

ANALYSIS OF JUDGES' DECISIONS WHO ARE FREE FROM THE CRIME OF MURDER

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Abstract

Analysis of the Decision of Judges Who Acquitted of Murder Crimes guided by Syamsul Haling as supervisor I and Samsuria as supervisor II. The research method used in writing the results of this thesis research is normative juridical. The aims of this research are: (1) to identify and analyze the qualifications of corporations as subjects of corruption; (2) to find out and analyze the form of criminal responsibility towards corporations as perpetrators of corruption; (3) to find out the decision of the judge who escaped from the crime of murder. The results of the study show (1) with regard to the analysis of the judge's decision that was acquitted of the crime of murder, it is clear that, to determine whether an act is included in a crime, a sharp analysis is needed from a judge without ruling out the applicable law; (2) Seeing the obstacles faced by judges in making decisions that are independent of the provisions of the law on the crime of murder, then every judge who has been in session should have matured emotionally, in terms of thought, attitude and authority of the judge himself and who is not inferior important is the ability of mature human resources. The researchers' suggestions are (1) Related to the constraints of judges in giving decisions that are independent of the law on the crime of murder. (2) Development of Human Resources (HR) is needed because the authority and intellectual abilities of judges greatly influence each decision given while still paying attention to the laws and regulations but not ignoring the sense of justice.

Keywords: Judge's Decision, Crime, Murder

INTRODUCTION

The process of law enforcement is an inseparable part of the life of the nation. One of them is done by making rules or provisions in the form of legislation. Legislation made to regulate law enforcement also requires supporting elements, namely law enforcement officials, such as police, prosecutors and judges. In connection with the existence of these factors, it is hoped that the material law contained in the applicable regulations can be implemented properly.¹

The process of enforcing criminal law is realized concretely through the implementation of criminal law, the regulatory procedure for which is regulated in the criminal procedural law. Law enforcement procedures end with a judge's decision. Regarding the imposition of the final decision (sentence) by the judge as stipulated in Article 191 of the Criminal Procedure Code, it can be classified into 3, namely the decision to be free from all legal charges (*vrijspraak*), the decision to release all lawsuits (*onslag van alle rechtsvervolging*) and the decision to sentence (*veroordeling*).

The judge must be observant and careful in viewing the arguments of the Public Prosecutor both regarding the Defendant's mistakes, the actions charged against the Defendant, available evidence, as well as the arguments of legal advisers in defending the Defendant. So that before the verdict is handed down, the judge's consideration is really convincing, because if it is not convincing or creates doubt, the judge is obliged to acquit the defendant, so that the acquittal can also be based on the assessment that the proven error was not followed by the judge's conviction, so that the evidentiary value is enough this will paralyze and the Defendant must be acquitted.²

Briefly it is defined that criminal procedural law is the law that regulates how to maintain or implement material criminal law, so as to obtain a judge's decision and the manner in which the contents of the decision must be implemented. The definition of criminal procedural law is "procedural law that implements and maintains material criminal law".³

The role of judges in criminal law enforcement, that the judge as the party deciding the case plays a very important role as a determinant of the future of the law, because every judge's decision will be the center of public attention, therefore judges do not only act as mouthpieces of the law, but judges also act as inventors of law. (*recht vinding*). The role of judges in deciding criminal cases that can fulfill the community's sense of justice, in terms of deciding a case the judge has freedom, this is in accordance with one of the elements of the rule of law which states that there is an independent and impartial judiciary, therefore judges in addition to paying attention to the provisions stipulated written in the Act also uses conscience, namely based on the judge's belief and sense of justice.⁴

Judges are required to uphold law and justice, not to win cases that are oriented to economic values, pragmatic, so that they can distort morals, ethical values, the text of laws, deflection to the value of truth, logic of rationality based on legal reasoning on the principle of formal legality. Where the Judge is free to decide all decisions without any intervention or

¹ Rukdiana, R. Putusan Lepas (Onslag Van Alle Rect Vervolging) Dengan Alasan Judex Factie Salah Dalam Menerapkan Hukum Dalam Perkara Pembunuhan. *Verstek*, 6(3).

² Mawey, A. G. (2016). Pertimbangan Hakim dalam Menjatuhkan Putusan Lepas dari Segala Tuntutan Hukum. *Lex Crimen*, 5(2).

³ Andi Sofyan dan Abd. Asis, 2014 *Hukum Acara Pidana Suatu Pengantar*, Edisi Pertama, Kencana Pramedia Group, Jakarta, hlm. 4.

⁴ Mulkan, H. (2021). Peranan Hakim Dalam Persidangan Perkara Pidana Sebagai Upaya Penegakan Hukum Pidana. *Jurnal Hukum Samudra Keadilan*, 16(2), 305-319.

interference from other parties. A judge who is very independent, not impartial in carrying out the task of deciding a case in court within the exercise of the judicial function.⁵

1. The freedom of judges is an important authority attached to individual judges where judges function as the application of the text of the law into concrete events, not just substantively, but also provide an appropriate interpretation of the law in order to rectify concrete legal events so that judges can be free to give judgments assessment and interpretation of the law. In Law Number 48 of 2009 concerning Judicial Power, all judge's decisions must include reasons and basis for the decision, also contain certain articles of the relevant laws and regulations or unwritten sources of law which serve as the basis for adjudicating. A court decision is considered valid and has legal force if it is pronounced in a hearing open to the public. Article 1 point 11 of the Criminal Procedure Code states that:
2. "A court decision is a statement made by a judge in an open court session, which can be in the form of conviction or acquittal or exemption from all lawsuits in matters and according to the manner stipulated in this law." "
3. Each judge's decision is one of three possibilities, namely:
4. 1. Punishment or imposition of criminal and/or orderly conduct;
5. 2. Free verdict;
6. 3. The decision is released from all lawsuits.⁶

The types of judge's decisions are: final decisions, comdenatoir decisions, constitutive decisions, and declaratory decisions. The judge's considerations in making a decision to be released from all lawsuits have the basis for the judge's consideration in making a decision to be free from all lawsuits, namely that what has been charged against the defendant is proven, but the actions of the defendant are not a crime. Another consideration of the judge is if there are special circumstances that cause the defendant cannot be punished, namely the existence of justification reasons and excuses.⁷

Talking about the case of a criminal act of murder which the judges decided independently, a few researchers gave an example of a case, namely: The panel of judges at the South Jakarta District Court sentenced the two police shooters to the FPI (Islamic Defenders Front) Laskar, Yusmin Ohorella and Fikri Ramadhan at the Cikampek KM 50 Toll Road. "Stating that the defendant was proven to have committed a criminal act as the primary indictment of the public prosecutor in the context of the defense being forced to exceed the limit," said presiding judge Arif Nuryanta at the South Jakarta District Court (PN).

However, the panel of judges also stated that the shooting was an attempt to defend themselves, so that the two defendants could not be sentenced to criminal penalties. "Declaring that they cannot be sentenced for criminal reasons for reasons of justification and forgiveness,". The indictment of maltreatment given by the prosecutor to the alleged perpetrator of the shooting of four FPI laskars led to a prosecution of 6 years in prison. The prison request was submitted by the Public Prosecutor (JPU) in a trial held at the South Jakarta District Court (PN). "The defendant was sentenced to 6 years in prison with an order that the defendant was immediately detained," said the prosecutor. Both were charged with Article 338 of the Criminal

⁵Abdul Ghafur Anshori, 2016, *Filsafat Hukum, Sejarah, Aliran dan Pemaknaannya*, (yogyakarta: Gajah Mada University Press.), hlm. 33

⁶ Andi Hamzah, 2012, *Hukum Acara Pidana Indonesia*, Penerbit Sinar Grafika, Jakarta, hal.285.

⁷ Mawey, A. G. (2016). Pertimbangan Hakim dalam Menjatuhkan Putusan Lepas dari Segala Tuntutan Hukum. *Lex Crimen*, 5(2).

Code in conjunction with Article 55 Paragraph (1) of the 1st KUHP subsidiary Article 351 Paragraph (3) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code.

The prosecutor's demand for 6 years imprisonment for two police officers who were defendants in the shooting of four FPI was not granted by the panel of judges, the panel of judges instead sentenced the two defendants, namely First Brigadier Fikri and Ipda Yusmin. The judge declared Brigadier Fikri and Ipda Yusmin guilty of criminal acts of persecution that resulted in the death of a person. However, the judge did not sentence the two defendants to prison and decided to release them from the lawsuit.⁸

Departing from the problems mentioned above, the researcher wants to examine in depth matters that are directly related to. Judge's Decision Apart from the Crime of Murder.

RESEARCH METHODS

The data collection method in this study used secondary data collection, "Data collected can be obtained from the literature by citing". Secondary data is data that is generally in a ready-to-use state (ready mode). Collecting data by conducting library activities, by studying acquittal and release decisions in the Criminal Procedure Code.

Researchers also used primary data collection in the form of interviews to support secondary data. The data source is in the form of secondary data which is commonly used in normative legal research which is divided into 3 (three), namely primary legal material, secondary legal material, and tertiary legal material.

1. Primary Legal Materials

Primary legal material is legal material that binds or makes people obey the law, such as statutory regulations and judge's decisions. The primary legal materials that researchers use in this writing are:

- a. The Criminal Code of the Criminal Procedure Code
- b. Law Number 48 of 2009 concerning Judicial Powers

2. Secondary Legal Materials

Secondary legal material is defined as legal material that is not binding but explains primary legal material which is the result of processing the opinions or thoughts of experts or experts who study a particular field in particular which will provide clues as to where the researcher will lead. The secondary materials here by researchers are the doctrines in books, law journals and the internet. relating to acquittal and acquittal in the Criminal Procedure Code.

3. Tertiary Law Material

Tertiary legal materials are legal materials that support primary legal materials and secondary legal materials by providing an understanding and understanding of other legal materials. The legal materials used by researchers are the Big Indonesian Language Dictionary (KBBI) and the Legal Dictionary, in relation to the problems to be studied.

RESULT AND DISCUSSION

In this sub-chapter, several legal materials from the results of research conducted on research objects related to corporate responsibility as perpetrators of corruption crimes will be presented. Some exposures to legal and non-legal materials that support the research results will be described as follows.

1. Analysis of Judges' Decisions Free from the Crime of Murder.

Based on a concept that has been described in the theoretical framework in the literature review chapter, in that chapter a guide is needed in determining what the judge's decision is free from

⁸ www.kompas.com/polisi-penembak-laskar-fpi-divonis-lepas-ini-perjalanan-kasusnya. Diakses pada tanggal 4 Juli 2022 pukul 09.33 Wita

the crime of murder. The guideline is used as a measure of the criminal act determined by the perpetrator who is the goal of the enforcement of the norm. departing from the above, the researcher offers a theoretical concept as a result of a literature review related to the theoretical concept of theory and doctrine then will find out how the role of a statutory regulation is used as a reference to be able to determine the extent to which the judge's decision is free from demands. Therefore, a picture is needed which can later be used as a reference to avoid the occurrence of multiple interpretations of the judge's decision, as shown in table 1 below:

Table 1. Judges' Decisions and Decisions That Are Free from Lawsuits

No	The judge's decision is free from lawsuits	Theories/Legal Basis	Determination	Ket
1	Peraturan Undang-Undang	Law Number 4 of 2004 concerning provisions judicial power	insists that no one can sentenced unless the court, due to valid means of proof complies Constitution	
2	Doktrin	Yurisprudensi No. 1/Yur/-Pid/2018	The element of intentionally taking a life is fulfilled if the perpetrator attacks the victim with a tool,	
3	Theory	Von Hippel's will theory. Frank's theory of knowledge (voorstelling theo-rie)	Both theories state that intentional is the existence of two wills	

Source processed directly by researchers, 2022

Referring to table 1 which has been presented above, it can be assumed or known that the doctrines, theories and laws relating to the judge's decision free from prosecution for the crime of murder already have references and guidelines so that it should not be difficult for the judge to determine whether an act which contains a criminal element can be sentenced to a criminal sentence by a permanent decision from the court. Seeing the magnitude of the role of judges in making decisions that cannot be contested for the birth of justice with the supremacy of law, the researcher assumes that every judge's decision is based on statutory provisions, so parties who feel disadvantaged can still apply for a review or PK which is in legal provisions. regulated in the Act. Here the researcher wants to explain that the elements of a crime can be distinguished from at least two points of view, namely (1) from a theoretical point of view and (2) from a statutory point of view. The theoretical intent is based on the opinion of legal experts, which is reflected in the formulation. Meanwhile, the point of the law is the fact that the crime is formulated as a specific crime in the existing articles of law. The elements of the crime that the researcher wants to present are as follows in table 2:

Table 2. The elements of a crime according to several theories

No	Nama Pentiori	Dasar Teori	Sebutan Teori	Ket
1	E.Y.Kanter dan SR. Sianturi	KUHAP	1st Subject 2nd Error 3rd Unlawful (from action) 4th An action that is prohibited and required by laws/regulations.	
2	Vantjik Saleh	Thinking	Against the law Detriment to society Prohibited by criminal law	

			The perpetrator was threatened with a criminal sentence.	
3	Simons		Handling, Wederrechtelijk Strafbaarfeit Gesteld The act must have happened by mistake	

Sumber diolah langsung oleh peneliti, 2022

Referring to Table 2 that the researcher has made, it is known how the existence of elements of a crime will affect the judge's decision. Because every decision read out by the panel of judges is the breath of the Act and also in every judge's decision it certainly has permanent and binding legal force, most decisions and judges' decisions are often used as a barometer for the next judge or what is known as Jurisprudence.

Departing from the elements of criminal acts that are based on the Act as contained in the Book II of the Criminal Code which explains a lot about the formulations regarding certain criminal acts that are included in the crime group and Book III is a violation. It turns out that there is an element that is always mentioned in every formulation, namely behavior/deeds, although there are exceptions such as Article 335 of the Criminal Code. The element of wrongdoing and illegality is sometimes included and often not included. It is not included at all regarding the element of accountability. From the formulations of certain criminal acts in the Criminal Code, it can be seen that there are eight elements of a crime, as shown in table 3 below:

Table 3. Elements of a Crime

No	Unsur Tindak Pidana	Dampak	Ket
1	Elements of behavior	The nature of against the law	
2	Elements against the law	There's chaos	
3	Element of fault	Inequality of understanding of the law	
4	Elements of constitutive consequences	-	
5	Elements of accompanying circumstances	Become a criminal	
6	Additional requirements for criminal prosecution	Proof or evidence	
7	Elements of additional requirements to aggravate the crime	Testimony	
8	Elements of additional conditions to be convicted.	Evidence and witnesses	

Source processed directly by researchers, 2022

Based on table 3, it can be seen that how the theory related to the elements of a criminal act works, this is very important considering that in order to be able to decide whether a crime can be prosecuted or not, there must be elements that can be used as a reference and which can be used as a reference. The most important thing is how the judge's decision in giving a free decision on the crime of murder. It is clear that with the description that the researcher has described in table 3, it can be easy to understand the performance of the judge's decision.

a. Causes of Crime

In the Criminal Code, criminal acts are divided into two, namely for all those contained in Book II, and violations for all those contained in Book III. So that the crime is a form of crime. Then the researcher wants to explain explicitly about the causes of criminal acts, because a criminal act must have a reason or element that makes the perpetrator of the crime commit an act against the law, however, the tendency is that there are still many misunderstandings of the unlawful act. describes the social factors that are considered to have an influence on the occurrence of a crime, can be categorized as table 4 below:

Table 4. Factors Influencing the Occurrence of Crime

No	Faktor-Faktor	Akibat Dari Faktor	Ket
1	Faktor ekonmi,	(<i>basic causa</i>) dari terjadinya kejahatan terhadap hak milik, juga mempunyai pengaruh <i>kriminogenik</i> karena membangun <i>egoisme</i>	
2	faktor mental,	meliputi kurangnya pemahaman terhadap agama, pengaruh bencana, film dan televisi	
3	faktor fisik	keadaan iklim, seperti hawa panas/dingin, keadaan terang/gelap, dan lain-lain dianggap sebagai penyebab langsung dari kelakuan manusia yang menyimpang	
4	faktor pribadi,	meliputi umur, jenis kelamin, ras dan nasionalitas, alkoholisme, dan perang berakibat buruk bagi kehidupan manusia.	

Source processed directly by researchers, 2022

Based on table 4, it can be seen that, related to the existing theory where the factors that can influence the occurrence of a crime, the concrete steps for judges in deciding a case must also pay attention to other factors. When a judge in deciding a case only focuses on the law, what happens is an imbalance between every decision that should not only be oriented to the law but there are values of local wisdom, and so on. What if the panel of judges does not pay attention to the above, as the researcher has described in table 4, it can be seen that there are many factors that influence the occurrence of criminal acts.

In general, things that can trigger criminal acts can be classified, including:

- a. Weak economic conditions and unemployment
- b. Weak law enforcement, in this case includes the weakness of criminal legislation sanctions, and the unintegrated criminal justice system.
- c. The existence of demonstration effects, namely the tendency of people to show off their wealth so as to ignite a consumptive lifestyle that competes to pursue surplus value while low ability
- d. The behavior of the victim who also supports the occurrence of a crime
- e. Family environment that is not harmonious and association with society that integrates with patterns of crime in society
- f. Lack of education about morals
- g. Mental illness.

Criminal sanctions

The term criminal is defined as a criminal sanction; besides that it is also interpreted by other terms, namely punishment, punishment, conviction, imposition of punishment, giving criminal and criminal penalties. Criminal sanctions are a causal punishment, because it is the case and the effect is the law, the person affected will receive a sanction either going to prison or subject to other punishment from the authorities. Criminal sanctions are a type of sad sanctions that are threatened or imposed on acts or perpetrators of criminal acts or criminal acts that can interfere with or endanger legal interests. Criminal sanctions are basically a guarantor to rehabilitate the behavior of the perpetrators of these crimes, but it is not uncommon that criminal sanctions are created as a threat to human freedom itself.

After knowing about sanctions from criminal acts, it must also be understood, namely about the kinds of sanctions in criminal law that can be seen in Article 10 of the Criminal Code. Article 10 of the Criminal Code stipulates that the punishment consists of as described in table 5 as follows:

Table 5. Types of Criminal Sanctions

No	Sanksi Pidana Pokok	Penteori	Pemahaman	Ket
1	Pidana Mati	Rasyid Ariman dan Fahmi Raghieb	Keberadaan pidana mati (<i>death penalty</i>) dalam hukum pidana (KUHP), merupakan sanksi yang paling tertinggi apabila dibandingkan dengan sanksi pidana lainnya.	
2	Pidana Penjara (<i>Gevangemisstraf/Improsonment</i>)	Zuleha	Pidana penjara merupakan pidana pokok yang berwujud pengurangan atau perampasan kemerdekaan seseorang.	
3	Pidana Kurungan (<i>Hechtenis</i>)	Ninieck Suparni	Terhadap pidana kurungan ini yang dianggap oleh pembentuk undang-undang lebih ringan dari pidana penjara	
4	Pidana Denda	Andi Hamza	Menurut pasal 30 ayat 2 KUHP apabila denda tidak dibayar harus diganti dengan pidana kurungan,	
5	Pidana Tutupan	Tina Asmarawati	Dasar hukum diformulasikannya pidana tutupan ini dalam KUHP terdapat di dalam Undang-Undang RI 1946 No.20	

Source: Qodariah Barkah, 2016

Based on a review that is directly related to the theory of the various criminal sanctions that the researcher has described in table 5, it is clear that, in the criminal law itself, there are many provisions regarding sanctions that can be given to the perpetrators of these crimes, so this is where the judge should be the mouthpiece. in giving a decision that is free from all lawsuits, it is best to pay attention to the existing rules and regulations implemented by previous judges or which were usually included in jurisprudence. Even though there are many sanctions contained in the Criminal Code and there are several judges' decisions that sentence the perpetrators of the crime of murder as shown in Table 6 below:

Table 6

No	No. Putusan Pengadilan	Nama Tersangka	Isi Putusan	Jenis Sanksi Pidana	Ket
1	Putusan perkara No.124/Pid.b/2019/PN.Sgr, menyatakan bahwa terdakwa tidak ada niat untuk membunuh korban namun terdakwa hanya berniat untuk menganiaya korban saja tanpa membunuhnya.	I Kadek Indrajaya alias Kodok	Majelis Hakim dalam menjatuhkan pidana dengan pidana penjara	14 tahun kepada I Kadek Indra Jaya alias Kodok (pelaku)	
2	794/Pid.B/2014/PN.Llg	Iskandar Alias Kandar Bin Aroeif	terbukti melakukan perbuatan yang didakwakan kepadanya, akan tetapi perbuatan tersebut bukan merupakan suatu tindak pidana	melepaskan Terdakwa Iskandar Alias Kandar Bin Aroeif dari segala tuntutan hukum (<i>ontslag van alle rechtsvervolgin</i>).	
3	Putusan Nomor: 137/Pid.B/2014/PN.Bkn	Ricardo Nainggolan	menyatakan pertimbangan hakim dalam menyatakan kualifikasi perbuatan terdakwa	bersalah melanggar Pasal 338 KUHP.	

Source: primary legal materials, processed by researchers, 2022

Referring to Table 6, it can be seen that there were several cases of criminal acts of murder in which the judges gave different decisions. In every court throughout Indonesia, of course, there is a different process in dealing with cases of the criminal act of murder. It requires a judge who is firm in his stance and also authoritative in giving decisions for the sake of legal justice.

Judge's Obstacles in Determining Decisions Regardless of the Law on the Crime of Murder

After describing the results of the research in the previous sub-chapter, to answer the second problem formulation related to the judge's constraints in determining a decision that is independent of the provisions of the law on the crime of murder, the researcher will describe the sub-chapter as referred to in Table 7 below:

Table 7. Constraints of Judges in Determining Decisions

No	Kendala Internal	Kendala Eksternal	Ket
1	a. Pengangkatan Hakim Banyak yang beranggapan bahwa rekrutmen hakim belum didasarkan pada norma-norma profesionalisme atau kemampuan pribadi hakim yang bersangkutan, yang pada akhirnya mengakibatkan terjadinya penyimpangan-penyimpangan di dalam proses peradilan yang melahirkan putusan hakim yang kurang mencerminkan kepasti-an hukum dan rasa keadilan masyarakat	a. Kemandirian Kekuasaan Kehakiman Hakim yang mampu mempertahankan kemandiriannya akan dapat berfungsi sebagaipenegak hukum yang baik dalam menjalankan tugas dan wewenangnya. Kemandirian ini membawa hakim selalu berpedoman pada prinsip-prinsip hukum yang adil dan dapat dipertanggungjawabkan.	

2	b. Pendidikan Hakim Data yang diperoleh di lapangan khusus-nya di Provinsi Gorontalo sebagian besar pengadilan baik pengadilan tinggi maupun pengadilan negeri menunjukkan bahwa tingkat pendidikan formal hakim masih tertinggal	b. Pembentukan Undang-Undang Salah satu langkah strategi yang dapat dilakukan dalam menciptakan putusan hakim yang mencerminkan kepastian hukum, keadilan dan kemanfaatan adalah dengan melakukan reformasi terhadap berbagai peraturan yang berkaitan dengan kekuasaan kehakiman	
3	c. Penguasaan terhadap Ilmu Hukum Berdasarkan data hasil Penelitian ditemukan berbagai kontroversi dalam putusan dan pertimbangan hukum yang tidak mendasarkan pada fakta yang ada dan tidak sesuai dengan hukum yang berlaku, merupakan kekurangan utama dalam pengetahuan hakim.	c. Sistem Peradilan yang Berlaku Pentingnya pembaharuan sistem peradilan, karena dengan usaha tersebut akan melahirkan produk-produk putusan pengadilan yang berkualitas. Pada akhirnya putusan pengadilan yang berkualitas menjadi sumber hukum yang dapat dipakai dalam kehidupan berbangsa dan bernegara.	
4	a. Moral Hakim Hakim harus mempunyai kemampuan profesional serta moral dan integritas yang tinggi.	d. Partisipasi Masyarakat Partisipasi masyarakat tidak sekedar melibatkan lembaga swadaya masyarakat (LSM), tetapi para individu yang ada dalam masyarakat	
5	a. Kesejahteraan Hakim Kerja para hakim menuntut perhatian ekstra keras.	e. Sistem Pengawasan Hakim Doner menyatakan paling tidak ada tiga macam pengawasan hakim. Pertama , pengawasan hukum, Kedua , pengawasan administrasi, Ketiga , pengawasan politik	

Wantu, F. M. 2013, processed directly by researchers

Referring to Table 7, which has been described by the researchers from the results of a literature review related to doctrine or theory, to examine what obstacles are faced by judges in making decisions that are independent of the provisions of the Act on the crime of murder, the focus of the description is to find obstacles that make judges In each decision, it is still not optimal and according to the researcher's opinion, these obstacles can still be improved so that in the future the judiciary can have decisions based on justice. According to the researcher, an alarming phenomenon in the field of law enforcement and justice in court is that legal justice is no longer in line with public justice. The direct impact of this incident was the loss of public trust in the state and the emergence of community initiatives to create their own courts which often resulted in vigilante action.

Based on the above description contained in Table 7, information is obtained that the obstacles that cause judges to make decisions are the presence of internal factors and external factors, however, from these two factors it can be assumed that the tendency of these obstacles can still be corrected by carrying out various kinds of developments such as increasing the source of resources. Human Resources (HR) for each judge, carry out training and can also support judges for further studies for those who have not had a doctorate, considering that academic factors are very important, as researchers have described in Table 7 what are the obstacles for judges to make decisions that are independent of the law. -Law on the crime of murder.

Basically, the obstacles faced by judges in realizing legal certainty, justice and expediency can be distinguished in internal constraints and external constraints. Basically, the internal constraints of judges in creating legal certainty, justice and benefits, based on the

findings, consist of appointment of judges, education of judges, mastery of science, morale of judges, and welfare of judges. While the external constraints for judges in creating legal certainty, justice and expediency are the independence of judicial power, the formation of laws, the existing justice system, community participation, and the judge's supervisory system.

To overcome the internal and external constraints of judges there are several things that must be done, among others:

First, the restructuring of the existing structures and institutions of judicial power, including the recruitment of quality human resources. The independence of judicial power must be guaranteed and can still be realized in the judicial process in court. Things that also need to be considered are: (1) the question of appointment/recruitment that really has quality not based on KKN; (2) improvement of moral and ethical values; (3) the education and training of judges will continue to be carried out regularly; (4) improving the welfare of judges and guaranteeing the safety of judges and their families. Second, it is necessary to formulate judges' decisions that are closer to the values of justice, legal certainty and expediency. The reasons and legal considerations in the judge's decision can be accepted especially by the parties and the community in general. Third, increasing law enforcement by resolving civil cases in court by starting with the principles of law and good judicial principles. Legal principles must be used as the main basis for judges in resolving and deciding cases. Fourth, community participation in law enforcement, especially in courts. Fifth, increase public awareness education on the legal process in court.⁹

One component that works in this criminal justice system is the Court. As a sub-system of the criminal justice system, the court is tasked with receiving, examining and adjudicating and resolving every case submitted to it. In this task, the court cannot be separated from its apparatus, which is called the Judge, because the Judge here is a state official who is given the task of adjudicating. Meanwhile, trying this according to the meaning of article 1 point 9 of the Criminal Procedure Code is a series of judges' actions to examine, accept and decide on criminal cases based on the principles of freedom, honesty and impartiality in court hearings.

The court component will produce a decision, as the implementation of the judge's duties in trying criminal cases submitted to him. In making decisions on criminal cases, judges are guaranteed freedom. We can read the provisions regarding the freedom of judges in giving decisions in Article 4 paragraph (3) of Law no. 14 of 1970 concerning the Main Provisions of Judicial Powers expressly states that all interference in judicial matters by parties outside the powers of the judiciary is prohibited except in matters stated in the law.

In the elucidation of this article, it is stated, among other things: in order for the court to carry out its duties as well as possible, namely to make decisions based solely on truth, justice and honesty, it cannot be justified that pressures or outside influences will cause judges are no longer free to make decisions that are as fair as possible. That is how clear the law guarantees the freedom of judges. Judges are guaranteed the freedom to examine and decide cases submitted to them in the fairest way possible.

The demand for truth, justice, benefits or legal certainty is so great directed at judges, especially after the Reformation era began seven years ago. Because only judges are authorized by law to make decisions in the name of God as stated in each head of the judge's decision which reads:

Demi Justice Based on Belief in the One and Only God. For this reason, good wisdom, prudence, intelligence and morality are a must for a judge to have. The good qualities possessed by a judge may not necessarily produce good decisions, if the law itself is still unclear in favor of justice.

⁹ Wantu, F. M. (2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, dan Kemanfaatan di Peradilan Perdata. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 25(2), 205-218.

Besides that, there is still a tug-of-war between prioritizing truth or justice or legal certainty or expediency. If we look at the head of the court's decision which reads For the sake of Justice Based on Belief in the One and Only God, then it is clear that justice is the main goal. However, until now the Supreme Court still seems to be guided by legal certainty. On the other hand, former Supreme Court Justice Bismar Siregar said judges should not be rigid in implementing legal regulations "for the sake of legal certainty", but must be wise and prudent, must pay attention to the values of justice contained in society.

In his opinion, it is not the rule of law that is the main thing, but the interests of society. In addition, Bismar, appealed to judges not to pile on legal certainty. The sequence of tasks of administering justice is justice, truth, order for the sake of legal certainty.

Disparity-style punishment has created negative prejudice in society. Sentence decisions like this are often considered by the community to not reflect a sense of justice. The freedom of the judge in determining the sentence must not be in such a way as to allow for striking inequalities to occur, which will lead to feelings of unsavory behavior in society.' Even though we often hear the expression (figuratively) that the court is the last bastion of justice. The purpose of the decision is to provide justice or equity rights by equating all people before the law of equality before the law.¹⁰

Seeing from the development and progress of technology today, it takes the attitude and authority of the judiciary which is the main pillar for justice seekers. However, before discussing this further, it is necessary to pay attention to regarding a rule of law that should have a foundation in its application and also strengthening, this is difficult to implement if the judiciary in Indonesia has not been able to maximize the implementation of every decision, in this case the power is in the institution.

Analysis of the Judge's Decision Away from the Crime of Murder

Criminal law is a law that has a special nature, namely in terms of sanctions. Every time we are faced with the law, our thoughts go towards something that binds someone's behavior in society. It contains provisions on what to do and what not to do, as well as the consequences. We call the former the norm, while the consequences are called sanctions. What distinguishes criminal law from other laws, among others, is the form of sanctions, which are negative in nature which are referred to as punishment (punishment). According to Pompe, criminal law is the entire rule of law regarding punishable acts and their criminal rules.

Crime has long been known in the history of human civilization. So it is not surprising that there is an assumption that crime is as old as humans. One of the first forms of crime that occurred was murder. The murder was carried out by the son of Adam, namely Qabil against Abel, as narrated in the holy book Al Qur' an. At that time Qabil killed Abel who was Qabil's sibling. Thus on violence after violence in its various forms threatens human lives committed by and against human children themselves and continues to this day.

The criminal act of murder in the Criminal Code is regulated in Chapter XIX concerning "Crimes Against Life". In this chapter, several types of criminal acts of murder are distinguished, including ordinary murder as regulated in Article 338 which carries a maximum imprisonment of 15 years. This crime is categorized as as murder in its usual form because if it is committed under certain circumstances the qualification of the offense will change to aggravated murder as stipulated in Article 339 of the Criminal Code concerning "murder followed, accompanied or preceded by acts that can be punished" and Article 340 of the Criminal Code concerning the crime of "murder planned" (moord), with the most serious criminal offenses each being life imprisonment and death penalty. From the three formulations

¹⁰ Marzuni, E. (2015). *Penerapan Asas Kebebasan Hakim Dalam Mengambil Putusan Perkara Pidana* (Doctoral dissertation, Universitas Islam Indonesia).

of the criminal act of murder, it shows that the Criminal Code policy does not solely emphasize the element of consequence, namely "the loss of another person's life", but also formulates an aggravating element that differs from one article to another as stipulated in Articles 339 and 340. Criminal Code.

With the difference in the elements of the article, in the event that a fact is found regarding the loss of another person's life, the work of law enforcers does not only stop at proving Article 338 of the Criminal Code, but also uncovers the possibility of aggravating elements. So that in terms of the prosecution strategy, the Public Prosecutor (JPU) often applies a Subsidiary (Layered) form of indictment to prevent the defendant from being released from criminal law, because the evidentiary consequence of this form of indictment is that the heaviest indictment must first be examined (*primaire*) and if it is not proven to have to move on to a lighter indictment (subsidiary) and so on. This is in accordance with the main function of the criminal procedure law (KUHAP), which is to seek and find material truth. Material truth is the complete truth or at least that approaches the truth of a criminal case by applying the provisions of the criminal procedure law honestly and precisely with the aim of seeking who did it and whether the accused person can be blamed. This goal is actually the initial goal in realizing the ultimate goal carried out by Criminal Law, namely national legal order, in this case achieving an orderly, peaceful, just and prosperous society.

Based on the literature review conducted by the researcher, the above description further emphasizes that the role of the judge in seeking and finding the material truth of the criminal act of murder by weighting is very important to uncover not only who the perpetrators are but also the actual qualifications of the offense. According to the researcher's opinion, every type of delict qualification that is proven according to the judge will result in the choice of imposition of the type of punishment (prison sentence of up to 20 years or life or death). As the public understands in general, these types of crimes are the most severe sanctions in criminal law. Even at a practical level it is known as a cruel sanction because it is related to a person's human rights. Therefore, the researcher's initial assumption is that judges who are authorized by law to decide cases must be able to seek and find material truth from the facts revealed in court. The value of a judge's decision does not only concern the professional responsibility of a judge towards his profession, but also concerns justice because it puts the victim's human rights on the one hand and the perpetrator on the other. That is, as a result of the actions of the perpetrators who have taken the lives of other people, the judge through his decision may also deprive the perpetrators of independence or life through imposition of imprisonment or death. In this regard, the judge in imposing a court decision must have strong considerations regarding the case being examined. The judge's consideration is a very important aspect in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) both from the perspective of perpetrators and victims (community).¹¹

Because, in this case the judgment or consideration of a judge himself is based on legal and non-legal factors. That of these factors that must be contained in the decision, as well as legal factors including repetition of criminal acts or recidive. And also, non-legal actors such as the attitude of the defendant in court and the reasons that can reduce the defendant's sentence.¹²

According to law number 48 of 2009 that: "Judge considerations are the thoughts or opinions of judges in making decisions by looking at things that can lighten or aggravate the

¹¹ Valentino, A. 20218, Analisis Yuridis Putusan Dalam Tindak Pidana Pembunuhan (Putusan Nomor: 137/Pid. B/2014/PN. Bkn).

¹²<https://goolewebliht.com/i?u=https://seniorkampus.blogspot.com/2017/09/pertimbangan-hakim-dalam-menjatuhkan.html?m%3D1&hl=id-ID>, diakses pada tanggal 19 Juli 2022 pukul 14.34 Wita.

perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an integral part of the decision.¹³

The decision is the final stage of a trial process in court of a matter that has been considered in written or oral form. And there are 3 types of judges' decisions, namely: acquittal, acquittal and sentencing.¹⁴ Therefore, the existence of legal considerations is an important thing for a judge before making a decision on the case, that the legal considerations will be the contents of the decision.

It is known that, in examining, adjudicating, and deciding cases before him, the judge must first use the statutory law, but if the statutory law turns out to be insufficient or not in accordance with the case. So, the judge will use other sources of law.

After the researcher has explained in the previous sub-chapter related to the judge's decision, in this sub-chapter the researcher will again elaborate on the judge's control in determining a decision that is independent of the Law on the crime of murder, the researcher will use several literature reviews related to theory and doctrine in the discussion that will be described.

According to Lilik Mulyadi, the essence of the judge's juridical considerations is proving the elements of an offense whether the defendant's actions fulfill and are in accordance with the offense charged by the public prosecutor so that these considerations are relevant to the verdict/dicta of the judge's decision.

Judge's considerations are arguments or reasons used by judges as legal considerations which form the basis before deciding a case. The judge's consideration is divided into 2 parts namely:

a. Juridical considerations

Juridical considerations are judges' considerations based on juridical facts revealed in the trial and by law determined as must be included in the decision, for example the indictment of the public prosecutor, the testimony of the accused, witness statements, evidence and articles in the regulations. criminal law.

Juridical considerations of the offense charged must also be in accordance with theoretical aspects, doctrinal views, jurisprudence, and the position of the case being handled, only then will the founder be determined in a limited way. After the inclusion of these elements, in practice the judge's decision is then considered the things that can lighten or aggravate the defendant. The things that were aggravating, for example, the defendant had been convicted before, because of his position, and used the national flag.¹⁵

b. Non-Juridical Considerations

Non-juridical considerations can be seen from the defendant's background, the defendant's condition and the defendant's religion. Law No. 48 of 2009 concerning Judicial Power Article 5 paragraph (1) stipulates that judges are required to explore, follow, and understand legal values and the sense of justice that lives in society. The purpose of this provision is that each judge's decision is in accordance with legal provisions and a sense of justice for the community.

Achmad Ali, argues that among legal practitioners there is a tendency to always see judicial institutions as mere legal institutions, which are full of normative content, followed by a number of judicial principles which are very ideal and normative in nature, which in reality are completely different. with the use of moral studies and legal science studies (normative).¹⁶

¹³ Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

¹⁴ Lilik Mulyadi, 2014, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia*, PT CitraAditya Bakti, Bandung, , hal. 194.

¹⁵ Adami Chazawi, *Kejahata terhadap Tubuh & Nyawa*, Jakarta, PT. Raja Grafindo, hlm.73

¹⁶ Achmad Ali, 2012, *Menguak Tabir Hukum Suatu Kajian Filosofis dan Sosiologis* jakarta:PT. Gunung Agung, hlm. 200.

Bismar Siregar, also stated, if there is and will be a conflict between the sound of law between what the people feel is fair by the community and what is called legal certainty, legal certainty should not be forced and the community's sense of justice be sacrificed. According to M.H.Tirtaamdijaja, the judge's way of determining a punishment for the defendant, namely "as a judge he must try to determine a sentence, which is felt by the community and by the defendant as an appropriate and fair punishment." To achieve this effort, the judge must pay attention to:¹⁷

- 1) The nature of the criminal offense (whether it is a serious or minor criminal offense).
- 2) The threat of punishment for the criminal offense. The circumstances and the atmosphere at the time the criminal offense was committed (which provided and mitigated)
- 3) Personality of the accused, whether he is a criminal who has been repeatedly convicted or a criminal for this one time only, or whether he is a young person or a young person or a person of old age.
- 4) The reasons for committing a criminal offense.
- 5) The attitude of the defendant in the examination of the case.

In addition to these two aspects, in Article 8 paragraph (5) of Law no. 48 of 2009 concerning Judicial Power, it is stated that considering the severity of the crime, the judge must also pay attention to the good and evil nature of the defendant. According to HB Sutopo, there are factors that must be considered sociologically by the judge in making a decision on a case, including:¹⁸

- 1) Paying attention to unwritten sources of law and values that live in society.
- 2) Paying attention to the good and bad qualities of the defendant as well as the mitigating and aggravating values of the defendant.
- 3) Pay attention to whether or not there is reconciliation, mistakes, the role of the victim.
- 4) Community factors, namely the environment where the law applies or is applied.
- 5) Cultural factors, namely as a result of creativity and taste based on human initiative in social life.

CONCLUSIONS

With regard to the analysis of the judge's decision that is free from the crime of murder, it is clear that, to determine whether an act is included in a criminal act, a sharp analysis is needed from a judge without overriding the applicable law. Seeing the obstacles faced by judges in determining decisions that are independent of the provisions of the Act on the crime of murder, then every judge who has convened should have matured emotionally, in terms of the thoughts, attitudes and authority of the judge himself and which is no less important. is the ability of mature human resources.

From the analysis of the judge's decision that is free from the crime of murder, the researcher recommends the authority of the judge in every decision he makes so that a fair decision is born. Related to the judge's obstacle in giving a decision that is free from the law on the crime of murder. It takes the development of Human Resources (HR) because the authority and intellectual abilities of judges greatly influence every decision given by taking into account the rules of the legislation but not overriding the sense of justice.

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¹⁷ MH Tirtaamidjaja, 2012, *Pokok-pokok Hukum Pidana* Jakarta: Fasco, hlm.53

¹⁸ HB Sutopo, 2012, *Metodologi Penelitian Hukum* PT.Grasindo, Surakarta, hlm.68

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