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Factors Affecting the Judge's Decision in the Court

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Abstract

Indonesia is a state of law that gives freedom to judges in deciding a criminal case, meaning that judges may not receive intervention from any party. Judges as state judicial officials are authorized to receive, examine, and decide cases before them. Judges have a very important role in a series of law enforcement processes, especially in sentencing, because all legal cases lead to their decisions. To make decisions, judges must have wise considerations so that the decision is in accordance with the principle of justice. There are things that need to be considered by the judge in giving a decision and there are factors that cause the judge to give a decision.

Keywords

Judge's Decision, Factors Causing Judge's Decision

Introduction

In Indonesia, the institution that has the authority to try and impose sanctions is called the judiciary, in which there is a state apparatus that exercises the authority to try and decide on a case or problem that occurs in society, which we know as judges. Indonesia is a state of law that gives freedom to judges in deciding a criminal case, meaning that judges may not receive intervention from

any party.¹ Judges as state judicial officials are authorized to receive, examine, and decide cases that are brought before them. In essence, the task of judges to try contains two meanings, namely upholding justice and enforcing the law. Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that judges are obliged to explore, follow, and understand legal values and a sense of justice that live in society.²

A verdict is a statement by a judge as a state official that is pronounced before a trial with the aim of ending or resolving a case or dispute between parties with mutual interests. Judges have a very important role in a series of law enforcement processes, especially in sentencing, because all legal cases lead to their decisions. In carrying out this important function, judges become the creators of new norms because each of their decisions can be considered as jurisprudence which is a source of law. Judges also play a role in maintaining legal order by giving decisions on every case that is brought before them. In addition to the role of judges as mentioned above, judges also have a role in interpreting the law.³

Punishment or imposition of a crime and or order, namely the punishment of a defendant if the defendant's guilt in the act that has been committed and the act is a criminal act according to law and conviction is sufficiently proven⁴. To make a decision, the judge must have wise considerations so that the decision is in accordance with the principle of justice. Each judge's decision is one of the following three possibilities. Sentencing or imposition of a crime and or order, namely the punishment of defendant if the guilt of the defendant in the act that has been done and the act is a crime according to law and the belief is sufficiently proven. Acquittal, namely the defendant is acquitted if according to the results of the examination the guilt of the defendant according to law and belief is not proven. The verdict is free from all lawsuits, that is, if the guilt of the defendant according to law and belief is sufficiently proven, but what the defendant did is not a crime.⁵

The judge's decision which contains a sentence that already has permanent legal force, then the decision can be carried out. Implementing the judge's decision is to implement so that everything contained in the judge's decision can be implemented, for example if the decision contains the release of the accused, so that he is immediately released from detention, if it contains a fine, so that the fine is paid, and if the decision it contains the imposition of imprisonment, so that the

¹ Ismail Rumadan, 'Interpretation of The Legal Values and Justice in The Living Law Related To Court Decision', *Sociological Jurisprudence Journal*, 4.1 (2021), 13–22 <<https://doi.org/10.22225/scj.4.1.2946.13-22>>.

² Alfonso Moral, Virginia Rosales, and Ángel Martín-Román, 'Professional vs. Non-Professional Labour Judges: Their Impact on the Quality of Judicial Decisions', *International Review of Law and Economics*, 65 (2021), 105948 <<https://doi.org/10.1016/j.irle.2020.105948>>.

³ Alessandro Melcarne, Benjamin Monnery, and François-Charles Wolff, 'Prosecutors, Judges and Sentencing Disparities: Evidence from Traffic Offenses in France', *International Review of Law and Economics*, 71 (2022), 106077 <<https://doi.org/10.1016/j.irle.2022.106077>>.

⁴ Manudeep Bhuller and Henrik Sigstad, 'Errors and Monotonicity in Judicial Decision-Making', *Economics Letters*, 215 (2022), 110486 <<https://doi.org/10.1016/j.econlet.2022.110486>>.

⁵ Zhuang Liu, 'The Internet Echo Chamber and the Misinformation of Judges: The Case of Judges' Perception of Public Support for the Death Penalty in China', *International Review of Law and Economics*, 69 (2022), 106028 <<https://doi.org/10.1016/j.irle.2021.106028>>.

convict can serve his sentence in the house of the Correctional Institution and so on. The results of the judge's decision can have a very broad impact on society.⁶

Method

The study of the author is normative or dogmatic and is meant to be prescriptive. This study is carried out using a statutory approach. The sources of law that were used were primary legal resources and secondary legal documents. Primary legal materials are statutory regulations, while secondary legal materials are literary study materials. In the course of data analysis, deductive reasoning is employed.⁷

Discussion

The judge is the decision maker in a trial in court, the judge's decision is absolute and cannot be contested. In giving a decision in court, the judge has a basis for consideration before giving and issuing a decision. In addition, there are also factors that influence the judge's decision in court which will be discussed later in this paper.⁸

Before discussing the Judge's decision in more depth, it is necessary to know and understand a number of things as follows Court Decision In the Criminal Procedure Code itself, the definition of a court decision is "Statement" judge pronounced in an open trial, which can be in the form of punishment or free or free from all lawsuits in terms of and according to the method regulated in this law". There are two types of decisions, namely interim decisions and final decisions. The difference between the two lies in the extent to which a criminal case has been examined by a judge. Based on articles 191 and 193 of the Criminal Procedure Code, we can know that there are two types of decisions, namely Sentencing verdict and Decisions that are not sentencing, which are divided into two types, namely: Decisions free from all charges and decisions free from all lawsuits.⁹

From the description above, it can be seen that the judge's decision has 3 forms, namely: Criminal Decision (verodeling), The decision to release from all lawsuits (onslag van alle rechtsveronging) , and Free Verdict (Vrijspraak/acquittal). The position of the judge and the basis for his consideration in imposing a criminal decision. When we discuss court decisions, we cannot escape

6 Mark D. Verhagen and Julius Yam, 'The Law of Attraction: How Similarity between Judges and Lawyers Helps Win Cases in the Hong Kong Court of Final Appeal', *International Review of Law and Economics*, 65 (2021), 105944 <<https://doi.org/10.1016/j.irl.2020.105944>>.

7 Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201-7 <<https://doi.org/10.1016/j.sbspro.2016.05.006>>.

8 Doina Ștefana Săucan, Mihai Ioan Micle, and Gabriel Oancea, 'An Analysis of the Efficiency of Judges' Decision Stating the Obligation of Drug - Addicted Offenders Held under the Supervision of the Probation Services to Seek Medical and/or Psychological Treatment', *Procedia - Social and Behavioral Sciences*, 78 (2013), 702-7 <<https://doi.org/10.1016/j.sbspro.2013.04.379>>.

9 Noel Struchiner, Guilherme da F.C.F. de Almeida, and Ivar R. Hannikainen, 'Legal Decision-Making and the Abstract/Concrete Paradox', *Cognition*, 205 (2020), 104421 <<https://doi.org/10.1016/j.cognition.2020.104421>>.

the position of a judge in adjudicating a case and the considerations used by him in making a decision in the case being tried. To understand the basic understanding of judges' considerations, we can refer to the definitions put forward as follows: According to Wiryono Kusumo, considerations or what are often called considerations are the basis for judges' decisions or judges' arguments in deciding a case. If the legal argument is not true and proper (proper), then people can then judge that the decision is not true and unfair.¹⁰

Then, according to Sudikno Mertokusumo, simply the judge's decision includes orders and heads of decisions, considerations, and orders. From that scope, what is seen as the basis for the decision is consideration. Strong reasons under consideration as the basis for the decision make the judge's decision objective and authoritative. So that it can be said that the basis of consideration is the argument that becomes the basis / material for compiling the considerations of the panel of judges before the panel of judges makes a legal analysis which is then used to pass a decision on the defendant, the basis of the judge's consideration itself has an important position in a decision made by the judge because The better and more precise the considerations used by the judge in a decision, the better will reflect the extent of the sense of justice that exists in the judge who makes the decision. In addition, related to justice itself, the position of a judge who has the task of adjudicating and deciding cases must be truly trustworthy, fair and impartial in judging and deciding a case. Therefore, the objectivity of judges in adjudicating cases, the responsibility of judges for their decisions, and the freedom of judges in hearing and deciding cases are factors that need to be considered as well.¹¹

The Purpose and Theories of Sentencing. Before outlining the purpose of punishment, it is necessary to understand in advance what punishment itself is, because people are still often mistaken and sometimes even equate the meaning of punishment with criminal. According to Niniek, a process of concretizing a criminal sanction contained in a regulation by imposing it as a punishment for the defendant in a case 8 While M. Sholehuddin stated: "Criminalization is defined as the stage of determining sanctions and also the stage of imposing sanctions in line with this opinion, Mahrus Ali state sanctions in law From the explanation above, we can know that in fact punishment is a process of imposing criminal sanctions contained in the law by the judge to the defendant in the decision made by him. Furthermore, the understanding of the purpose of punishment itself is what is expected to be punished. achieve from the imposition of criminal decisions. The purpose of punishment itself has developed which at this time has led to a more rational and humane direction. The criminal system has begun to lead to a development that the imposition of a crime is not merely a retaliation but prioritizes elements educate and provide opportunities for a convict to improve himself by providing moral education and opportunities to change and behave

10 Piotr Bystranowski and others, 'Do Formalist Judges Abide By Their Abstract Principles? A Two-Country Study in Adjudication', *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique*, 35.5 (2022), 1903-35 <<https://doi.org/10.1007/s11196-021-09846-6>>.

11 Muhammad Ikram Nur Fuady, 'Siri' Na Pacce Culture in Judge's Decision (Study in Gowa, South Sulawesi Province)', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 13.3 (2019), 241 <<https://doi.org/10.25041/fiatjustisia.v13no3.1684>>.

well for criminals. The current criminal objectives are variations of the forms of deterrence, both aimed at violators of the law themselves and those who have the potential to become evil, protection of the community from evil deeds and improvement (reform) to criminals. Modern and popular nowadays, it is not only aimed at improving imprisonment but also looking for other alternatives that are not criminal in nature in fostering lawbreakers. Conditional Criminal as an alternative to punishment.¹²

There are several opinions among legal experts, including the opinion of PAF Lamintang which states Conditional punishment is a punishment whose implementation by the judge has been dependent on certain conditions stipulated in his decision. The provisions regarding this conditional penalty in the Criminal Code are contained in Article 14a-14 f of the Criminal Code. Although it is referred to as a conditional crime, conditional punishment is not one of the types of crimes as stated in Article 10 of the Criminal Code. Therefore, conditional punishment is more suitable to be referred to as a certain criminal system (prison) where it is stipulated in the verdict that the sentence imposed does not need to be carried out by the defendant with certain conditions that have been determined by the judge. In the application of conditional punishment itself, a very important thing is included, namely the expected benefits of conditional criminal sanctions. Conditional punishment is expected to be a very useful option (alternative punishment) in the context of rehabilitation, especially for novice criminals who commit crimes not because of their evil nature but because of the factors that compelled them to commit the crime. Regular association and social relations in the community will avoid the stigma (bad stamp) from the community towards criminals (ex-convicts) who have been in prison. Therefore, the application of conditional punishment cannot be separated from the role of judges who are also very important in making decisions. A judge in making a decision is required to be able to fulfill the community's sense of justice by not only being guided by written laws, but also unwritten laws or customs that apply in that society.¹⁶ So that a judge is not only a mouthpiece of the law but also must pay attention to the development of a sense of justice that exists in society today, this is because the sense of justice in society itself is dynamic and continues to develop from time to time so that as law enforcement officers judges are required to play a role in legal reform reform for the fulfillment of justice in society.¹³

Basis for Judges' Consideration in Imposing Criminal Decisions Against Criminal Actors. Before deciding a case, the judge always pays attention to things that can become considerations both juridically and outside of the juridical provisions in order to find a truth and create justice. imposed if there is an error of the defendant, which is proven in court, namely the guilt of the defendant as

12 Suzanne O. Kaasa and others, 'The Impact of Waiver to Adult Court on Youths' Perceptions of Procedural Justice.', *Psychology, Public Policy, and Law*, 24.4 (2018), 418–29 <<https://doi.org/10.1037/law0000181>>.

13 Valerie P. Hans, 'The Impact of Victim Participation in Saiban-in Trials in Japan: Insights from the American Jury Experience', *International Journal of Law, Crime and Justice*, 42.2 (2014), 103–16 <<https://doi.org/10.1016/j.ijlcj.2013.07.002>>.

referred to in the indictment of the public prosecutor. So the court imposes a penalty if the defendant is guilty of committing the criminal act he is charged with (Article 193 of the Criminal Code). It is not just that a criminal can be sentenced but must be supported by valid evidence in accordance with the formulation of Article 183 of the Criminal Code which states that: "A judge is not criminal in imposing a crime on a person unless with at least two valid pieces of evidence and he is convinced that the act crime actually occurred and that it is the defendant who is guilty of committing it."¹⁴

The following types of evidence are contained in Article 184 of the Criminal Code, namely witness testimony, expert testimony, letters, hints and defendant's statement. Besides that, what the judge should pay attention to in making a criminal decision, based on the results of an interview with Mr. HM Luthfie, SH, are error of criminal act, the motive and purpose of committing a crime, how to commit a crime, the inner attitude of the criminal maker, curriculum Vitae and socio-economic conditions of the perpetrators of the crime, the effect of the crime on the future of the perpetrator of the crime, attitudes and actions of the maker after committing a crime, the public's view of the crime committed, the responsibility of the perpetrator to the victim and was the crime committed with a plan.¹⁵

According to Mr. HM Luthfie, SH, in passing a court decision, judges have considerations that are not only influenced by the things mentioned above, but there are several other factors, in this case they can lighten and aggravate the crime, namely as follows like penalties commuted Penalties are commuted in relation to the following matters a person who tries to commit a crime, a person who assists in the occurrence of a crime a person who voluntarily surrenders himself to the authorities after committing a crime, a pregnant woman who commits a crime, a person who voluntarily provides appropriate compensation or repairs damage due to a criminal act committed, a person who commits a crime is not criminal because of a severe mental shock as a result of a very severe condition of his personal or family, a person who commits a crime, but is less accountable for suffering from a mental disorder, mental illness or mental retardation (mental retardation) or intellectual disability.¹⁶

Criminal aggravated like civil servant who violates the obligations of a special position is threatened with a criminal offense or when he commits a crime, he uses the power, opportunity, or effort given to him because of his position, anyone who commits a criminal act by misusing the national flag, national anthem or state symbol, everyone who commits a crime by abusing his expertise or profession, adults commit criminal acts together with minors. e. Any person who

14 Jae-Hyup LEE and Jisuk WOO, 'Assessment of the Jury Systems in Asia: A Comparison of Korea and Japan', *Asian Journal of Comparative Law*, 14.S1 (2019), 577-96 <<https://doi.org/10.1017/asjcl.2019.9>>.

15 Masahiro Fujita, *Japanese Society and Lay Participation in Criminal Justice* (Singapore: Springer Singapore, 2018) <<https://doi.org/10.1007/978-981-10-0338-7>>.

16 Joseph Kantanbacher and Shahzeen Z. Attari, 'Better Rules for Judging Joules: Exploring How Experts Make Decisions about Household Energy Use', *Energy Research & Social Science*, 73 (2021), 101911 <<https://doi.org/10.1016/j.erss.2021.101911>>.

commits a criminal act in alliance, jointly, or with violence in a cruel or premeditated way. f. Everyone who commits a crime during a riot or disaster, everyone who commits a crime when the State is in danger. h. Other matters specifically specified in a statutory regulation. The weighting of the crime is also applied to everyone who repeats the crime within five years from carry out all or part of the principal sentence imposed, the principal sentence imposed has been abolished, the authority to carry out the main sentence imposed has not expired for a criminal act, the effect of a criminal act on the future of the perpetrator of the crime, attitudes and actions of the maker after committing a criminal act, the public's view of the crime committed, the responsibility of the perpetrator to the victim and whether the criminal act was carried out with a plan.¹⁷

There are many factors that are considered in the imposition of the criminal, so according to the author it takes foresight, policy, and wisdom of a judge in making a decision. Based on this, it appears that judges not only make decisions based on the provisions of the applicable laws and regulations, but judges also judge based on social values and human values. The judge's considerations are a means to obtain a sense of justice both for the defendant, the victim, the community or the court for the judge himself. The justice that is felt by the defendant, the defendant will know that the mistake he made was getting a leniency based on mitigating things called in the reading of the court's decision so that the defendant feels that he has received forgiveness for his actions even though he has to serve the sentence. If it is stated that things are burdensome for the defendant, then the defendant feels that his actions can harm others or himself, then the defendant will feel that he deserves the sentence imposed. The judge in imposing a sentence also pays attention to the future of the defendant, for example the defendant is the backbone of the family in earning a living for his wife and children, the judge considers this, so that the defendant gets relief from sanctions. Another thing that the judge considers is the age of the defendant. . The age of a defendant can affect the judge's consideration in making a decision. For example, if the defendant is elderly, the sanctions that will be given are certainly different from those of a productive age. But this is certainly not absolute, it means that it depends on the case at hand. In the case of narcotics abuse, the age issue according to the judge's opinion and based on the facts (facts) at trial is something that must be considered before the judge decides the case.¹⁸

Factors Influencing Judges' Decisions in Making Decisions

Crime Against Criminal Actors. The judge's decision in imposing a crime against a criminal act is influenced by external and internal factors that can affect

17 Svetlana Avdasheva, Svetlana Golovanova, and Elena Sidorova, 'Does Judicial Effort Matter for Quality? Evidence from Antitrust Proceedings in Russian Commercial Courts', *European Journal of Law and Economics*, 53.3 (2022), 425-50 <<https://doi.org/10.1007/s10657-022-09736-7>>.

18 Nuno Garoupa, Adrián Segura, and Fernando Gómez-Pomar, 'Ideology and Career Judges: Reviewing Labor Law in the Spanish Supreme Court', *Journal of Institutional and Theoretical Economics*, 178.2 (2022), 170 <<https://doi.org/10.1628/jite-2022-0007>>.

the behavior of judges in resolving cases. External factors, for example, government pressure for the creation of interests related to 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. 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. 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 the community 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.¹⁹

According to Mr. HM Luthfie, SH, internal factors that can influence judges in making a decision are Subjective and Objective. In Subjective like 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 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 outcome of the decision, arrogant behavior, judges who have an arrogant attitude feel that they are powerful and smarter than others, often influencing their decisions and moral, this factor is a very vital foundation for law enforcement and justice, especially judges.²⁰

Objective in social, cultural and economic background. The social background of a judge 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 smooth, loose, and familial cultural environment. 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

19 Awaludin Marwan, Diana Odier Contreras Garduno, and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22-32 <<https://doi.org/10.20961/bestuur.v10i1.59143>>.

20 Satria Unggul Wicaksana Prakasa, Asis Asis, and Mualimin Mochammad Sahid, 'Reduce Corruption in Public Procurement: The Effort Towards Good Governance', *BESTUUR*, 10.1 (2022), 33 <<https://doi.org/10.20961/bestuur.v10i1.51339>>.

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.²¹

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 of resolving cases, enforcing the law and providing justice.²²

Conclusion

From the description above, it can be concluded that the judge in deciding a decision always pays attention to everything that needs to be considered regarding all internal and external factors of the convict subjectively and objectively. So the judge's decision in court is not a decision that is given without any consideration, but the decision is a decision that everything has been considered before. Judges must be more careful in giving a decision so that there is no sense of injustice felt by the community. In criminal matters, judges are expected to be bolder and willing to dig deeper into a case to find reasons and facts in handling a case. In supervision, clearer and more detailed regulations should be made regarding the implementation of the duties and authorities possessed by a supervisory judge and observer.

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21 Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68 <<https://doi.org/10.20961/bestuur.v10i1.59098>>.

22 Iswantoro Iswantoro, 'Strategy and Management of Dispute Resolution, Land Conflicts at the Land Office of Sleman Regency', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021) <<https://doi.org/10.53955/jhcls.v1i1.3>>.

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