5 paragraph (1), that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society. This means that if there is a void in the rule of law or the rules are unclear, then to overcome it, a judge must have the ability and activity to find the law (*recht vinding*). What is meant by *recht vinding* is the process of establishing law by judges/other law enforcement officers in the application of general regulations to concrete legal events and the results of legal findings being the basis for making decisions.

The judge in making a decision in a court session may consider several aspects:¹⁴

1. Error of the perpetrator of the crime;
2. The motive and purpose of committing a criminal act;
3. How to commit a criminal act;
4. The inner attitude of the perpetrator of the crime;
5. Curriculum Vitae and socio-economic;
6. Attitudes and actions of the perpetrator after committing a crime;
7. The effect of the crime on the future of the perpetrator;
8. The public's view of the crime committed by the perpetrator.

Judges in deciding a case must consider the juridical truth, philosophical and sociological truth. Juridical truth means that the legal basis used has complied with the applicable legal provisions. Philosophical truth means that the judge must consider the side of justice whether the judge has done and acted fairly in deciding a case. Sociological considerations mean that the judge must also consider whether his decision will have a bad impact and impact on society, in other words that a judge must make a fair and wise decision by considering the legal impact and the impact that occurs in society.

The sentencing of the perpetrators must look at the mistakes made. It is based on the principle of error. The terms of sentencing in a decision depart from two very fundamental pillars, namely the principle of legality which is a social principle and the principle of guilt which is a humanitarian principle.¹⁵ Recalling Socrates' expression "Only decisions based on knowledge of objective justice can be declared as real law". So the judge in deciding the case must have the correct implementation of the application of the law.¹⁶

Determination is a court decision on a voluntary application, for example a determination in cases of marriage dispensation, marriage license, polygamy, guardianship, and others including the determination of foundation examination based on the provisions of the Foundation Law. Stipulation is a voluntary jurisdiction, which means it is not a real trial because in the determination there is only an application, there is no legal opponent. In the determination, the judge does not use the word "judgment", but it is enough to use the word "determine".¹⁷

The court's determination is called the jurisdiction valuer because the only person in the determination is the applicant. A voluntary application or lawsuit is a civil matter submitted in the form of an application signed by the applicant or his/her proxy addressed to the Head of the District Court. Furthermore, a judge's

¹³ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta : Liberty, 2002), P. 108.

¹⁴ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, (Bandung: PT Citra Aditya Bakti, 2001), P. 23.

¹⁵ *Loc.cit*, P. 94.

¹⁶ Herman Bakhir, *Filsafat Hukum*, Refika Aditama, Bandung, 2007, P. 164.

¹⁷ Yahya Harahap. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Jakarta : Sinar Grafika, 2005), P. 28.

decision or decision is a statement by a judge as a state official who is authorized to do so, pronounced at the trial and aimed at ending or resolving a case or dispute between the parties.

The decision is called *jurisdiction contentiosa*, namely because of the existence of the defendant and the plaintiff as in a real court. There are 3 (three) types of judge's decisions, namely in terms of the decision, in terms of its content and in terms of the presence or absence of the parties at the time the decision was handed down, explained as follows:¹⁸

a. From the point of view of the decision, it consists of:

1. Final verdict.

The final decision is a decision that ends a dispute or case at a certain level of justice, such as a *contradictoir* decision, a *verstek* decision, a *resistance* decision (*verzet*), an *immediate* decision, a decision to accept a *principaal rebuttal* (*verweertenprincipale*) and a *rebuttal* (*exeptiefverweer*), an *appeal* decision, *cassation* decision. The final decision is divided into 3 (three) kinds, namely *condemnatoir*, *declaratoir*, and *constitutief*.

A *condemnatory* decision, which is a decision that is punishing on one party to do something or not to do something, or to submit something to the opposing party to fulfill achievements. Decisions that are *condemnatory* are charged to the defendant, where it is the defendant who is obliged to fulfill his achievements. *Declaratoir* decisions, namely decisions that state a condition that is legal according to law, therefore the decree of the *declaratoir* decision reads "to determine". *Declaratoir* decisions occur in the following decisions, for example the decision on the application for divorce, the decision on divorce due to the divorce agreement, the decision on the determination of the right to care for the child by the mother, the decision on the determination of legal heirs, the decision on determining the existence of joint assets, the decision on voluntary cases and so on. , the decision is void, rejected and not accepted, the decision for divorce is not due to *ta'lik talak*, the *verstek* decision, the decision to annul marriage and so on. *Constitutive* decisions, namely decisions that create new legal conditions that are valid according to the previous law, have not yet occurred. The *constitutief's* decision reads "declare".

2. The verdict is not final.

A non-final decision is also called an *interim* decision or an *intermediate* decision. A non-final decision is a decision whose function is to expedite the case examination process.

b. In terms of content, it consists of:

1. A decision that grants the lawsuit.

A decision whose content is a lawsuit is granted if the claim is grounded or not against the rights. The decision granted the plaintiff's claim in part and refused not to accept the rest, namely the final decision in which some of the arguments for the lawsuit were proven and some were not proven or did not start the conditions (positive and negative mixed decisions). The decision grants the plaintiff's claim in its entirety, namely a decision that fulfills the requirements of the lawsuit and proves the arguments for the lawsuit (positive decision).

2. Decisions whose lawsuits are not accepted.

A decision whose content is a lawsuit is declared not acceptable, if the lawsuit is against the rights or against the law. The decision does not accept the plaintiff's application, namely the plaintiff's claim/applicant's application is not accepted because of the non-fulfillment of legal requirements both formal and material (negative decision).

3. The decision whose lawsuit was rejected.

The decision which contains the claim is rejected if the claim is unfounded. The decision to reject the plaintiff's claim, namely the final decision that was handed down after going through all stages of the examination, but it turned out that the plaintiff's arguments were not proven (negative decision).

c. In terms of whether or not the parties were present at the time the decision was handed down, it consisted of a *verstek* decision, an *invalid* decision and a *contradictory* decision.

1. *Verstek* decision, namely a decision that was handed down because the defendant/respondent was not present at the trial even though it had been officially summoned, while the plaintiff/applicant was present.

2. *Dismissal* decision, namely a decision stating that the lawsuit/application is void because the plaintiff/applicant was never present even though it has been officially summoned and the defendant/respondent is present in court and asks for a decision.

3. *Contradictory* decision, namely the final decision which at the time it was handed down/ pronounced in a trial was not attended by one of the parties or the parties.

¹⁸ Dariuslekalawo.blogspot.com/2015/05, Amor Patriae Nostra Lex

From the explanation above, the writer concludes that the court's decision and the court's decision are different. The difference between a court decision and a court decision is that in the decision there is a defendant and a plaintiff. Previously, there had been a dispute or a prolonged conflict that eventually led to a lawsuit. The procedure is that the plaintiff files a lawsuit against a case that is detrimental to him which is intended for the defendant to the competent court. In the decision, there are two litigants, namely the plaintiff and the defendant. The plaintiff is someone who feels or indeed his rights have been violated by the defendant while the defendant is someone who is reported by the plaintiff because the plaintiff feels that his rights have been violated by the defendant.

The words of affirmation used in the decision, the judge uses the word "judgment". The judge uses the word to emphasize that the defendant is guilty and must pay material or immaterial compensation to the plaintiff as the party whose rights have been impaired. Meanwhile, in court decisions, there is only one party, namely the applicant and hereinafter referred to as applicant I and applicant II.

In the determination there is no conflict or dispute behind the emergence of the determination. Prior to the issuance of the decision by the judge, the applicant submits an application for a case that he will submit to the local court. In the determination, there is only 1 (one) party in the litigation, namely the applicant where the applicant himself is the party who considers his rights and/or authorities violated. The words of affirmation used in the determination, the judge only uses the word "stipulate" to decide the case submitted by the petitioners.

C. Application of the Principle of Justice Based on Pancasila in Cases

In upholding the law, it must be based on applicable principles, one of which is the principle of justice. In Pancasila, the principle of justice is contained in the 2nd and 5th precepts. In the second principle, namely Humanity that is just and civilized, in the precepts of humanity there are values that the State must uphold human dignity as a civilized being. Therefore, in state life, especially in state legislation, it is necessary to realize the goal of achieving the height of human dignity, especially human rights as basic rights that must be guaranteed in state laws and regulations.¹⁹

Pancasila was born and formulated in the trial of the Investigative Agency for Preparatory Work for Indonesian Independence (BPUPKI) when discussing the basis of the state, especially in Soekarno's speech on June 1, 1945. Soekarno referred to the state foundation as *Philosofische grondslag* as the foundation, philosophy, deepest thoughts on which to be founded. Indonesian state building. Soekarno also called it the *Weltanschauung* or view of life. Pancasila is the five principles or five principles.²⁰

In the life of the state, it must always be based on human morals, including in the life of the State government, politics, economy, law, social culture, defense and security as well as in religious life.²¹ In terms of enforcing the law, justice is needed to be able to guarantee legal certainty for every citizen. Basically every citizen has the same rights and position before the law, known as the principle of equality before the law.

The formulation of Pancasila as a source of Indonesian law, the purpose of national criminal law must include the following objectives:

- a. The national criminal law aims to protect the principles of God and Religion that live in Indonesia
- b. The national criminal law aims to protect the body and soul of Indonesian people.
- c. The national criminal law aims to protect the Indonesian human mind.
- d. The national criminal law also aims to protect offspring (regeneration of humans/the Indonesian nation).
- e. National criminal law aims to protect Indonesian human property.²²

Likewise, the examination before the trial, whoever becomes a defendant, both law enforcement officers and non-law enforcement officers, all have the same rights as regulated in the Criminal Procedure Code. Although the accused are law enforcement officers, there are no privileges or differences in how to handle them. Civilians in general and law enforcement officers have the same position before the judiciary. The only difference is the criminal sanctions given.

A law enforcement officer, such as a member of the police, gets more severe sanctions when compared to civilians who commit the crime because the defendant as a member of the police should be able to set an example to the public not to use narcotics against the law and even be able to prevent the use of narcotics, especially members of the police and the public at large generally.

¹⁹ Kaelan, M.S., 2010, *Pendidikan Pancasila, Paradigma*, Yogyakarta. P. 64-65.

²⁰ Jimmy Asshiddiqie dan Ali Safaat, *Teori Hans Kelsen Tentang Hukum*, Konstitusi Press, Jakarta, 2012, P. 158.

²¹ *Loc.cit.*, P. 80.

²² Mokhammad Najih, *Politik Hukum Pidana*, Setara Press, Malang, 2014, P. 36-37.

The fifth precept of Pancasila, social justice for all Indonesian people is the goal of the other four precepts. Ontologically, the nature of social justice is also determined by the nature of justice as contained in the second precept, namely just and civilized humanity. The essence of justice contained in the second principle is justice contained in the monopluralist human nature, namely humanity that is fair to oneself, to others and to God or the prime cause. The embodiment of monopluralist human justice in the field of shared life both within the scope of society, nation, state, and life between nations, which concerns the nature of human nature as individual beings and social beings, namely in the form of justice in living together or social justice.

In the 5th precept it is stated that the consequences of values that must be realized in living together include:

1. Distributive justice, which is a justice relationship between the State and its citizens, in the sense that it is the state party who is obliged to fulfill justice in the form of sharing justice, in the form of welfare, assistance, subsidies, and opportunities in living together based on rights and obligations.
2. Legal justice, which is a relationship of justice between the colors of the State and the State and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the laws and regulations in force in the State.
3. Cumulative justice, which is a reciprocal relationship of justice between the colors of the countries.²³

As explained in the definition of legal justice above, it is citizens who are obliged to fulfill justice in the form of obeying the laws and regulations in force in the country. There are no better or worse legal systems, only differences caused by different historical, political, social and legal backgrounds.²⁴

Aristotle (384-322BC) Plato's student in his book *Politiek* expressed his opinion about the relationship between crime and society, that poverty leads to crime and rebellion. The great evil is not made to obtain what is necessary to live, but to obtain luxuries. Opinions of Plato and Aristotle-especially Plato's adage; The punishment is imposed not because of having committed a crime, but so that there is no evil act - it has a very large influence on criminal law, especially in terms of punishment.²⁵

When talking about Pancasila, especially in the second and fifth precepts above, the thing that is most upheld is about human rights (HAM), where human rights are the rights that each person has to regulate his life freely. However, the freedom that each person has in managing his or her life must remain within the limits that have been regulated in the applicable law.

The announcement of the judge's decision from the convict's point of view is a serious suffering. This is because it directly touches his good name and dignity. The announcement of the judge's decision on the one hand is an additional crime, but on the other hand shows the character as an action or *maatregel* that aims to protect the interests of the community. In the context of the Criminal Code it is stated that if a judge orders that a decision be announced based on the Criminal Code or other general rules, then he must also determine how to carry out the order at the expense of the convicted person.²⁶

Although judges are considered to be the determinants of realizing the hope of justice in a verdict of a criminal act, justice seekers should not regard the judge as the embodiment of "god" on this earth. However, judges are still human beings who are part of legal subjects and are still possible to make mistakes, omissions or omissions in the considerations as well as the product of the decision and/or determination. That is why the State provides a door of opportunity for further legal remedies if it does not accept or reject the judge's decision in a criminal case or the product of a judge's determination.

The power of judges who are already independent can make judges abuse their authority. In other words, there can be tyranny of judges, so to prevent the tyranny of judges, the State also limits the power of the Judiciary with a code of ethics. Therefore, the authors argue that Indonesian Judicial Power is the independence of judges to carry out their roles, functions, duties and authorities without being intimidated and influenced by other parties based on the Code of Ethics and Code of Conduct for Judges.

II. Conclusion

In imposing a crime against the perpetrator of a crime, not only paying attention to or assessing the defendant outside the court, in the sense of the defendant's behavior in the community as explained by the testimony of the witness, but also paying attention to the defendant's behavior at trial.

²³ *Ibid.* P. 83.

²⁴ Andi Hamzah dan Surachman, *Pre-Trial Justice Discretionary Justice Dalam KUHAP berbagai Negara*, Sinar Grafika, Jakarta, 2015, P. 67.

²⁵ Abintoro Prakoso, *Kriminologi Dan Hukum Pidana*, Laksbang Grafika, Yogyakarta, 2013, P. 55.

²⁶ Eddy O.S Hiariej, *Prinsip-prinsip Hukum Pidana*, Cahaya Atma Pustaka, 2016, P. 474.

In the determination there is no conflict or dispute behind the emergence of the determination. Prior to the issuance of the decision by the judge, the applicant submits an application for a case that he will submit to the local court. In the determination, there is only 1 (one) party in the litigation, namely the applicant where the applicant himself is the party who considers his rights and/or authorities violated. The words of affirmation used in the determination, the judge only uses the word "stipulate" to decide the case submitted by the petitioners.

The panel of judges at the Banyumas District Court decided this case indiscriminately. Even though the Defendant is a police officer, the Panel of Judges still examines and decides on this case in accordance with the applicable legal provisions. This shows that a law enforcement officer must work professionally in enforcing the law in accordance with applicable legal provisions.

Based on the conclusions above, the authors suggest that the Panel of Judges of the Court in sentencing both the public or law enforcers who stumbled upon a criminal case, the Panel of Judges can give heavier sanctions to the perpetrators. But besides that, the Panel of Judges must still be guided by applicable principles such as the principles of justice, expediency, and legal certainty so that justice can still be upheld.

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