

## The Analysis of Judges' Considerations in Giving Free Verdicts in Cases of Murder Crimes

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**Abstract.** *The writing of legal research with the title "Analysis of Judge Considerations in Giving Acquittal Decisions in Cases of Murder" aims to find out the basic considerations of Judges' obstacles and Judges' Solutions in imposing criminal decisions on perpetrators of premeditated murder with the aim of knowing and analyzing the influence of the Law Judicial Power Act on judges in making free legal considerations related to the crime of murder. This study used a qualitative approach with descriptive analysis specifications. The data were obtained using a literature study and processing of the Decision Documents. The data was then analyzed qualitatively. The results of this study are that in judicial practice, the decisions handed down are always also based on the articles that have been previously formulated by the legislators, both in the form of articles contained in material law and in formal law. In considering a decision, judges must pay attention to 3 aspects of consideration, namely juridical considerations, philosophical considerations and sociological considerations.*

**Keywords:** *Consideration; Judges; Murder.*

### 1. Introduction

Indonesia is a country that upholds law enforcement and human rights, this is because law and human rights are interrelated with one another. The law is a container that regulates all matters regarding the protection of human rights.<sup>1</sup>In this regard, the Indonesian people should receive protection for safety and security that is real in all aspects of life.<sup>2</sup>

This is confirmed in Article 1 Paragraph (3) of the 1945 Constitution that the State of Indonesia is a State of law, but this means that within the Unitary State of the

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<sup>1</sup> Quarterly Point Tuti, 2010, Construction of Indonesian Constitutional Law Post-Amendment to the 1945 Constitution, Jakarta: Kencana, p. 28

<sup>2</sup> *Ibid*, p. 114

Republic of Indonesia, law is the lifeblood of all aspects of life. Law has a strategic and dominant position in the life of the nation and state society.<sup>3</sup>

Freedom of law in the field of criminal law can be seen when the criminal procedural law came into force, namely in 1981 which was promulgated in Act No. 8 of 1981 concerning Criminal Procedure Law and there has been a change in approach in procedural procedures within the criminal justice system. Improvements and improvements in practice in order to achieve the goals of a just and civilized society continue to be a concern today.<sup>4</sup>

Criminal law must be realized in a process, this is what is called criminal procedural law (*strafvorderingrecht*) or also known as formal criminal law, the book of which is summarized in the Criminal Procedure Code.<sup>5</sup>KUHAP is an official and legalistic codification of criminal procedural law. Police, prosecutors and judges are not allowed to carry out criminal procedures indiscriminately, therefore they must be based on provisions of the law as well as provisions outside the Criminal Code (KUHP) which contain deviant criminal procedure provisions.<sup>6</sup>

Based on the Law on Judicial Powers Article 5 paragraph (1), that judges and constitutional judges are required to explore, follow, and understand legal values and a sense of justice that lives in society. This means that if there is a void in the rule of law or the rules are not clear, then to overcome this a judge must have the ability and activeness to find the law (*recht vinding*). What is meant by *recht vinding* is the process of law formation by judges/other law enforcement officials in the application of general regulations to concrete legal events and the results of legal findings become the basis for making decisions

Problems related to the crime of taking the lives of other people or persecution arise because the prison sentences given to the perpetrators do not make people afraid to do this, instead there are more and more perpetrators of crimes such as rape, child abuse, immorality. Even though there have been many laws that threaten perpetrators of criminal acts of persecution or taking the lives of other people with severe criminal penalties, these crimes still occur. Therefore, research was conducted on the considerations of judges in giving acquittals in cases of the crime of taking the lives of others.

From the introduction above, the writer is interested in discussing the analysis of the influence of the Judicial Powers Act on judges in making legal judgments related to the crime of murder with the aim of writing this is to find out and analyze the influence of the Judicial Powers Act on judges in making free legal judgments related to criminal acts murder.

## **2. Research Methods**

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<sup>3</sup>Marwan Effendy, 2005, Indonesian Prosecutor's Office Position and Function from a Legal Perspective, Jakarta: Gramedia Pustaka Utama, p. 1

<sup>4</sup>Syaiful Bakhri, Indonesian Criminal Justice System in the Perspective of Judicial Renewal, Theory and Practice, Print II, Student Library, Yogyakarta, 2015, p. 28.

<sup>5</sup>Syaiful Bakhri, Op. Cit, p. 29

<sup>6</sup>Ibid., p. 30

The method of normative juridical approach or doctrinal legal research, namely a legal research that uses secondary data sources. This is done by emphasizing and adhering to juridical aspects. Normative legal research is library research, namely research on secondary data. Secondary data has a scope that includes personal letters, books, to official documents issued by the government.<sup>7</sup>This normative approach will focus on juridical issues regarding legal rules regarding crimes against life to crimes of murder in Indonesia.

The research specification used is Analytical Descriptive which is an attempt to analyze and explain legal issues related to objects, it is said to be descriptive, meaning that from this research it is expected to obtain a comprehensive and systematic picture of all matters related to aspects of the judgment of independent judges against the crime of murder.

Data collection was obtained from library research supported by field research. Materials used include primary legal materials, secondary legal materials.<sup>8</sup>Primary legal materials, namely binding legal materials, namely, the 1945 Constitution of the Republic of Indonesia, The Criminal Code (KUHP) Second Book Chapter XIX Concerning Crimes Against Life, The Criminal Code (KUHP) Second Book Chapter XXI concerning Accidental Murder, Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. Secondary legal materials are legal materials that provide an explanation of primary legal materials, such as: research results and scientific papers as well as journals from legal circles, which are related to crimes against life or criminal acts of murder and data analysis used in this study is analysis qualitative data.

### **3. Results and Discussion**

#### **a. Effects of Judicial Powers Act**

This means that the judicial power in Indonesia is carried out by the Supreme Court and the Constitutional Court and supervised by the Judicial Commission where the judicial power is an independent and responsible judicial power which is the embodiment of the principles of people's sovereignty, rule of law and separation of powers. However, there is a diametrical difference between the independent and responsible concepts of the judiciary.

If essentially the judicial power is independent, should the judicial power still be responsible and if the judicial power is responsible, then to whom and in what cases is the judicial power responsible? judicial is accountability (judicial accountability).

According to Bagir Manan, judicial power is indeed weak compared to legislative power because conceptually it is a political order. In reality, the judiciary is always powerless in the face of political pressure to keep the

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<sup>7</sup>Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview*, eighth printing, Jakarta. Sinar Graphics, 2004, p. 24.

<sup>8</sup>Soerjono Soekanto and Sri Mamudji, 1995, *Normative Legal Research A Brief Overview*, Jakarta: Rajawali Press, p. 39.

independent judicial power intact or without the interference of other parties/institutions and the administrative system, for example, the budget. As long as the judicial power budget system depends on the kindness of the government as the holder of the state treasury, various efforts to strengthen the power of the judiciary will encounter various obstacles.<sup>9</sup>

Due to the various causes above, the effort to free the judicial power from the influence of other powers is a continuous struggle. However, an independent judiciary is one of the important principles in a democratic country. Shimon Shetreet in *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges* divides the independence of the judiciary into four things, namely:<sup>10</sup>

- 1) *Substantive independence*(independence in deciding cases);
- 2) *personal independence*(for example there is a guarantee of tenure and position);
- 3) *Internal independence* (eg independence from superiors and colleagues) and
- 4) *Collective independence* (eg the participation of the courts in court administration, including in determining the court budget).

b. Factors that influence Judges in making Free Legal Considerations

1. Guarantee of Freedom of Justice (Independence of Judiciary).

Freedom of the judiciary has become a necessity for the upholding of a rule of law (rechstaat) state. Judges will be independent and impartial in deciding disputes, and in this conducive situation, judges will be free to transform ideas into considerations for decisions. In Indonesia, guarantees against the independence of the judiciary have been laid down as the foundation in Articles 24 and 25 of the 1945 Constitution which are emphasized in the explanation referred to "Judicial power is independent power, meaning that apart from the influence of government power, in connection with this there must be guarantees in the Law regarding the position of the Judge".

An independent judicial power has two purposes. First, to carry out the functions and authorities of the judiciary in an honest and fair manner, second, so that the judicial power is able to play a role in supervising all actions of the authorities. Quality of Judge Professionalism.

In an effort to realize the professionalism of judges, judges should have in-depth mastery of knowledge and broad insights, which is reflected in the weight and for decisions handed down with the ability to know,

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<sup>9</sup>Bagir Manan, *Restructuring of the Judiciary Body*, in the 20th Year *Varia Judicial Law Magazine*. No. 239,(Jakarta, 2005

<sup>10</sup>Saldi Isra, *Independent and Responsible Judicial Power at the Supreme Court* (2010)

understand and live up to the applicable law and have the courage to make decisions based on law and justice.

## 2. Appreciation of Judge Professional Ethics

The professional ethics of judges are the principles of morality that underlie the profession of judges. Means as a guide in behaving and acting while carrying out and carrying out the position of Judge, both inside and outside the office.

The Association of Indonesian Judges (IKAHI) has formulated a code of honor for Indonesian Judges in the form of Panca Dharma Hakim, which is a form of supervision over its members. The Five Dharma Hakim are abstract values, which consist of: Kartika (devout to God Almighty), Cakra (behaves fairly), Candra (wise), Tirta (honest), Sari (virtuous).

A judge in deciding a case must consider juridical truth (law) with philosophical truth (justice). A judge must make fair and wise decisions by considering the legal implications and impacts that occur in society. Legal certainty emphasizes that laws or regulations are upheld as desired by the sound of the law/regulations, as said by *Fiat Justitia et pereat mundus* (even though the world is collapsing the law must be upheld). The sociological value emphasizes the benefits for society.

## 4. Conclusion

Considerations based on the law are fair, have benefits or provide legal certainty, because one of the goals of law is to create justice. In this consideration, the judge also looks at whether in a case each perpetrator is legally and convincingly proven guilty of committing the crime of premeditated murder. Judges focus on truth and justice. Considering that when viewed from the side of justice, the judge also saw from the mitigating and aggravating aspects of the defendant such as being polite in court, admitting his mistakes and not being complicated when giving statements. The judge considers the cultural values that live in society. In a sense, the judge in making a decision must pay attention to the impact it has on the defendant, and so that the defendant is aware that what he has done is disgraceful, causing harm to society, especially the victim's family.

## 5. References

- Bagir Manan, 2005, Restructuring of the Judicial Body, in the XX Year Varia Judicial Law Magazine. No. 239, Jakarta.
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