

Analysis Of The Urgency Of A Judge's Legal Reasoning Capability In Facing Overcriminalization

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Abstract. *Judges' legal reasoning in addressing the phenomenon of overcriminalization in Indonesia focuses on shifting from a rigid, rule-bound positivist approach to a more substantive, progressive, and restorative justice-based approach. Judges are required to be more than just "the mouth of the law" (la bouche de la loi), but rather as enforcers of justice capable of limiting excessive criminalization, especially when the law is unclear (lex certa) or used to implicate acts that should be resolved through civil or administrative means. The aim of this research is to determine and analyze (1) the nature of overcriminalization in the development of criminalization in Indonesia, (2) the position of judges in facing overcriminalization by fulfilling legal reasoning skills, (3) the problems of optimizing a judge's legal reasoning in facing overcriminalization. The approach used in this research is normative juridical. The research specifications are descriptive and analytical. The data sources used are secondary data. Secondary data is data obtained from library research, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The results of the research and discussion can be concluded: (1) The phenomenon of overcriminalization in Indonesia is increasingly evident post-reform when the legislative process is often driven by short-term political interests and populist demands. Many new laws and changes to laws quickly include criminal sanctions as an instant solution to social problems. (2) Connecting with the position of judges in facing overcriminalization, judges are required to reason legally (legal reasoning) progressively in finding the law (rechtsvinding) as a basis for deciding cases that are full of elements of overcriminalization. Based on the nature of criminal law which is actually held to regulate human behavior with the consequences of sanctions through criminal instruments for those who violate it but as a last option that is in accordance with the principle of ultimum remedium (last resort) not as primum remedium (main tool). (3) Problems that arise within the Indonesian Judiciary that affect the quality*

of Human Resources of Judges in Indonesia in order to accommodate legal reasoning capabilities in facing the wave of overcriminalization cases, for example structural problems and cultural problems.

Keywords: *Judge; Legal Reasoning; Overcriminalization.*

1. Introduction

Law is a system of human actions, while order is a system or rule.¹ The Indonesian nation is a state of law or a state based on law. This refers to the written statement in the explanation of the 1945 Constitution of the Republic of Indonesia. Our constitution has expressly stated that Indonesia is a state of law as contained in Article 1 Paragraph (3) of the 1945 Constitution.² The concept of a state based on law leads to the goal of creating a democratic life, protecting human rights, and achieving just welfare.³

The concept of a state based on law has been well known in the development of civilization in accordance with the personality of the Indonesian nation.⁴ As for the ancient Greek philosopher Cicero, he said *Ubi societas ubi ius* (where there is society, there is law) which can provide an illustration that in every human society, regardless of how simple the situation or how advanced it is, there must be law.⁵ The primary goal of law is justice, but the goal of law is not only justice but also legal certainty and legal utility. Ideal law should incorporate all three; for example, a judge's decision should be the result of all three.

In the Indonesian judicial system, the judge is the main determinant of the decision in a case in court, in contrast to the United States which adopted the common law system from England which has evolved where in practice the court's decision is also based on the decision of a jury which is a group of general public randomly appointed from the community who meet to determine whether there is sufficient cause to believe that someone has committed the federal crime charged to him.

The judiciary, as a law enforcement institution within the criminal justice system, is the mainstay and hope of justice seekers, who always desire simple, swift, and inexpensive justice. True justice is a primary requirement for maintaining the survival of a society. In this regard, judges play a crucial role in enforcing criminal law to achieve the justice they hope for and aspire to.⁶ Thus it can be understood that the position of judge in our country is a very high position.⁷

2. Research Methods

The approach used in this research is a normative legal approach or written legal approach (statutory/statutory approach). The normative legal approach is an approach carried out based on primary legal materials by examining theories,

¹Hans Kelsen, *A General Theory of Law and the State*. Bandung: Nusamedia Publishers and Nuansa Publishers, 2006, p. 3

²Supriyono, *Criminology Study of Crime of Fencing the Stolen Goods*, *Jurnal Daulat Hukum*, 3 (1), March 2020, p. 185

concepts, legal principles, and laws and regulations related to this research. This approach is also known as a literature approach, namely by studying books, laws and regulations, and other documents related to this research.

3. Results and Discussion

3.1. The Nature of Overcriminalization in the Development of Criminal Justice in Indonesia

Criminalization can be defined as the process of determining and imposing sanctions in criminal law. The word "criminal" is generally interpreted as law, and criminalization as punishment. Hulsman stated that the sentencing system is a legal regulation related to criminal sanctions.⁸

Sentencing can be broadly interpreted as a process of giving or imposing a sentence by a judge, including the following concepts:

- a) The entire system (legal regulations) for criminal punishment.
- b) The entire system for the imposition/imposition and execution of criminal penalties.
- c) The entire system for the functionalization/operationalization/concretization of criminal law.
- d) The entire system that regulates criminal law is enforced or operated concretely and then someone is given a sanction.⁹

Punishment as an act of a criminal can normally be justified not because it has positive consequences for the convict, the victim, or society. Punishment is not

³Masyhadi Irfani and Ira Alia Maerani, Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, *Jurnal Daulat Hukum*, 2 (1), March 2019, p 75

⁴Natangsa Surbakti, *Legal Philosophy: The Development of Thought and Its Relevance to Indonesian Legal Reform*. Surakarta: BP FKIP UMS, 2012, p. 138

⁵*Ibid*, p. 137

⁶Yesmil Anwar and Adang, *Criminal Justice System (Concept, Components and Implementation in Law Enforcement in Indonesia)*, Bandung: Widya Padjadjaran, 2009, p. 218.

⁷Nanda Agung Dewantara, *The Problem of Judicial Freedom in Handling Criminal Cases*. Jakarta: Aksara Persada Indonesia, 1987. p. 28.

⁸LCH Hulsman, *The Dutch Criminal Justice System from A Comparative Legal Perspective in DC Fokkema, Introduction to Dutch Law for Foreign Lawyers*. Netherlands: Kluwer Deventer, 1978, p 320.

⁹Barda Nawawi Arief, *Selected Chapters on Criminal Law*. Third edition; Bandung: PT Citra Adiya Bakti, 2013, pp. 107-108.

imposed for a crime, but to deter the perpetrator from committing another crime and to deter others from committing similar crimes.

Punishment is not intended as revenge, but rather as a form of rehabilitating the perpetrator and preventing similar crimes from occurring. Punishment can be achieved by considering the following planning stages:

- a) Imposition of criminal penalties by law makers.
- b) Imposition of criminal penalties by authorized bodies.
- c) Imposition of criminal penalties by the authorized implementing agency.¹⁰

This interpretation encompasses all statutory regulations concerning material/substantive criminal law, formal criminal law, and criminal enforcement law, which can be viewed as a unified criminal justice system. In other words, the criminal justice system consists of substantive criminal law subsystems, formal criminal law subsystems, and criminal enforcement/execution subsystems.

In the world of criminal law itself, several theories have developed regarding the objectives of punishment, namely absolute theory (retributive), relative theory (deterrence/utilitarian), and integrative theory.¹¹ Retributive theory views punishment as retribution for a wrong that has been committed, so it is action-oriented and lies in the crime itself. Punishment is given because the perpetrator must accept the sanction for their mistake. According to Hegel, punishment is a logical necessity as a consequence of the existence of a crime. The relative theory views punishment not as retribution for the perpetrator's mistake, but as a means to achieve the goal of protecting society towards prosperity. From this theory arises the purpose of punishment as a means of prevention, namely general prevention aimed at society. According to Leonard, the relative theory of punishment aims to prevent and reduce crime. Punishment should be intended to change the behavior of criminals and others who have the potential or tendency to commit crimes. The purpose of punishment is social order, and to uphold that social order, punishment is necessary.¹²

Meanwhile, the combined theory bases punishment on the principle of retribution and the principle of maintaining social order. In other words, these two reasons

¹⁰Amir Ilyas, *Principles of Criminal Law: Understanding Criminal Acts and Criminal Responsibility as Conditions for Sentencing*, 1st ed.; Yogyakarta: Mahakarya Rangkang Offset, 2012, pp. 95-96

¹¹J. Kenedi, *Criminal law policy (penal policy) in the law enforcement system in Indonesia*. Pustaka Pelajar, 2017

¹²Muladi, & Barda Nawawi Arief, *Theory and Anthology of Criminal Law*. Bandung: Alumni. 1992

form the basis for sentencing. This theory teaches that punishment is intended to maintain legal order in society and improve the character of the criminal.¹³

The use of criminal law as a means to combat crime is inextricably linked to questions about what type of sanctions are appropriate and how the crime should be resolved. Furthermore, how criminal law is formulated depends heavily on basic assumptions about crime and the methods and means available to combat it. One such basic assumption, deeply rooted in the history of criminal law formation, is retributivism.¹⁴

In fact, according to Michael S. Moore, the retributivist view is the first and most prominent view.¹⁵ In the retributivist view, criminal law is built on a legal fiction that, in the development of legal science, is considered to ignore the aspect of objectivity or the real experience of everyday life. Traditionally and dogmatically, a crime is defined as a violation of public order or an act against society, against the collective body of citizens, or against a set of standards established by the democratic institutions of society.¹⁶ Thus, any response to violations of public order becomes the state's responsibility. Defining a crime as a violation of public order as regulated by the state's laws provides the legitimacy for the state, which positions itself as a substitute for the victim, to formulate and impose criminal sanctions on the perpetrator.

Criminal law policy plays a crucial role in realizing criminal law development both now and in the future. Before explaining the meaning of criminal law policy, the essential nature of the policy itself should be explained. The use of criminal law in regulating society (through criminal legislation) is essentially part of a rational step (effort) in implementing policy and cannot be separated from the objectives of development policy itself.¹⁷

The policy of using criminal law as part of criminal policy is essentially a rational effort to support and achieve "social welfare" and "social defense". Thus, the use of criminal law as a means of criminal policy and a means of social policy is intended to protect certain social interests and values in order to achieve social

¹³Muhammad Idris Nasution, Muhammad Ali, Fauziah Lubis. Reform of the Criminal Justice System in Indonesia: A Literature Review of the New Criminal Code, *Judge: Jurnal Hukum*, 05 (1) 2024, p. 19

¹⁴Yong Ohoitumur, *Ethical Theory of Legal Punishment*, PT. Gramedia Pustaka Tama, Jakarta, 1997, p. 7

¹⁵Michael. S. Moore, *Retributism* (in *Encyclopedia of Crime and Justice : Second Edition* (Editor in Chief: Joshua Dessler), Macmillan Reference, Gale Group, USA, 2002, p. 1338.

¹⁶Randy E. Barnett, et al, *Assessing the Criminal Restitution and the Legal Process*, Ballinger Publishing, Cambridge, Ill eds, 1977, p 7.

¹⁷Sitta Saraya, *Reconstruction of the Criminal Penal System for Crimes of Public Information Transparency*. Doctoral Program in Law, Unissula Semarang, Dissertation, 2022, pp. 102 and 106

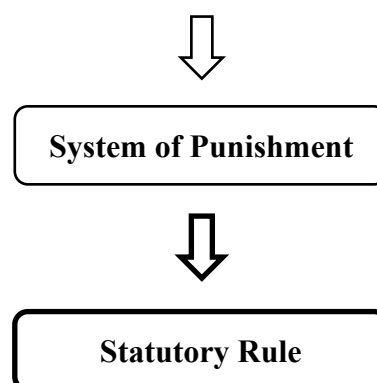
welfare. Crime prevention policies (criminal policy) are carried out using "penal" means (criminal law), so criminal law policy, especially at the judicial/applicative policy stage (enforcement of criminal law in concrete), must refer to and lead to the achievement of the goals of that social policy, namely "social welfare" and "social defense".¹⁸

According to Barda Nawawi Arief¹⁹, if the definition of criminalization is interpreted broadly as a process of giving or imposing a sentence by a judge, then it can be said that the criminalization system includes all the provisions of the legislation that regulate how criminal law is enforced or operationalized concretely so that someone is given a sanction (criminal law). This means that all the regulations regarding Substantive Criminal Law, Formal Criminal Law and Criminal Implementation Law can be seen as a unified criminalization system.

Barda Nawawi Arief further stated that, based on the above definition, if the statutory rules are limited to the substantive criminal law contained in the Criminal Code, it can be said that all provisions in the Criminal Code, both in the form of general rules and special rules regarding the formulation of criminal acts, are essentially a unified criminal system. All statutory rules in the field of substantive criminal law consist of general rules and special rules. General rules are contained in the Criminal Code (Book I), and special rules are contained in the Criminal Code Books II and III, as well as in Special Laws outside the Criminal Code. These special rules generally contain the formulation of certain criminal acts, but may also contain special rules that deviate from the general rules.²⁰

Current Penal System Scheme in Indonesia:²¹

Substantive Sentencing System



¹⁸Ibid, p. 108

¹⁹Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Bandung: Citra Aditya Bakti, 1996, p. 129

²⁰Barda Nawawi Arief, *Selected Chapters ...Op.Cit*, 2013, p. 142

²¹Barda Nawawi Arief, *Development of the Criminal Justice System in Indonesia*, in Sitta Saraya, *Reconstruction of the Criminal Justice System ...Op.Cit*, 2022, p. 114



General Rules		Special Rules	
Book I of the Criminal Code (General Rules) (Articles 1 - 103)	Book II of the Criminal Code (Crimes) (Articles 104-488)	Book III of the Criminal Code (Violations) (Articles 489-569)	Special Laws (Outside the Criminal Code)

The diagram above explains that the criminal provisions contained in all special laws outside the Criminal Code constitute a specific part (subsystem) of the overall penal system. Therefore, the penal system in special laws outside the Criminal Code must be integrated into (consistent with) general rules. However, special laws outside the Criminal Code may create specific rules that deviate from or differ from the general rules.

The development and shift in criminal justice will never be free from several classic questions, such as: What is the difference between punishment and conviction? Who has the right to impose punishment? On what basis can punishment be imposed? What is the intended purpose of punishment, and are existing mechanisms and types of punishment capable of achieving these goals? These classic questions have essentially been a constant topic of discussion throughout the history of human civilization.²²

In recent developments, in many countries around the world, dissatisfaction and frustration with existing criminal justice mechanisms arise because they are perceived as failing to meet the sense of justice and the desired goal of preventing and combating crime. Developments in human rights thinking have sharpened questions about punishment in terms of ethics and morals. Although laws regulate the types of capital punishment, for example, does the imposition of the death penalty violate the right to life? Or does imprisonment violate the right to personal liberty? While the imposition of the death penalty is not unlawful, the question remains whether it is morally justifiable. Discussions about punishment from a legal and moral perspective are two distinct but inseparable areas. Punishment

²²Ricardo, Application of the Prosecutor's Restorative Justice Concept as a Paradigm for Criminal Justice. Master of Law, Unissula, Semarang, Thesis, 2024, pp. 4-5

may justify the imposition of a particular punishment, but society is not yet morally ready to accept it. Or, conversely, society morally desires it, but punishment is still being formulated.²³

Problems within the criminal justice system also exhibit complexity, with numerous variables. Therefore, law enforcement officials must work diligently to resolve every issue that arises within the social order.²⁴ Laws should be implemented fairly, but injustice often occurs. Law enforcement officials are not yet fully aware of this. The law enforcement process is still far from the public's sense of justice. The essence of law is justice itself. Justice under the law is a right of every citizen that must be guaranteed and protected by the state. The legal justice that emerges is more formal legal, justice based on written texts contained in laws (rule-bound).

3.2. The Position of Judges in Facing Overcriminalization by Fulfilling Legal Reasoning Ability

The reality of overcriminalization in the Indonesian criminal law system is an issue that has serious implications for the principle of constitutionality as the main foundation of a democratic state based on law.²⁵ In the theory of the rule of law, constitutionality implies that every legal norm must not only formally conform to the constitution but also align with its fundamental values, such as justice, legal certainty, and the protection of human rights. Criminal law, as the most repressive instrument of all branches of law, demands utmost care in its formulation to avoid creating injustice. However, the practice of overcriminalization in Indonesia actually demonstrates a broad, vague, and often multi-interpretable pattern of criminalization.²⁶

Consequently, criminal law, which should serve to protect fundamental legal interests, has become an instrument prone to abuse and erodes constitutional guarantees of individual freedom. This preference directly implicates the principle of legality (*nullum crimen sine lege, nulla poena sine lege*), which asserts that a person can only be punished based on valid, clear, and predictable legal provisions.²⁷ This principle is the main pillar of the constitutionality of criminal law,

²³Eva Achjani Zulfa, *Shifting the Paradigm of Criminalization*, Bandung: Lubuk Agung, 2011, p. 1.

²⁴Rona Apriana Fajarwati, *Analysis of the Criminal Justice System in the Dynamics of Law in Indonesia from an Islamic Perspective*. *Journal of Mandalika Literature*, 6 (3) 2025, p. 746

²⁵Sanusi. Soesi Idayanti and Tiyas Vika Widyastuti, *Democratization in the Framework of Responsive Legal Development*, *Dictum: Journal of Legal Studies*, 8 (2) November 2020, p. 190

²⁶Zico Junius Fernando, Sri Wulandari, *Men's Panca Bachelor. Potential Overcriminalization in Religious Offenses: A Critical Analysis of The Formulation of The New National Criminal Code (Law 1 Number 2023)*. *Human Rights Journal*, 14 (3) December 2023, p 209

²⁷Bayi Priyono, *The Principle of Legality as a Pillar of the Rule of Law*, *Journal of Government Transformation*, 5 (2) October 2013, p. 164

because it guarantees predictability for citizens regarding behavior that is considered prohibited.

However, with the rise of overcriminalization, many criminal provisions are formulated in a soft (multi-interpretable) manner, using phrases such as "may harm the public interest," "may disturb society," or "contradict moral norms." These enigmatic formulations actually blur the parameters of prohibited behavior and increase the discretion of law enforcement. This has the potential to give rise to inconsistent, even discriminatory, criminalization, thus threatening the principle of equality before the law, a fundamental principle of the constitution.²⁸

In a quote from the Jakarta Post with the title "Commentary: Indonesia has serious 'overcriminalization' problem" with the narrative "it is easy to go to jail in Indonesia. If you say anything wrong about someone's religion, you could go to jail. If you offend anyone on Twitter, you could go to jail. Indonesia is no longer ruled by European overlords and the New Order regime was overthrown 20 years ago, so why do we still have to fear the state while doing harmless things?" (It's very easy to go to jail in Indonesia. If you say something wrong about someone's religion, you can go to jail. If you offend anyone on Twitter, you can go to jail. Indonesia is no longer ruled by European powers and the New Order regime was overthrown 20 years ago, so why should we still be afraid of the state when doing harmless things?).²⁹

A study by Anugrah Rizki Akbari, co-founder of the Indonesian Legal Reform Institute, concluded that Indonesia has a problem of "overcriminalization," with hundreds of seemingly harmless activities being classified as crimes. There's certainly nothing wrong with regulation. But it's clear that over-regulation is a problem, not a solution, as it defeats the very purpose of regulation: to create order, not chaos.³⁰

From a criminological perspective, overcriminalization in Indonesia is caused not only by unclear legal norms but also by a law enforcement system that fails to consider sociological and psychological approaches in assessing criminal acts. Therefore, criminal law reform must be directed at improving the principle of legality, strengthening restorative justice, providing legal education for law enforcement officers, and actively involving law enforcement officers in building a just and humane legal system.

²⁸Abdau Abdi Chaniago, Mahdi Nasution, Fauziah Lubis. The Role of Advocates in Providing Legal Aid to the Community from a Human Rights Perspective. *El-Mujtama: Journal of Community Service*, 3 (3) February 2023, p. 713

²⁹<https://www.thejakartapost.com/academia/2018/02/09/commentary-indonesia-has-serious-overcriminalization-problem.html>, Accessed February 13, 2026

³⁰Ibid

Overcriminalization This not only burdens the criminal justice system but also touches on fundamental aspects of constitutionality. It weakens the principle of legality, obscures legal predictability, creates disproportionality in criminalization, and increases the risk of abuse of power and authority.³¹

Regarding the potential for overcriminalization to burden the criminal justice system, Supreme Court data shows that the caseload for 2025 reached 38,148 cases. This report illustrates the dynamics of case handling at the cassation and judicial review levels throughout the past year. Of this total caseload, 230 cases were left over from 2024, while 37,918 cases were registered throughout 2025. These figures indicate that the flow of cases to the Supreme Court remains high, in line with increasing public legal awareness and the practical results of legal instruments in determining the functionality of litigation channels for resolving criminal cases.³² This also has implications for the problems of the Indonesian correctional system, namely as the final container for the results of the criminal justice process for the distribution of criminalization traffic that has reached the judge's verdict, where the Correctional Institution becomes overcapacity/overcrowded with its residents (prisoners) due to overcriminalization.

A judge plays a crucial role in curbing criminalization through their legal reasoning capabilities, enabling them to filter criminal cases. Judges are considered to play a significant role in addressing overcriminalization through their wise role through in-depth legal reasoning to reach final decisions. Philosophically, judges are not merely "mouthpieces of the law" (rigid positivism), but rather as legal innovators (*recht vinding*) who prioritize substantive justice over procedural justice.³³

The term "judge" comes from the Arabic word "ahkam," meaning "not a judge," but rather "related to the judge's duties, namely the law." In Arabic, "judge" is "qadhi."³⁴ The term judge means a person who tries a case in a court or tribunal; judge also means court. To judge means to have a case tried; to judge means to act as a judge against someone; justice means legal and court matters, sometimes the term judge is used by wise people, experts and prudent people.³⁵

³¹GM Saragih, et al., *Overcriminalization in the Indonesian Criminal Law System: Challenges to the Principles of Constitutionality and Pancasila Ideology*. Puskopsi Law Review, 5 (2) December 2025, p. 748

³²<https://marinews.mahkamahagung.go.id/berita/beban-perkara-mahkamah-agung-2025-capai-38-ribu>, Accessed on February 13, 2026

³³Erna Dewi, *The Role of Judges in Enforcing Indonesian Criminal Law*. Legal Institution, 5 (2) July 2010, p. 91

³⁴AW Munawwir, *Al-Munawwir Dictionary ...Op.Cit*, 1997, p 286.

³⁵Lilik Mulyadi, *Judge's Decision ...Op.Cit*, 2010, p. 125

According to the Criminal Procedure Code (KUHP), a judge is a state judicial official authorized by law to adjudicate. According to Bismar Siregar, regardless of the precise term, the term "judge" is unquestionably used, meaning they pronounce and apply justice to an individual.³⁶In the history of the judiciary, the position of judges is regulated in the *Recht Ordonantie* (RO), that the position of judges is an autonomous and independent institution, although of course it cannot be separated from the political situation at that time.³⁷

The task of a judge is actually a noble task, as explained by Roeslan Saleh, about a "human struggle", which is something that today's judges should be aware of and internalize.³⁸This statement reminds us how drained judges are when carrying out their duties, as they must undergo an inner struggle and make difficult choices. Judges who are truly aware of the human struggle within themselves, confronted with legal regulations, facts, arguments from prosecutors, defendants, advocates, and more, must place their ears in the heart of the community. As Satjipto Rahardjo explained, "Judges must represent the voice of the silent, unrepresented, and unheard people."³⁹

The judge's task is in line with the view of United States Supreme Court Justice Oliver Wendell Holmes Jr., that deciding is not merely a mathematical and mechanical syllogism process, but a very broad meaning "...the life of the law has not been logic; it is has been experience. The felt necessities of the time, the prevalent moral and political theories, the institution of public policy avowed or unconscious, even the prejudices which judges share with their fellow..." Holmes also said, "The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."⁴⁰

Thus, a judge's decision reflects attitudes, morality, reasoning, and many other things Holmes describes as experience. This suggests that a judge's decision will be strongly characterized by cultural relativism, or, to take Tamanaha's view of the "mirror thesis," the decision reflects the decision maker like a mirror.⁴¹

The honorable position of a judge is accompanied by a heavy responsibility. This is said to be heavy because one must realize that, due to their oath of office, they are not only accountable to the law, themselves, and the people, but also to God

³⁶Bismar Siregar, *Law ...Op.Cit.*, 1983, p. 116.

³⁷*Ibid*

³⁸Satjipto Rahardjo, *The War Behind the Judge's Toga* in the book: *Dissecting Progressive Law*, Jakarta: Kompas, 2006, p. 91.

³⁹*Ibid*, p. 92

⁴⁰ Julius J. Marke, *The Holmes Reader*, New York: Oceana's Docket Books, 1955, pp. 65-70

⁴¹Brian Z. Tamanaha, *A General Jurisprudence of Law and Society*. Oxford: Oxford University Press, 2006, pp. 1-3.

Almighty. Therefore, in the context of this responsibility, it is deemed important for a judge not only to be a skilled officer who improves his or her abilities in the technical field of law (judicial), but also to personally reflect the authority that judges possess as God's representatives in resolving all disputes they face.

A judge is obligated to uphold the law and justice impartially. When administering justice, a judge must first examine the truth of the events presented to him, then assess the events and relate them to applicable law. Only then can the judge issue a verdict. Today's increasingly complex society demands the enforcement of law and justice to satisfy the public's sense of justice. The character of a judge is crucial through his or her decisions, as judges are the ones who exercise judicial power to ensure the implementation of the judicial function.

A judge's decision is the final product of the judicial process, with legal, social, and moral implications for those seeking justice. Through this decision, the law is not only enforced but also interpreted and given meaning. Therefore, a judge's decision cannot be understood simply as a mechanical application of legal norms, but rather as the result of a reasoning process that rationally connects facts, norms, and values of justice.⁴²

In the manifestation of judicial performance, the quality of a judge's decision is often assessed based on its compliance with statutory provisions. However, this approach tends to be reductionist because it ignores the reasoning behind the decision. A decision that appears formally valid can create problems when its legal reasoning is structured incoherently, its argumentation is weak, or the relationship between facts and norms is not adequately explained. This situation indicates that the primary problem lies not always with legal norms, but rather with the judge's logical reasoning in constructing the decision.

In carrying out their duties, a judge must possess sound reasoning in analyzing and providing sufficient consideration. This requires a process of legal reasoning, also known as legal reasoning. Legal reasoning, in this context, involves seeking "reasons" regarding the law, or the basis for how a judge decides a legal case.

Legal reasoning is the most important part of a judge's work. Legal reasoning is a multifaceted phenomenon. However, it should not be done arbitrarily. Legal reasoning is reasonable, not merely logical. Legal reasoning is most visible in judges' decisions. The reason is, as AG Guest stated, "The object of a scientific inquiry is discovery; the object of a legal inquiry is decision." Of course, legal reasoning applies to all the work of legal professionals other than judges.

⁴²Nana Supriana and Nehemia Indrajaya, Logical Reasoning in the Construction of Judges' Decisions. *Journal of Innovative and Creativity*, 6 (1) January 2026, p. 355

However, the intensity of legal reasoning carried out by judges is indeed the highest level, this shows how important legal reasoning is for judges.⁴³

Legal reasoning is the study of law, or the search for the basis for how a judge decides a case, how a lawyer argues the law, and how a legal expert reasons. For judges, legal reasoning can be useful in making decisions. For legal practitioners, legal reasoning can be useful in finding the basis for an event or legal action with the aim of avoiding future legal violations and as argumentative material in disputes regarding events in the legal action.

Regarding the relevance of logic and reasoning in law, A. Soeteman and P.W. Brouwer explain that a strong proposition is that a meaningful argument can only be built on a logical basis. In other words, a "condition sine qua non" for a decision to be accepted is if it is based on a reasoning process, in accordance with a formal logic system, which is an absolute requirement in argumentation.⁴⁴

The specifics of legal arguments are divided into 2 basic things, namely:

- 1) Legal arguments always begin with positive law (both its provisions and principles).
- 2) Legal argumentation is concerned with the procedural framework, within which rational argumentation and rational discussion take place.⁴⁵

ET Feteris (Drie niveaus van rationale juridische argumentatie) classifies rational legal arguments into 3 (three) layers, including:

- a. Logical Layer (Logische niveau) = deduction, analogy
- b. Dialectical Layer (Dialectische niveau) = There are pros and cons
- c. Procedural Layer (Procedurale niveau) = structure, dispute resolution procedures.⁴⁶

⁴³Basuki Kurniawan, *Logic and ...Op.Cit.*, 2021, p. 59

⁴⁴Eny Susilowati, Endrawati, Mahdi Surya Aprilyansyah. *The Position and Benefits of Logic in Legal Reasoning by Judges*. *Sociopolitico Journal*, 6 (2) August 2024, p. 192

⁴⁵*Ibid*

⁴⁶Philipus M. Hadjon, Tatiek Sri Djamiati. *Legal Argumentation*, UGM Press, Yogyakarta, 2005

Shidarta⁴⁷ mentions six main steps of legal reasoning that can be actualized by judges through their methods, including:

- 1) Identifying the facts to produce a case structure (map) that the judge truly believes is a real case that occurred;
- 2) Connecting (subsuming) the structure of the case with relevant legal sources, so that he can determine legal actions in legal terms;
- 3) Selecting relevant legal sources and legal rules to then find out the policies contained in those legal rules (the policies underlying those rules), so that a coherent regulatory structure (map) is produced;
- 4) Connecting rule structure with case structure;
- 5) Search for possible alternative solutions;
- 6) Determine the choice of one of the alternatives to then be formulated as a final decision.

The process of implementing the law can be approached technically in two ways: through inductive and deductive legal reasoning. Handling a case or dispute in court always begins with the inductive step, which involves formulating facts, identifying causal relationships, and estimating probabilities. Through this step, judges at the first and second levels of court act as *judex facti*. Once the inductive step has been obtained or the facts have been formulated, the application of the law is followed by the deductive step. The step of implementing the law begins with identifying legal rules.⁴⁸

4. Conclusion

The phenomenon of overcriminalization in Indonesia has become increasingly apparent post-reform, when the legislative process is often driven by short-term political interests and populist demands. Many new laws and amendments to laws quickly introduce criminal sanctions as an instant solution to social problems. The result is an inflation of criminal norms that increases the burden on law enforcement officials, from the Police, Prosecutors, the Judiciary and Correctional Institutions. The burden of overcriminalization triggers structural problems such

⁴⁷Shidarta, *Legal Discovery Through Judges' Decisions*, Paper presented at the Seminar on Strengthening Understanding of Human Rights for Judges Throughout Indonesia at the Grand Angkasa Hotel, Judicial Commission, Medan, 2 - 5 May 2011, pp. 3-4.

⁴⁸Ahmad Rifai, *Legal Discovery by Judges in the Perspective of Progressive Law*, Second Edition, Sinar Grafika, Jakarta, 2011, p. 89

as case backlogs, overcapacity of Correctional Institutions, and even a decline in the quality of law enforcement as a whole. Thus, instead of providing maximum protection for the community, overcriminalization has the potential to reduce the effectiveness of the criminal law system itself. Some examples of cases categorized as overcriminalization in Indonesia that are quite often raised in legal research journals include (1) Minor Crimes; (2) the ITE Law which contains vulnerable articles such as defamation and attacks on good names, hate speech, false information, and termination of access; (3) Narcotics Cases (Users/Addicts); (4) Cases of Morality/Cohabitation; (5) Cases of Corruption under the influence of Political Interests. In relation to the position of judges in facing overcriminalization, judges are required to use legal reasoning progressively in finding the law (*rechtsvinding*) as a basis for deciding cases that are full of elements of overcriminalization. Based on the nature of criminal law which is actually made to regulate human behavior with the consequences of sanctions through criminal instruments for those who violate it but as a last option that is in accordance with the principle of *ultimum remedium* (last resort) not as *primum remedium* (primary tool) to criminalize acts that in terms of efficiency and effectiveness of punishment can still be categorized as cases that can be resolved through alternative routes other than resulting in criminal decisions in the form of physical imprisonment. Judges have a crucial role in interpreting legal norms substantively to prevent the negative impacts of excessive criminalization. Several important points regarding the mechanisms that can be taken within the framework of a judge's legal reasoning when facing cases that are full of elements of overcriminalization include (1) Implementation of the *Ultimum Remedium* Principle; (2) Restorative Justice Approach; (3) Progressive Interpretation (Finding the Law/ *Rechtsvinding*); (4) Implementation of the Principle of Legal Parsimony (Parsimony Principle); (5) Critical Assessment of *Mens Rea* (Evil Intent); (6) Basis for the Morality of the Judge's Law (Integrity); (7) Reasoning of the Principle of *In Dubio Pro Reo*.

5. References

Journals:

- Muhammad Idris Nasution, Muhammad Ali, Fauziah Lubis. Pembaruan Sistem Pidana di Indonesia: Kajian Literatur atas KUHP Baru, *Judge : Jurnal Hukum*, 05 (1) 2024
- Muhammad Rivaldianto, dkk. Moralitas Hakim di Indonesia dalam Mewujudkan Keadilan menurut Perspektif Aristoteles. *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humanioral*, 1 (1) Januari 2023
- Murdoko, Disparitas Penegakan Hukum di Indonesia (Analisis Kritis Kasus Nenek Minah dalam Perspektif Hukum Progresif). *Perspektif Hukum*, 16 (2) November 2016

Nils Jareborg, Criminalization as Last Resort (Ultima Ratio), *Ohio State Journal of Criminal Law*, 2 (52) January 2005

Norman L.Reimer (Executive Director of NATL ASSOC of Crim Deffense Lawyers), "Overcriminalization: Criminalizing the Everyday", <https://www.youtube.com/watch?v=J9wNJKEch14&t=13s>

Nur Iftitah Isnantiana, Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan, *Jurnal Islamadina*, 18 (2) 2017

Pande Komang Surya Mahesa, Ayu Putu Laksmi Danyathi. Penerapan Prinsip Ultimum Remedium dalam Kebijakan Kriminalisasi di Indonesia: Tinjauan Teoritis dan Praktis, *Jurnal Meda Akademik (JMA)*, 3 (9) September 2025

Paul L. Friedman, Remarks at the Eleventh Annual Judge Thomas A. Flannery Lecture (Nov. 6, 2019), in Threats to Judicial Independence and the Rule of Law, A.B.A. COMM. AM. JUD. SYS.<https://www.americanbar.org/groups/litigation/about/awards-initiatives/american-judicialsystem/threats-to-judicial-independence-and-rule-of-law>

Petrus CKL Bello. Hukum sebagai Interpretasi. *DISKURSUS*, 11 (1) April 2012

_____. Teori Kesetaraan Sumber Daya Dworkin dalam Kerangka Keadilan Distributif dan Implikasinya Terhadap Konstitusi Negara Kesejahteraan. *Jurnal Hukum & Pembangunan*, 52 (2) April-Juni 2022

Ricardo, Penerapan Konsep Restorative Justice Jaksa sebagai Paradigma Pemidanaan Keadilan. Magister Ilmu Hukum Unissula, Semarang, Tesis, 2024

Ridwan, Relasi Hukum Dan Moral Perspektif Imperative Categories. *Fundamental: Jurnal Ilmiah Hukum*, 10 (1) Januari-Juni 2024

Rodrigo Fernandes Elias. Penemuan Hukum dalam Proses Peradilan Pidana. *Jurnal LPPM Bidang EkoSosBudKum*. 1 (1) 2014

Rona Apriana Fajarwati, Analisis Sistem Pemidanaan dalam Dinamika Hukum di Indonesia Ditinjau dari Perspektif Islam. *Journal of Mandalika Literature*, 6 (3) 2025

Rospita Adelina Siregar, et.al, Majelis Disiplin Profesi sebagai Primum Remedium Berdasarkan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *Jurnal Hukum to-ra: Hukum untuk Mengatur dan Melindungi Masyarakat*, 10 (3) Desember 2024

Sanusi. Soesi Idayanti dan Tiya Vika Widyastuti, Demokratisasi dalam Rangka Pembangunan Hukum Responsif, Diktum: Jurnal Ilmu Hukum, 8 (2) November 2020

Sara Sun Beale, The Many Faces of Overcriminalization: From Morals and Mattress Tags to Overfederalization, American University Law Review, 54, 2005

Selvi Marsela, dkk. Konsep Hukum William Ockham. Praxis: Jurnal Filsafat Terapan, 1 (2) 2024

Shidarta. Peragaan Pola Penalaran Hukum dalam Kajian Putusan Kasus Tanah Adat: Kajian Putusan Nomor 22/PDT.G/2004/PN.AB. Jurnal Yudisial: Pergulatan Nalar & Nurani, III (03) Desember 2010

_____, Penemuan Hukum Melalui Putusan Hakim, Makalah dibawakan pada Seminar Penguatan Pemahaman Hak Asasi Manusia Untuk Hakim Seluruh Indonesia di Hotel Grand Angkasa, Komisi Yudisial, Medan, 2 - 5 Mei 2011

_____, Ronald Dworkin dan Pemikiran Hukumnya. Rubric of Faculty Members, Februari 2025

Sitta Saraya, Rekonstruksi Sistem Pemidanaan Terhadap Tindak Pidana Keterbukaan Informasi Publik. Program Doktor Ilmu Hukum, Unissula Semarang, Disertasi, 2022

Sri Sutatiek. Akuntabilitas Moral Hakim dalam Memeriksa, Mengadili dan Memutus Perkara agar Putusannya Berkualitas. Arena Hukum, 6 (1) April 2013

Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, Jurnal Daulat Hukum, 3 (1), March 2020

Syamsuddin, Bentuk-Bentuk Perdagangan Manusia dan Masalah Psikososial Korban, Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial, 6 (1) April 2020

Tahar Rachman, Definisi Hakim, Tugas, dan Hubungan dengan Para Penegak Hukum, Angewandte Chemie International Edition, 6 (11) 2018

Takdir Yakindo, dkk. Moralitas dan Hukum dalam Pandangan Immanuel Kant. Praxis: Jurnal Filsafat Terapan, 1 (1) Januari 2023

Books:

Amir Ilyas, Asas-asas Hukum Pidana: Memahami Tindak Pidana dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan, Cet. I; Yogyakarta: Mahakarya Rangkang Offset, 2012

- Andrei Marmor, *Interpretation and Legal Theory*. Oxford: Hart Publishing, 2005
- Asfinawati, Erick Tanjung, Adib Muttaqin Asfar. *Peta Bahaya Kriminalisasi Jurnalis Menggunakan UU ITE dan KUHP (Policy Brief Advokasi UU ITE dan KUHP)*, Aliansi Jurnalis Independen (AJI) Indonesia: Jakarta Pusat, Cetakan I, 2024
- A.W. Munawwir, *Kamus Al-Munawwir Arab-Indonesia*, Pustaka Progresif, Surabaya, 1997
- Bambang Sutiyoso, *Metode Penemuan Hukum: Upaya Mewujudkan Hukum yang Pasti dan Berkeadilan*, Yogyakarta : UII Press. Cet-4, 2015
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bakti, 1996
- _____, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Cet. Ketiga, Badan Penerbit, Universitas Diponegoro, Semarang, 2000
- _____, *Perkembangan Sistem Pemidanaan Di Indonesia*, Universitas Diponegoro, Semarang, 2009
- _____, *Kapita Selekta Hukum Pidana*. Cet. III; Bandung: PT Citra Aditya Bakti, 2013
- _____, *Pembangunan Sistem Hukum Nasional (Indonesia)*, Cetak Kedua, Pustaka Magister, Semarang, 2015
- Basuki Kurniawan, *Logika dan Penalaran Hukum*, Bondowoso: Penerbit Licensi, Cetakan I, 2021
- Bismar Siregar, *Hukum Acara Pidana*, Penerbitan Bina Cipta, Bandung, 1983
- Douglas Husak, *Overcriminalization: The Limits of the Criminal Law*, Oxford: Oxford University Press, 2007
- Eva Achjani Zulfa, *Pergeseran Paradigma Pemidanaan*, Bandung: Lubuk Agung, 2011
- Hans Kelsen, *Teori Umum Tentang Hukum dan Negara*. Bandung: Penerbit Nusamedia dan Penerbit Nuansa, 2006

- _____, *Essey in Legal and Moral Philosophy*, diterjemahkan ke dalam bahasa Indonesia dengan judul *Hukum dan Logika* oleh B. Arief Sidharta, Cetakan ke-4, Bandung: Alumn, 2011
- H.D. Effendy Hasibuah, *Legal Reasoning*, Mata ajar Pendidikan khusus advokat, Peradi, Ikadin Bekasi, 2008
- H.L.A. Hart, *The Concept of Law*. Oxford: Oxford University Press, 1994
- Julius J. Marke, *The Holmes Reader*, New York: Oceana's Docket Books, 1955
- L.C.H. Hulsman, *The Dutch Criminal Justice System from A Comparative Legal Perspektive dalam D.C Fokkema, Introduction to Dutch Law for Foreign Lawyers*. Netherlands: Kluwer Deventer, 1978
- Lief H. Carter dan Thomas F. Burke, *Reason in Law*, 6th ed., 2002
- Lilik Mulyadi, *Putusan Hakim dalam Hukum Acara Pidana: Teori, Praktik, Tehnik Penyusunan dan Permasalahannya*. Citra Adtya Bakti : Bandung, 2010
- Maroni. *Hukum Birokrasi Peradilan Pidana*. Penerbit Aura, Bandar Lampung, 2018
- Michael. S. Moore, *Retributism* (dalam *Encyclopedia of Crime and Justice : Second Edition* (Editor in Chief: Joshua Dessler), Macmillan Reference, Gale Group, USA, 2002
- Muhammad 'Abid al-Jabiri, *Bunyah al-'Aql al-'Arabi: Dirasah Tahliliyyah Naqdiyyah li Nuzum al-Ma'rifah fi as-Saqafah al-'Arabiyyah*, Beirut: Markaz Dirasat al-Wahdah al-'Arabiyyah, 1990
- Muh. Zuhri, *Hukum Islam dalam Lintasan Sejarah*. Ed. 1. Cet. 1; Jakarta: PT. Raja Grafindo Persada, 1996
- Muladi, & Barda Nawawi Arief, *Teori dan Bunga Rampai Hukum Pidana*. Bandung: Alumn. 1992
- Nana Supriana dan Nehemia Indrajaya, *Penalaran Logika dalam Penyusunan Konstruksi Putusan Hakim*. *Journal of Innovative and Creativity*, 6 (1) January 2026
- Nanda Agung Dewantara, *Masalah Kebebasan Hakim Dalam Menangani Suatu Perkara Pidana*. Jakarta :Aksara Persada Indonesia, 1987

- Natangsa Surbakti, *Filsafat Hukum Perkembangan Pemikiran dan Relevansinya dengan Reformasi Hukum Indonesia*. Surakarta: BP FKIP UMS, 2012
- Nawari Hadari, *Metode Penelitian Hukum*, Yogyakarta Gajah Mada University Press, 1987
- N.J Coulson, A. *History of Islamic Law*, ttp: Edinburgh University Press, 1991
- N. MacCormick, *Legal Reasoning and Legal Theory*. Oxford: Clarendon Press, 1978
- Philipus M. Hadjon, Tatiek Sri Djamiati. *Argumentasi Hukum*, UGM Press, Yogyakarta, 2005
- Pius A. Partanto dan M. Dahlan Al- Barry, *Kamus Ilmiah Populer*. Surabaya: Arkola, 1994
- Poerwadarminta, *Kamus Umum Bahasa Indonesia*. Jakarta: Balai Usaha, 2007
- Pusat Bahasa, *Kamus Besar Bahasa Indonesia*, 4th ed., Jakarta: PT Gramedia Pustaka Utama, 2012
- Randy E. Barnett, et al, *Assesing the Criminal Restitution and the Legal Process*, Ballinger Publishing, Cambridge, III eds, 1977
- Ronald Dworkin, *Taking Right Seriously*. Massachusetts: Harvard University Press, 1977
- Satjipto Rahardjo, *Perang di balik Toga Hakim dalam buku: Membedah Hukum Progresif*, Jakarta: Kompas, 2006
- Sanford H. Kadish, *The Crisis of Overcriminalization*, American Criminal Law, 1968
- Stephen F. Smith, *Overcoming Overcriminalization*. *Journal of Criminal Law and Criminology*, 102, 2012
- Soetandyo Wignjosebroto, *Dari Hukum Kolonial ke Hukum Nasional, Dinamika Sosial- Politik Perkembangan Hukum di Indonesia*. PT. Raja Grafindo Persada, Jakarta, 1994
- Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta : UI Press, 1986
- Sudikno Mertokusumo & A. Pitlo, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya Bakti, Jakarta, 1993

Regulation:

Criminal Procedure Code

Law Number 48 of 2009 concerning Judicial Power

The 1945 Constitution of the Republic of Indonesia