Criminal Convictions from The Perspective of The Proportionality Principle

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Abstract

The absence of explicit guidelines and limitations for evaluating punishment based on the character of the offender creates a significant gap in the justice system. Without clear provisions, judges are left to rely solely on their own interpretation and knowledge when making decisions about punishment. This lack of guidance can lead to inconsistencies and potential biases in sentencing. To ensure fairness in the judicial process, it is essential for the principle of proportionality to be fully understood and applied when judges make their rulings. Proportionality refers to the idea that the severity of punishment should be directly proportional to the seriousness of the crime committed. The research aims to address two key problem statements. Firstly, it seeks to define punishment from the perspective of the proportionality principle. Secondly, the research aims to identify the factors that judges consider when imposing punishment. To achieve these research objectives, a normative research approach will be adopted. This approach involves analyzing legal principles, rules, and regulations to address the legal issues at hand.

I. Introduction

The sentence imposed by the judge on the perpetrators has not brought a sense of justice to the community. In such conditions, clear legal norms are needed to regulate human life in society, both criminal law rules and civil law as well as other legal norms (Soekanto, 2004). The function of norms is as a regulator to create order in society. The rule of law as one of the norms that is very necessary in social life in society and can be able to set rules that can be accepted by all parties (Hutabarat et al., 2022).

The function of criminal law is to protect and at the same time maintain the balance of several aspects of interests, be it the interests of society, the state, perpetrators of criminal acts and victims of criminal acts, including those who witness crimes (Soponyono, 2012). The sentences imposed on defendants generally depart from past actions by the purpose of retaliation, but if leaving for future interests, the purpose of the crime is to correct the offender (Gunarto, 2009).

Criminal acts refer to criminal law, namely nulla crimen sine poena, which means that every criminal always causes moral and material losses to victims, both individuals, communities and society. Law enforcement against criminal cases must be aligned with the objectives of law, namely legal certainty (rechtssicherheit), expediency (zweckmassigkeit), and justice (gerechtigkeit) (Salaeh, 1977).

Pursuant to the provisions of Law Number 8 of 1981 concerning Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), one of the sentencing decisions must contain articles of laws and regulations which form the basis of sentencing or actions and articles of laws and regulations which form the legal basis of decisions, accompanied by aggravating and mitigating circumstances for the defendant. If these elements are not fulfilled, then the criminal decision is null and void by law.

Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Law), the judge in considering the severity of the sentence must also pay attention to the good and bad nature of the defendant, so that the decision handed down is appropriate and fair with the mistakes he has made.

Judges in utilizing their position as free or independent officials can apply various teachings or methods of finding law, especially methods of interpreting law. However, judges need to develop the principle of proportionality in imposing sentences on defendants, in order to produce a criminal verdict that is fair to

them.

Criminal impositions against perpetrators of criminal acts currently still do not provide a sense of justice, where there are differences in criminal sentences given by judges from several of the same criminal decisions, as follows:

1. Decision Number: 83/Pid.B/2018/PN.Dpk with Decision Number: 1235/Pid.B/2018/PN.Mks (case of fraud and money laundering committed by Umrah agents);
2. Decision Number: 06/PID.B/TPK/2010/PN.JKT.PST with Decision Number: 07/PID.B/TPK/2010/PN.JKT.PST (bribery case for the election of BI Deputy Governor Miranda Gultom which occurred in 2010 conducted by 29 (twenty nine) DPR members);
3. Decision number: 372/Pid.B/2020/PN. Jkt Utr with Decision Number: 41/Pid.B/2021/PN.Pli (case of maltreatment resulting in serious injury)

The imposition of criminal threats in the case mentioned above does not reflect the principle of proportionality, resulting in the current collapse of the criminal justice community's trust because it is seen as not reflecting a sense of justice. This happened because there was no clear regulation regarding the criteria and boundaries of the good and bad nature of the defendant as a basis for the judge's considerations in imposing a sentence.

The matter of punishment is a significant concern that is intricately linked to the inquiry of whether a judge's ruling has achieved a notion of fairness. Muladi refers to it as a "troubling matter" within diverse criminal justice systems (Muladi, 1995). In the meantime, Harkristusi Harkrisnowo asserted that this matter is a pervasive concern that frequently afflicts diverse criminal justice systems (Harkrisnowo, 2003). The issue of proportionality in the imposition of punishment arises when we contemplate the fact that the judge's decision to punish the perpetrator for the committed crime lacks proportionality. The principle of proportionality in criminal law, as discussed by Koto and Lubis (2021), entails that the severity of punishment should be commensurate with the gravity of the offense committed (Koto & Lubis, 2021). In the Magna Carta, proportionality is reflected in the phrase, "...free man shall not be amerced[penalized] for a small fault, but after the manner of the fault; and for a great crime accordingto the heinousness of it..." (Singer, 2010). The concept of criminal proportionality originates from the classical school of thought, which emphasizes the importance of establishing a balance between the severity of punishment and the seriousness of the crime committed.

The concept of proportionality entails the correlation between the severity of criminal punishment and both the criminal act committed and the culpability of

the offender. This fundamental principle serves as a check on the state's authority to impose criminal sanctions, ensuring that they are not driven by personal interests or political motives. When the punishment surpasses the legitimate power of the state, it is deemed disproportionate. Similarly, if minor offenses are met with harsh penalties, it is deemed inconsistent with the principle of proportionality (Setiawan et al., 2021).

The concept of proportionality in the imposition of criminal penalties holds significant value in contemporary criminal law. This principle guarantees that the severity of punishment aligns with the gravity of the offense committed. Within the legal framework of Indonesia, numerous deliberations have taken place regarding the implementation of this principle in diverse scenarios. These include the incorporation of customary law within the criminal justice system, extrajudicial killings in the context of terrorism, and the sentencing of individuals involved in drug-related crimes. A particular study explores the integration of living law into the national criminal law system, highlighting its pivotal role in attaining substantive justice in Indonesia (Yanto & Hikmah, 2023). A different study examines the issue of extrajudicial killings within the framework of terrorism, emphasizing the significance of maintaining the presumption of innocence and safeguarding human rights in these particular instances (Astawa & Munasto, 2022). Furthermore, there exist research investigations that examine the implementation of the principle of proportionality when penalizing individuals involved in drug-related offenses, particularly those associated with drug trafficking (Setiawan et al., 2021). This previous investigation demonstrates the ongoing academic fascination with guaranteeing that criminal penalties are enforced in a manner that aligns with legal principles and upholds human rights. The examination of the concept of proportionality within Indonesia's criminal justice system remains a subject of discussion, especially in light of the changing legal structure and societal apprehensions.

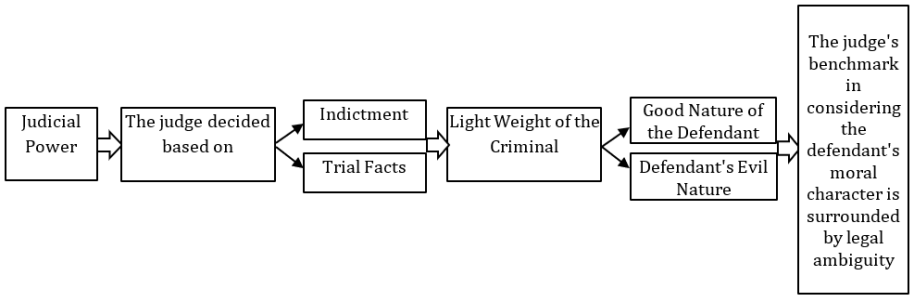


Figure 1. Current Legal Conditions

Based on the description above, this study aims to determine whether the meaning of the imposition of punishment in the perspective of the principle of proportionality as well as the basis for the judge's consideration in imposing punishment.

2. Research Method

The research is normative juridical research. Normative juridical research is research on problems that have the intent and purpose of researching laws and/or regulations that apply in society in particular, as well as literature on theoretical concepts in law then paired with the problems discussed in this research. This study analyzes and finds legal rules, legal principles, and legal doctrines in order to find solutions and answer legal issues in this research (Mahmud, 2016).

According to Peter Mahmud Marzuki, there are several approaches to legal research, namely statute approach, case approach, historical approach, comparative approach and conceptual approach (Marzuki, 2013).

Approaches that are relevant to this legal research are:

1. The statute approach is carried out by examining all laws and regulations that are related to the application of laws and other laws and regulations that contain criminal imposition in the perspective of the principle of proportionality.
2. The conceptual approach is carried out when the researcher does not depart from existing legal regulations. This was done because there was no legal regulation for the problem at hand. In using a conceptual approach, researchers need to refer to legal principles. These principles can be found in the views of scholars or legal doctrines related to sentencing in the perspective of the principle of proportionality.
3. The case approach is carried out by conducting a study of cases related to the issues at hand which have become court decisions that have permanent force, as follows:
   a. Decision Number: 3096 K/Pid.Sus/2018.
   b. Decision Number: 1235/Pid.B/2018/PN.Mks.
   c. Decision Number: 06/PID.B/TPK/2010/PN.JKT.PST.
   d. Decision Number: 07/PID.B/TPK/2010/PN.JKT.PST.
   e. Decision Number: 372/Pid.B/2020/PN. Jkt Utr.
   f. Decision Number: 41/Pid.B/2021/PN Pli.
4. This comparative approach is carried out by comparing the laws of a country with the laws of one or more other countries regarding criminal imposition in the perspective of the principle of proportionality.

This study uses legal materials, namely primary and secondary legal materials with explanations including:

1. Primary Legal Materials

   Primary legal material, namely primary legal material consisting of statutes,

official records, or treatises on making laws and judges' decisions (Marzuki, 2013). In this case:

a. The 1945 Constitution of the Republic of Indonesia and its amendments;
b. Law Number 1 of 1946 Concerning Criminal Law Regulations;
c. Law Number 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209);
d. Law Number 14 of 1985 concerning the Supreme Court (State Gazette of the Republic of Indonesia of 1985, Number 75, Supplement to the State Gazette of the Republic of Indonesia Number 3316);
e. Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia of 1999, Number 156, Supplement to the State Gazette of the Republic of Indonesia Number 3882);
f. Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court (State Gazette of the Republic of Indonesia of 2004 Number 9, Supplement to State Gazette of the Republic of Indonesia Number 4359);
g. Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia of 2009, Number 157, Supplement to the State Gazette of the Republic of Indonesia of 5076);
h. Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court (State Gazette of the Republic of Indonesia of 2009, Number 3).
i. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020 Concerning Guidelines for Sentences Article 2 and Article 3 of the Corruption Eradication Law (State Gazette of the Republic of Indonesia of 2020 Number 832).
j. Guideline Number 11 of 2021 concerning Handling of Narcotics Crime Cases and/or Narcotics Precursor Crimes.

2. Secondary Legal Materials

Secondary legal material is in the form of all legal publications that are not official documents. 8 Sources of secondary legal material in writing this journal include literature, opinions of scholars that are related to what is being discussed, articles published in law journals, print media, as well as the internet, and legal dictionaries

3. Results and Discussion

The Meaning of Criminal Conviction in the Perspective of Proportionality Principle

In Indonesia, the issue of punishment is characterized by a significant and diverse disparity, as previously mentioned. The Criminal Code grants judges considerable

authority when it comes to imposing criminal sanctions. For instance, Article 12 of the Criminal Code stipulates that the minimum duration of imprisonment is one day. However, when comparing this to the maximum duration of imprisonment specified in various articles in Book II of the Criminal Code, the range is quite extensive. For example, the range for murder is from 1 day to 15 years, while for theft it is from 1 day to 5 years. This grants judges extraordinary discretion in determining criminal sanctions. The rationale behind the calculation of these sanctions in different cases is often difficult to ascertain, resulting in the subjective judgment of the judges being the primary factor. In an attempt to address this issue, Indonesia has implemented strategies to ensure proportionality in criminal sanctions. These strategies involve setting minimum punishments for certain types of crimes in laws and regulations outside the Criminal Code. For instance, the Human Rights Court Law No. 26 of 2000 establishes a minimum imprisonment of 10 years and a maximum of 25 years, while the Law on Corruption No. 31 of 1999 sets a minimum imprisonment of 4 years and a maximum of 20 years. These provisions aim to reduce the disparity in punishment and are intended to align with the purpose of punishment, which serves as the basis for determining the severity of sanctions. However, it is worth noting that in practice, many decisions regarding cases of gross human rights violations result in sanctions that fall below the minimum scale prescribed by legislation.

Proportionality in the legal context has various meanings. In the perspective of constitutional law, especially the principle of proportionality relates to restrictions on state power. This principle requires that the use of state power must be proportionate to the interests to be limited by that power (Ristroph, 2005). As a principle and goal of government, proportionality is a teaching about justice that greater losses caused by the use of government power must be justified by far more rational reasons (Jackson, 2014).

The concept of proportionality, as defined by the desert theory, exhibits a significant disparity between its theoretical interpretation and its practical application in the field. When judges are tasked with establishing guilt, they are confronted with a multitude of variable facts that must be carefully considered in order to gauge an individual's level of culpability. Each unique case possesses its own distinct set of variables, setting it apart from others. Consequently, the imposition of penalties becomes highly diverse, rendering the notion of proportionality subjective. The objective of proportionality in punishment theory is to mitigate the injustice stemming from discrepancies in the application of various types or degrees of criminal sanctions. In a specific instance, a judge may deem a lenient punishment to be proportionate to the offender's guilt, whereas in other cases, only a severe penalty would be deemed proportional (Zulfa, 2017).

Criminal imposition cannot be separated from legal certainty and justice. Both are absolute requirements to determine whether a person deserves or does not deserve to be punished. At least, this was realized by the Draft of Criminal Code (also known

as RKUHP) drafting team, especially Roeslan Saleh, who formulated Article 12 of the Criminal Code that "in considering the law to be applied, judges prioritize justice over legal certainty as far as possible". Nevertheless, this does not mean that legal certainty and justice cannot be combined, but on the contrary, in criminal law, the two can go hand in hand and become the basis for sentencing.

Legal certainty refers to the principle of legality which emphasizes that no action is a crime unless first regulated in a written regulation. The written rules that contain these prohibitions are based on general societal standards regarding certain actions. The social dimension embodied in legal certainty is static because the dynamics of criminal law depend on criminalization, change or decriminalization.

As long as no decriminalization is carried out, the judge will still make the penal code the first requirement in trying the accused. Referring to the legal certainty above, it must be recognized that some of the foundations of criminal law are built on a systematic normative framework. This means that the enactment of criminal law begins with setting written norms in a legal system. These norms are used as a reference to determine a particular act as a crime.

In accordance with the teachings of tatbestandsmasigkeit, the formulation of the offense contains a set of rules regarding the types of criminal acts. This type of crime is the first to be considered by the judge to determine the continuation of the next phase. In this context, sentencing must begin with the fulfillment of the offense element. If the element of offense is not fulfilled, the conditions for imposing a sentence are not fulfilled.

Justice refers to the nature of material lawlessness and wrongdoing in a normative sense. In the previous explanation, it was stated that the material nature of violating material law is based on written norms, unwritten norms, decency and decency which judge the propriety of prohibited acts. In other words, the object of assessing material unlawful nature is limited to things that are prohibited by law (legality principle).

Actions that are not prohibited are not included in the material unlawful assessment. In contrast to the criminal code which is static, the doctrine of material lawlessness is actually intended to respond to social change and place social dynamics within the principal corridors that have been determined in criminal law.

With the doctrine of the nature of material lawlessness, judges can provide dynamic assessments and interpretations of the rigidity of criminal rules while keeping abreast of social changes while respecting the principle of legality. Sometimes the propriety assessment states that the act which is prohibited by law is considered appropriate and therefore is not a crime. But sometimes, the propriety assessment states that the prohibited act is inappropriate and therefore the act is a criminal act.

In the context of trying and imposing a sentence, a judge cannot be separated from

the criminal justice system. However, judges are given the freedom to explore further based on social change and the sense of justice in society, whether actions that are prohibited by law are deemed socially adequate or inappropriate. This confirms that judges are not mouthpieces for laws that only use laws as the only basis for imposing a sentence, but must also consider social dynamics and the legal feelings of the community regarding these prohibited acts. With the doctrine of the nature of against material law, the imposition of a sentence is not only formulated in "actus reus+mens rea = penal", but further than that, the judge also explores social changes to give meaning to the propriety of a prohibited act.

With the doctrine of the nature of material lawlessness, justice can find concrete and measurable forms. It is said to be fair when an act that is prohibited and inappropriate is declared a crime. It is said to be fair when a prohibited act that is socially adequate should be stated is not a crime. Based on this, the judge is required to prioritize decency over the law so that the act is not a crime even though the law prohibits it. This is where the justice lies. Injustice actually occurs when the judge imposes a sentence by reducing the crime to the law alone and ignoring the propriety of the act.

A more complicated problem can be found in the common people's perception of justice in criminal law. In this perception, justice is often contrasted with legal certainty so that justice can only be prioritized by violating legal certainty. Justice can only be achieved by imposing punishment on actions that are morally inappropriate even though the law never prohibits inappropriate actions. This kind of perception actually describes injustice. It is said so, because an assessment of the propriety of an act must be preceded by setting the act in law. Justice can only be obtained when the judge acquits someone who commits an act that is prohibited but socially adequate. Judges can also declare an act as a crime after ensuring that the act is prohibited and inappropriate. For this reason, it seems that justice is not always described by the imposition of punishment. In certain circumstances, justice is actually obtained by freeing the perpetrators of criminal acts.

Justice also refers to the doctrine of guilt in a normative sense. In order to be sentenced to a crime, a person must be able to be reproached for a crime because based on the public's opinion, the perpetrator of a crime can be expected to do something other than a crime. Mistakes in a normative sense aim to, on the one hand, respond to the legal feelings of society and, on the other hand, bring that response closer to the individuality of the person who committed the crime. In normative mistakes, reproach is actually external, because the normative assessment of the reprehensibility of the perpetrators of criminal acts comes from society so that the legal process and social processes can go hand in hand (Fletcher, 1998).

The tough task of a judge in making a decision is not related to normative judgments, but how he places his position as a representation of society and brings him closer

to the individuality of the person who made the crime. Normative judgments become meaningful when judges can carry out their heavy duty. In such circumstances, it is a necessity for the judge to know and understand the circumstances of the perpetrator of the crime so that he can measure the extent of the sentence that is appropriate to be imposed. This is because proper punishment is not only punishment that does not exceed the criminal threat, but that punishment can provide benefits for the perpetrators of criminal acts.

In this stage, the judge places the perpetrator of the crime as a subject in criminal justice. This is because humans are the goal and center of the study of criminal law (Saleh, 1991), including the implementation of law and criminal justice aimed at human interests. In the context of adjudicating, judges are expected to know and understand the circumstances of the perpetrators of crimes as human beings and as social entities in order to create a balance between the social aspect and the individual aspects of the perpetrators of crimes.

Thus, the judge can determine retaliation and reactions to the mistakes of the perpetrators of criminal acts. In the context of retaliation, judges are required to dig deeper into the background of the person who committed the crime in carrying out his actions to determine whether or not it is appropriate for the perpetrator of the crime to be reproached. In the context of reaction, the judge as far as possible imposes a sentence that does not impede the process of resocialization and the future of the perpetrator of the crime. This goes back to the purpose of criminal law, which is to create order and social welfare.

An assessment of the actions of law enforcement against the perpetrators of criminal acts is a must in the process of adjudicating and imposing crimes. There are at least three things that need to be discussed in achieving justice, especially in relation to the individuality of the person who committed the crime which is the core of the teaching of error in a normative sense.

First, knowing the background of the perpetrator of the crime and the circumstances that prompted him to commit a crime. This cannot be viewed from a legalistic perspective solely but also requires knowledge of the etiology of the crime, although a judge is not required to be an expert in criminology. Adequate insight into social life and its changes greatly assists the task of a judge in understanding the background of a criminal offender.

Second, an assessment of the pre-adjudication process carried out at the level of investigation and prosecution. In this stage, including examinations in court, the judge places the perpetrators of crimes as subjects and centers of study so that judges are obliged to ensure that the pre-adjudication process is carried out in a humane manner and treats perpetrators of crimes with dignity. This includes examining the legitimacy of obtaining evidence in a humane and dignified manner.

Third, determine the punishment that is beneficial for future criminal offenders.

Even further, criminal determination should also consider the impact on the family who committed the crime. This is intended so that the sentence imposed does not hinder the creation of welfare and social order, but on the contrary it contributes to positive development towards the creation of social welfare and order.

Based on the description referred to above, criminal law enforcement cannot be separated from the social dimension. This encourages the process of integration between the science of criminal law and other fields of social science. The doctrine of material lawlessness and wrongdoing in a normative sense opens the door to the integration of social dynamics in criminal law without abandoning the legalistic aspects contained in the principle of legality. In other words, criminal law integrates social dynamics in a unique way through principles and principles that have been accepted in criminal law. With all its limitations, criminal law seeks to provide a concrete form of justice in the form of material lawlessness and wrongdoing in a normative sense so that it can be measured and felt by those involved in criminal justice.

Basic Considerations of Judges in Sentence

1. Concepts and Types of Criminal Decisions Concept of Criminal Decisions

The principle of proportionality in the realm of human rights law is intricately linked to the notion of margin of appreciation, which asserts that national courts possess a superior ability compared to international courts in evaluating local traditions, values, and necessities. This notion necessitates that states are bound to honor the traditions, culture, and values of their respective jurisdictions when deliberating on the extent and significance of human rights, and to prioritize them as the benchmark for the enforcement of human rights safeguards by courts (Legg, 2012).

Barbara A. Hudson defines ordinal proportionality as "...ranking offences according to seriousness and then establishing a scale of penalties of commensurate severity" (Willday, 1999). A person who commits a crime of comparable seriousness should receive a sentence of comparable severity. A person who commits crimes of different gravity/seriousness, the penalties are linked or assessed based on their seriousness (Von Hirsch, 1992). Ordinal proportionality, therefore, addresses criminal comparability. Crimes with the same level of seriousness should be punished with equal criminal sanctions. To achieve this, there must be a clear argument for each punishment imposed.

A sentencing decision (veroordeling) is a judge's decision which contains an order for the defendant to serve a sentence for his actions in accordance with the verdict. If the judge makes a sentencing decision, the judge is sure based on valid evidence and facts at trial that the defendant committed the actions as stated in the indictment.

The severity or duration of this sentence is the authority of the judex facti which is

not subject to cassation, unless the judex facti imposes a sentence that exceeds the maximum limit determined by law (Mahkamah Agung RI, 1994).

Legislators give freedom to determine the maximum and minimum length of sentence that must be served by the accused, this does not mean that judges can arbitrarily impose sentences without a complete basis for consideration. The sentence must be sufficiently considered with a judge's decision that lacks consideration (onvoldoende gemotiveerd) which can be canceled by the Supreme Court of the Republic of Indonesia.

1) Forms of Criminal Decisions

A. Acquittal/vrij spraak

An acquittal is a defendant who is acquitted or acquitted of lawsuits (vrij spraak) or acquitall. The accused was acquitted of prosecution, meaning that the accused was acquitted of conviction. Based on the provisions of Article 191 paragraph (1) of the Criminal Procedure Code, if the court is of the opinion:

a. From the results of the examination at the trial court;
b. The guilt of the defendant for the act he was charged with was “not proven” legally and convincingly (Harahap, 2000).

B. Decision Away from All Lawsuits/Onslag Van Rechtsvervolging

Based on the provisions of Article 191 paragraph (2) of the Criminal Procedure Code, “if the court is of the opinion that the act charged against the defendant is proven, but the act does not constitute a crime, the defendant is dismissed from all charges”.

The verdict is free from all lawsuits, namely the fact that what was charged and what has been proven is not a crime. The difference between an acquittal against all lawsuits and an acquittal is that the acquittal charged by the public prosecutor is not legally and convincingly proven. Meanwhile, the decision to be released from all lawsuits is that what was charged by the public prosecutor is proven not to constitute a crime.

C. Sentence Verdict

Punishment means that the defendant is sentenced to a criminal sentence in accordance with the threats specified in the article on the criminal act against which the defendant is charged. Based on the provisions of Article 193 paragraph (1) of the Criminal Procedure Code, “If the court is of the opinion that the defendant is guilty enough to be proven as what was charged with him, then the court imposes a sentence”.

The sentencing decision orders the defendant to be punished in accordance with the criminal threat in the article charged, because the starting point of the judge in

imposing a sentencing decision is based on the criminal threat. In providing an explanation of the judge's considerations in various decisions, it will be seen in two categories.

2) Considerations of Judges in Imposing Criminal Decisions

A. Legislation

Based on the provisions of Article 1 point 11 of the Criminal Procedure Code, 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 release from all lawsuits in matters and according to the method stipulated in this law. A sentencing decision (veroordeling) is a judge's decision which contains an order for the defendant to serve a sentence for his actions in accordance with the verdict. If the judge makes a sentencing decision, the judge is sure based on valid evidence and facts at trial that the defendant committed the actions as stated in the indictment. Specifically, the judge did not violate the provisions of Article 183 of the Criminal Procedure Code.

Based on the provisions of Article 5 paragraph (1) of the Judicial Powers Law and its explanation, it is stated that judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society. This provision is intended so that the decisions of judges and constitutional judges comply with the law and the sense of justice of society. Based on these provisions, juridically the judge is obliged to give a quality (ideal) and accountable decision.

Based on the provisions of Article 53 of the Law on Judicial Power, states that:

a. In examining and deciding cases, the judge is responsible for the decisions and decisions he makes.
b. The determination and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct reasons and legal basis.

B. Supreme Court

The Supreme Court in its instructions No. KMA/015/INST/VI/1998 dated 1 June 1998 instructed judges to strengthen professionalism in realizing quality trials with accountable judge decisions containing ethos (integrity), pathos (first and foremost juridical considerations), philosophical (valued sense of justice and truth), and sociological (according to the prevailing cultural values in society), and logos (accepted with common sense, for the sake of creating the independence of Judicial Power Organizers.

Supreme Court Justices must be more careful and thorough in making legal decisions. Such scrupulousness is only to achieve justice which becomes the spirit for justice. According to him, a decision that violates justice will result in disaster (Tumpa, 2012). For example, criticism of the verdict in the flip-flops theft case, Prita Mulyasari, Mbok Minah who stole cocoa, and finally Rasmi Nah's grandmother who was convicted of stealing her employer's plate, society demands that judges are impartial (not taking sides) and uphold the value of justice.

C. Legal Doctrine

Legal doctrine is a statement put into language by all jurists and the result of the statement is agreed upon by all parties. According to Dwi Hananta, there are several characteristics that need to be considered as things that can be aggravating or mitigating a crime in a judge's decision, namely the criminal act or crime, elements outside the crime, and the seriousness or danger of the crime (Hananta, 2018).

According to Cosmin Peonasu, "circumstances" are referring to the circumstances, situations, events or other information material from reality that is outside the content of the crime, but related to the criminal act committed or to the perpetrator of the crime, which aggravates or reduces the level of seriousness of the crime or the level of danger of the offender. Peonasu added, without being directly linked to the crime, people can still describe the level of seriousness of the crime or the level of danger of the perpetrator (Peonaşu, 2015).

Additional aggravating circumstances/elements of aggravating criminal acts" function to determine more specific criminal acts which show variations of criminal acts with more severe criminal consequences. While "aggravating circumstances" are beyond the crime itself (Gorbunova et al., 2015).

According to Teedy, the complexity of the factors influencing the judge's decision, especially factors related to the economy (Asmara & Purnomo, 2011). Meanwhile, according to Bambang Sutiyoso and Sti Hastuti Puspitasari, there are two main factors that influence the judge's decision, namely internal and external factors (Sudirman, 2007).

According to Aloysius Wisnusubro, there are several factors that influence judges in considering decisions. These factors, namely subjective and objective factors. Subjective factors include: the a priori behavior of judges, emotionality, arrogance of power, and morals. While objective factors include social, cultural and economic background, as well as the professionalism of judges (Wisnusubroto, 1997).

According to M. Yahya Harahap, although what is fostered and supervised by the department is only limited to the administrative, personnel and financial fields of

the judiciary, the position and authority of the department, directly or indirectly, constitutes a "stamp" or "symbol" of the department attached to the judiciary. The

"stamp" or "symbol" will directly affect the autonomy of juridical independence; like it or not, acknowledged or not, whether psychologically or politically, "stamp" or "symbol" is forever "loyalty." If this is the case, it is difficult to disprove the

assumption which states that the symbol of the department attached to the judiciary, even though it is only the first-instance court and the appellate level, has reduced the function and authority of the judiciary as the highest authority in law and justice.

4. Conclusion

Conclusion:

Based on the findings above, the conclusions that can be drawn from this paper are as follows:

a. The meaning of criminal imposition in the perspective of the principle of proportionality is a criminal imposition that is commensurate with the criminal act and proportionate criminal responsibility as long as it is based on the specific circumstances of the perpetrator and other considerations, in order to determine the severity of the sentence to be imposed based on the criminal threat.
b. The basis for the judge's consideration of imposing a sentence in the perspective of the principle of proportionality is that the judge must pay attention to the good and evil characteristics of the defendant and consider and assess the political, economic, social, cultural and security defense aspects as a constitutional basis, so that the decision handed down is appropriate and fair (proportionality) with the mistakes made by the defendant.

Suggestion:

From the explanation and discussion in the previous chapter, the writer proposes the following suggestions:

a. It is necessary to add the concept of criminal imposition in the perspective of the principle of proportionality into one chapter, section, and articles in the Criminal Code (KUHP) and the Draft of Criminal Code (RKUHP), insisting on the regulations in question has not provided legal certainty regarding sentencing guidelines as a basis for considering the severity of judges deciding criminal cases.
b. It is necessary to add the concept of imposing a sentence in the perspective of the principle of propensity into one chapter, section and articles in Law Number 48 of 2009 concerning Judicial Power, bearing in mind that the said regulation does not provide legal certainty regarding the limits or size of judges assessing the good nature or the evil nature of the accused as the basis for his consideration in determining the severity of the criminal verdict, so that his sentence is appropriate and fair to the mistakes he has committed.

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