

The Role of A Judge's Conscience in Deciding Criminal Cases: Practice of Criminal Justice in Indonesia

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Abstract

As the leading actor in the criminal justice system in Indonesia, a judge must engage in a dialogue with their conscience before deciding on a criminal case to ensure true justice for all parties. This article aims to analyze the functioning of judges' consciences in their decisions within the criminal justice system in Indonesia. Therefore, a literature study was conducted. Data is collected by reading and tracing various relevant documents. Furthermore, the data were analyzed using descriptive qualitative methods. The results are as follows: first, conceptually, judges who have a conscience are constantly in dialogue with their consciences, and then they decide cases according to their sincere consciences. Second, in the context of criminal justice in Indonesia, judges are obligated to heed the promptings of their conscience every time they decide on a criminal case. This is because the ultimate goal of criminal justice is to uncover the truth and ensure justice for all parties, namely society, victims, and perpetrators of crimes. However, in fact, there are still judges who disregard their conscience and are easily influenced by extrajudicial powers,

such as mass pressure and political interests. For this reason, it is necessary to submit several recommendations: (1) all parents should teach their children the importance of a simple, honest, committed, and responsible life because the family is a cell of society, a place for seedling law enforcement officials, including judges; (2) optimizing the role of the judicial commission in the form of policy support and adequate funds so that the institution can recruit prospective judges and professionally supervise the behavior of judges; (3) Judges who are involved in moral violations or abuse of power are subject to severe criminal sanctions to create a deterrent effect.

Keywords:

Indonesian judiciary, Judge's conscience, Judge's decision.

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Introduction

The existence of a judge's conscience is a crucial factor in law enforcement, particularly in deciding criminal cases. Having a sincere conscience enables a judge to see, understand, and investigate cases in a fair, honest, and objective manner, thereby facilitating the realization of "true truth" and ultimately creating justice for all parties in society. Nevertheless, judges often face conflict situations between legal certainty and justice in deciding criminal cases. In addition, various external forces usually influence the judge's decision, including the interests of groups and litigants, as well as political and power pressures. However, the judge must not be influenced by the situation in which he finds himself, and he is free to exercise his professional intellectual authority. The sense is that the judge must be committed to his conscience, and in certain cases, the judge must exercise discretion appropriately to uphold a just law.¹

Franz Magnis Suseno said that the law should be fair, but in reality, this is not the case.² The debate on this subject may never end. In everyday life, there is a tendency to respond to public policies based on considerations of what is good and just for society. The law must be examined critically because it was created by humans to protect their own interests. Therefore, a normative evaluation of the law is inevitable.³

Regarding the disposition of judges in deciding cases, a judge cannot escape the influence of their conscience, which plays a significant role in determining court decisions. In concrete experience, the judge's decision in a court case cannot always be separated from the ethical responsibility of the judge toward their conscience. A judge does not necessarily decide a case without the involvement of his conscience. Herein lies the judge's struggle in ensuring that he has acted correctly

¹ Joko Susanto, Indah Sri Utrari. Children as victims of Sexual Violence Committed by Parents: A Criminological Perspective. (Journal of Law and Legal Reform); 1(2): 353-363.

² Franz Magnis Suseno, *Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern*, PT. Gramedia Pustaka Utama, Jakarta, 2003, p. 81-84.

³ Andre Ata Ujan, *Filsafat Hukum: Membangun Hukum, Membela Keadilan*, Kanisius, Yogyakarta, 2001, p. 27.

and precisely, or not, in upholding justice; or has he proportionally decided in a case to provide the fairest certainty for the community.

Cases of struggles between judges' consciences in making court decisions sometimes give rise to various new problems, such as legal mafia, abuse of authority, and a monopoly on court case decisions. In many cases, especially in Indonesia, not a few judges are involved in some interests, including judicial corruption⁴, gratification, and nepotism. This fact has been evident since the transitional period in 1998, since the country under the leadership of B.J. Habibie and after the 1999 Majelis Permusyawaratan Rakyat (MPR) general session, the implementation of court decisions tends to be shaped by social stratification, where the stronger (political power) a person is, the less binding power the law governs his life, as well as the economic power where court decisions can be purchased, and a sense of justice generally gambled.⁵ The lower a person's position, the more strongly they are bound by the laws that govern their life.

Criticism of the judicial service includes delays in case completion, as well as the judge's partiality towards certain parties and neglect of others. In addition, court judges of first instance are often perceived as having insufficient knowledge of the law and lacking the skills necessary to make fair decisions. The majority (85%) of experts believe that the primary factor hindering the judicial process is the integrity and honesty of judges in making decisions.⁶

Conscience becomes a symbol of the judge's firmness in upholding a sense of justice in society. Therefore, discussions regarding "conscience" should have a place in law faculty discussions to maintain the dignity and ethics of law enforcement in the eyes of society. Because the debate about conscience in the context of this article falls within the

⁴ Antonius Sudirman, *Hati Nurani Hakim Dan Putusannya: Suatu Pendekatan dari Perspektif Ilmu Hukum Perilaku (Behavioral Jurisprudence)*, Kasus Hakim Bismar Siregar. Bandung: PT. Citra Aditya Bakti. 2007, p. 2-3.

⁵ J. E. Sahetapy, *Yang Memberi Teladan dan Menjaga Nurani Hukum dan Politik*, Komisi Hukum Nasional Republik Indonesia, Jakarta, 2007, p. X-XI.

⁶ Suharyo dkk. Final Report of the Legal Research Team on Legal Issues in the Implementation of Judicial Decisions in Law Enforcement. The National Legal Development Agency, Ministry of Law and Human Rights, Republic of Indonesia, Jakarta, 2005. p. 57.

realm of legal ethics, the discussion about the conscience of judges will be limited to the perspective of judicial awareness in making court decisions, especially in the context of Indonesian criminal justice.

Not a few researchers have discussed ethical issues related to the conscience of judges in court decisions. Wim Decock⁷, through his writing entitled “The Judge’s Conscience and the Protection of the Criminal Defendant: Moral Safeguards against Judicial Arbitrariness,” emphasized that in assessing a case he is trying, a judge cannot judge based on his conscience alone (*iudex secundum allegata non secundum conscientiam iudicare debet*), but must be based on valid evidence and facts presented in court. This is to protect the defendant from the judge’s arbitrary decision-making in court. Alexander Nikolaevich Shytov,⁸ as described in his thesis entitled “Conscience in Making Judicial Decisions”, explains the meaning of good conscience and also its practical implications in making court decisions. A judge must have a good conscience, which enables him to apply proper and good laws. The judge must be aware of their conscience, as well as the conscience of other people, who can be mistaken. The concept of a good conscience emphasizes the importance of moral education in making informed decisions and prioritizing personal efforts to achieve good moral outcomes. In line with that, Gene E. Franchini,⁹ in his research entitled, “Conscience, Judging, and Conscientious Judging”, emphasized that if a judge is unable to be an example or role model, or if a judge is unable to use his conscience in applying the law, he can use other alternative considerations, or by withdrawing from the trial case based on the consideration of the authority of his conscience.

The description suggests that judges, as classified into the components of the legal structure by Lawrence M. Friedman,¹⁰ have a

⁷ Wim Decock, *The judge’s conscience, and The Protection of The Criminal Defendant: Moral Safeguards Against Judicial Arbitrariness*, p. 80.

⁸ Alexander Nikolaevich Shytov, *Conscience in Making Judicial Decisions*, Faculty of law and financial studies. University of Glasgow. June 2000.p 2-3. [Http://theses.gla.ac.uk/2920](http://theses.gla.ac.uk/2920).

⁹ Gene E. Franchini, *Conscience, Judging, and Conscientious Judging*, The Journal of Appellate Practice and Process, Vol. 2 Issue 1, 2000, p. 19-25.

¹⁰ Lawrence M. Friedman, *The Legal System, A Social Science Perspective*, New York: Russel Sage Foundation, 1975, p. 11-16. According to Friedman, every legal

vital role in achieving law enforcement's success.¹¹ For this purpose, a judge may not merely be a mouthpiece for laws (let's take the law as it stands), following the paradigm of legal positivism,¹² because no rule is perfect¹³ or all-encompassing.¹⁴ Therefore, judges should heed their conscience when evaluating the provisions in the law regarding the specific cases they handle,¹⁵ ensuring that their decisions align with the values of justice and truth. In this regard, Henry Arianto, in his research entitled "The Role of Judges in Law Enforcement Efforts in

system has three components that support its functioning, namely legal substance, legal structure, and legal process. The legal structure is the entire law enforcement institution and its apparatus, including the police and police, prosecutors and prosecutors and courts and judges. Legal substance, namely the entire legal rules, legal norms and legal principles, both written and unwritten, including court decisions. Legal culture, namely habits, opinions, ways of acting and thinking of law enforcers and members of the public about how the law or the legal system is used, abused and avoided. Furthermore, in a book entitled *American Law in Introduction*, Second Edition, Translated by Wisnu Basuki, Jakarta, Tata Nusa, 2001, p. 8. Lawrence M. Friedman emphasised: "The legal system is likened to the following: the legal structure is like a machine; legal substance is what is produced or done by the machine. Legal culture is anything or anyone who decides to turn on and turn off the machine and decides how the machine is used."

¹¹ Erna Dewi. Peranan Hakim dalam Penegakan Hukum Pidana Indonesia. *Pranata Hukum*, Volume 5 Nomor 2, Juli 2010, p. 95.

¹² See Lessius' argument in *Wim Decock. Op.Cit. p. 93-94, which confirms that*, "Too much legalism would turn the judge into the upholder of intrinsic evil." And Alan Watson, in the book *Society And Legal Change*, Second Edition, United State Of America: Temple University, 2001, p. 131 quote opinion Eugen Erlich who is one of the figures who oppose legal formalism, namely: "At the present as well as at any other time, the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in juridical decision, but in society itself."

¹³ See Antonius sudirman, *Op. Cit. p. 57-58*; Roeslan Saleh, *Pembinaan Cita Hukum dan Azas-azas Hukum Nasional*, Cetakan ke-1 Karya Dunia fikir, 1996, p. 56.

¹⁴ Ch. J. Enschede dalam W. van Gerven, *Het Beleid Van De Rechter*, translated by Hartini Tranggono, Jakarta, Erlangga, 1990, p. 108.

¹⁵ See Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law*, translated by Raisul Muttaqien, Nusamedia, Bandung, 2007, *Op. Cit. p. 92-93*. "Even if a regulation contains a formal authority, i.e. passes a pedigree test of legal validity, it still has to be re-examined in the context of its consequences on the values at stake."

Indonesia,” emphasized that judges act as agents of change.¹⁶ In this case, he has the freedom and responsibility to judge a case with a clear conscience. For this reason, a judge must employ the legal discovery method to ensure justice for society.¹⁷ Jefferson also emphasizes that justice is a response from the power of the decision maker, which in this case is the judge; if the decision maker’s response is unable to convey the language of justice, then justice cannot be served in good faith.¹⁸ Therefore, a judge’s loyalty, integrity, and allegiance to honesty and upholding justice are essential and a top priority, including in interpreting and making new laws within the judicial process. In other words, law enforcement morality standards are placed within a judge, as the last bastion of upholding justice.

Frank Cross¹⁹, reinforce the independence of judges in court decisions by providing several principles of judicial power. (a) free from pressure and fear when deciding cases. (b) No one can object to a judge’s decision; (c) the judge cannot be prosecuted because the decision was wrong; (d) the judge cannot be subject to action because of his actions. However, in reality, judges are still very strongly influenced by: (a) external institutions of the judiciary; (b) the internal institution of the judiciary itself; (c) the influence of the litigants; (d) community pressures; (e) effects that are characteristic of “trial by press”.

The problem is that the various studies mentioned above are seen as incomplete and inadequate because certain aspects have not

¹⁶ See H. Garner, Christopher D. Maxwell and Jina Lee, *The Specific Deterrent Effects of Criminal Sanctions for Intimate Partner Violence: A Meta-Analysis*, Journal of Criminal Law & Criminology, Volume 111, Issue 1 (2021), p. 229. “Much of the contemporary scholarly literature on criminal sanctions, like much of the current policy attention, focuses on deterrence theory—the argument that potential offenders are dissuaded from future criminality by the threat of future penalties that are appropriately swift, certain, and severe.

¹⁷ See Henry Arianto. Peranan Hakim Dalam Upaya Penegakan Hukum di Indonesia. Lex Jurnalica Volume 9 Nomor 3, Desember 2012, p. 155.

¹⁸ See H. Jefferson Powell. Constitutional Conscience: The Moral Dimension of Judicial Decision. Chicago and London: The University of Chicago Press. 2008. p. 13.

¹⁹ Frank Croos in Bagir Manan, Ancaman Pidana terhadap Hakim ketika Menjalankan fungsi yudisialnya, Varia peradilan Nomor 327, February 2013, p. 10.

been explicitly studied, namely, the role of judges' conscience in decision-making within the criminal justice system in Indonesia. Meanwhile, on the other hand, the role of a judge's conscience in resolving criminal cases is significant, ensuring that "true truth" is served for all parties. In addition, the reality shows that the world of justice in Indonesia is not free from political pressure and intervention from disputing parties²⁰, social relations, and power²¹, resulting in judicial decisions that do not adhere to the principles of justice, and the emergence of resistance and uproar in society.

That is why the author is interested in conducting an in-depth study of the role of a judge's conscience in making decisions in criminal cases in Indonesia. In this case, the focus of the discussion in this article, which distinguishes it from previous authors, is the dynamics of judicial conscience awareness in the process of making court decisions in criminal cases in Indonesia. In such a context, the function and role of the judge's conscience are at stake and warrant in-depth examination.

For this purpose, the issues discussed in this article are: (1) How is the conceptual construction of a judge's conscience? (2) What is the role of the judge's conscience in the process of making court decisions in criminal cases in Indonesia?

To address the problems described in the introductory section, a literature study was conducted using a normative juridical approach. In response to these issues, a literature review was conducted. The data used are (1) primary legal materials: laws and regulations in the field of justice; (2) secondary legal materials: results of research and opinions of leading legal experts; and (3) tertiary legal materials: legal dictionaries

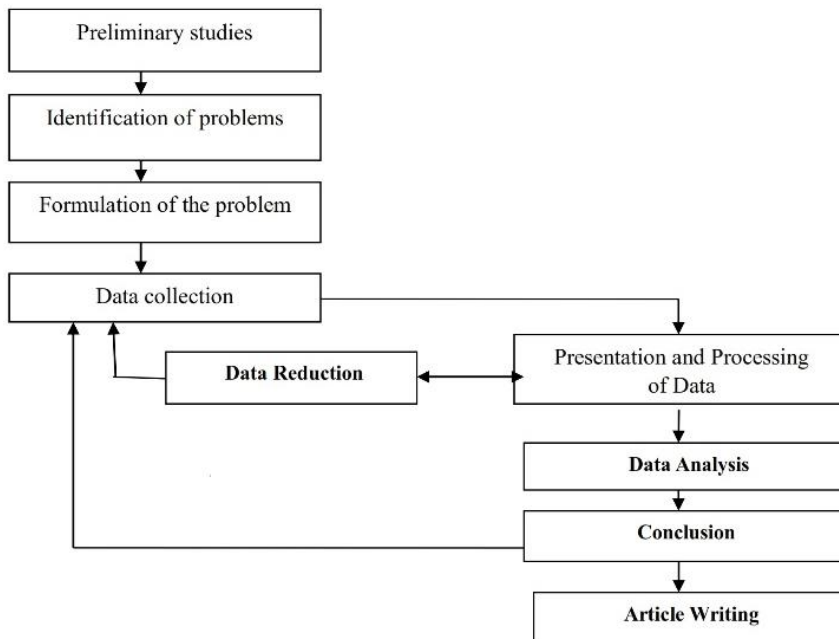
²⁰ See Suparman Marzuki in Danang Wijayanto (eds), *Problematika Hukum dan Peradilan di Indonesia*, Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2014, p. vi-vii, emphasized: "Those who have (have access and have money) enforce the law instead they use it to imprison people, criminalize people, seize other people's legal rights, release those who are guilty, punish those who are innocent, burden or lighten sentences".

²¹ See, Charles Shamford, *The Disorder of Law: A Critique of Legal Theory*, New York: Basil Blackwell Ltd., 1989. p. 6-7. *Shampfard emphasized that a court decision could have been influenced by social relations established between parties who were interrelated with one another. Society will view the law in the context of law enforcement actions that affect them. This phenomenon affects legal irregularity and public trust in law enforcement.*

and encyclopedias. Data collection is done by reading, copying, and studying legal documents related to the authority of judges in court decisions. Data is processed by sorting and grouping data according to its type and designation. Furthermore, qualitative data analysis was carried out and presented descriptively. This is done to obtain a clear understanding of the strategic role of the judge's conscience in court decision-making within the criminal justice system in Indonesia.

The flow of discussion in this article encompasses several stages of activity, including a preliminary study, topic determination, problem formulation, data collection, data presentation and processing, data reduction, data analysis, conclusion drawing, and article writing. Some of the stages of the activity are interactive efforts. This means that data analysis is an ongoing effort that repeats itself continuously across several stages of the activity, as shown in Figure 1.

Figure 1: Writing Flowchart



A. The Conceptual Construction of the Judge's Conscience

Before discussing the role of a judge's conscience in making decisions in criminal cases, the conceptual construction of a judge's conscience is first described. In this case, conscience is often regarded as the final factor in determining whether a decision is correct, reasonable, and appropriate. From Frans Magnis Suseno's perspective, conscience is understood in the context of a person's most basic awareness, which confirms their belief in their decisions and attitudes as good, honest, just, and moral. It is absolute, supported by reasoning.²² This belief determines the direction of conscience to fulfill the obligation to hold fast to the truth and ignore wrong things. "Conscience is man's capacity to look within himself and to distinguish between good and evil. Regardless of all his shortcomings, humans are creatures that can determine what is good to do and make decisions.

Augustine W. Dewantara explains conscience in this way:

*Conscience is also referred to as "synderesis." In English, it is called "conscience," which is directly related to awareness. Conscience becomes like a capacity/power/strength whose consideration and examination overcomes laws, good/bad phenomena, and overcomes prohibitions/commands in the rules that are inherent in human life. Conscience is understood as an inner consciousness that exists in the human heart, guiding human life. Its examination of life's problems is like that of an eagle, seeing everything as a whole.*²³

Suppose you look closely at the opinion of Augustine W. Dewantara. In that case, conscience tends to be associated with moral demands, so adherence to moral norms encourages humans to make decisions that objectively free them from moral responsibility. A critical point in understanding "Conscience" is "Consciousness", which is a larger context that involves reasoning/reasoning considerations.

²² See Franz Magnis-Suseno. *Menalar Tuhan*. Yogyakarta: Kanisius. 2006. p. 180-181.

²³ Agustinus W. Dewantara. *Filsafat Moral: Pergumulan Etis Keseharian Hidup Manusia*. Yogyakarta: Kanisius. 2017. p. 19.

Awareness without reason, proper understanding will not be produced, while reason without awareness can create directionlessness. Awareness of conscience reinforces one's determination to make decisions correctly and precisely.

However, conscience can go astray or be mistaken if it is not placed in the realm of the role of reason (rationality). A renowned philosopher and theologian, St. Thomas Aquinas, developed a comprehensive understanding of the heresies and errors of conscience.²⁴ Suppose an error of conscience is invincible (cannot be subdued/cannot be overcome) and inculpable (cannot be blamed/cannot be punished). In that case, people can escape morally evil actions. That is, if he commits a crime based on his invincible and inculpable misguided impulses, his morally reprehensible actions cannot be tolerated. If the error is vincible (can be overcome) and culpable (can be blamed), the responsibility for the bad/evil deed lies with the perpetrator. A culpable error is an error regarding what a person should know (so he should know), or that error arises from negligence or carelessness on the part of the perpetrator (for example, because the error is habitual). If the error is related to what must be known, then a person's conscience will be called upon to make decisions that are in favor of good and reject error.

In Aquinas's frame of mind, it can be understood that the moral standards of conscience are within the corridors of the mind's awareness of the "necessity" of knowledge to act on a problem, value, or event. Suppose an event or action is logically within the reach of the subject's intellectual awareness. In that case, the subject is naturally "called on" to behave or make a decision based on the reach of his conscience, and is immediately responsible for it. Concretely, if someone's conscience states that something is right and/or wrong, but he tries to hide or reverse it, then he is against the law of his conscience. This is where a person has the authority and moral responsibility that extends beyond written law to determine whether a decision is good, correct, or appropriate, following what is "should" or "obliged" to be carried out normatively.

Referring to the opinion of Thomas Aquinas, conscience is a

²⁴ Agustinus W. Dewantara. *Ibid.* p. 20-21.

person's ability to discern the value of something as good or bad, based on objective knowledge that is felt by their conscience, within the reach of their self-awareness. And that awareness encourages one to carry out the "obligation" or "must" to fulfill the objective truth of what is realized and known. Conversely, if a person is in a state of being unable to overcome something, both from the aspect of unconsciousness and ignorance of an action or deed, but the deed or action is still carried out. He is free from moral responsibility because he is outside the role of conscience. Meanwhile, when a person realizes that a thing or action is wrong and has no doubts about it, and if it is indeed true, and they do not carry it out, then they are morally responsible for that action and/or thing. That is, it is almost impossible for a human being to have conscience and knowledge to go astray unless the human himself ignores it, and if a human consciously tries to negate and or deny what is "obliged" or what he should do, he will still be called to account for it.

It can be concluded that conscience contains at least two main elements that require a person to be responsible for the decisions they make, namely moral awareness and knowledge. Moral awareness is often associated with faith, while knowledge is often associated with intellectual intelligence or the mind's ability to understand.

Concerning the concept of conscience, Louis Lehay asserts that there is no room for avoiding the moral responsibilities that call us through "conscience"²⁵. If we do something that goes against our conscience, our conscience keeps reminding us, and we often "judge" ourselves in a permanent sense of guilt. Conscience is a real and concrete form of Conscience. In the Magnis-Suseno perspective, Suara Hati is interpreted as a person's awareness of an obligation and responsibility as a human being in a concrete situation. Conscience is the center of human independence. The absolute conscience is the demand never to deviate from what we are aware of as our duty, indeed our duty, not always to be sure.²⁶

In this case, conscience is binding because it obliges, whereas

²⁵ Franz Magnis-Suseno. *Etika Dasar: Masalah-Masalah Pokok Filsafat Moral*. Yogyakarta: Kanisius. 2016. p. 54, 57.

²⁶ *Ibid.*

humans, by nature, are endowed with the ability to choose not to carry out their obligations freely. Consequently, humans have the potential to commit crimes or evils that are contrary to the “call” of their sincere and good conscience. In this context, a person is faced with a sense of justice that extends not only to something outside of himself but also to a sense of justice within himself, if he makes a mistake or an erroneous decision.

Following the description above, what is meant by the conceptual construction of a judge’s conscience is a judge who can consciously distinguish between something good and evil, right and wrong. The role of a judge’s conscience in this context emphasizes the quality of a judge’s awareness and knowledge to make court decisions that are not only normatively good but at the same time correct and materially correct, beyond just what is written in the articles used to try a criminal case. The dominance of conscience enables a judge to decide a case without intervention from any party, whether through mass pressure or other factors. In all situations and conditions faced by judges in court, a judge is “obliged” to comply with what, according to the extent of his awareness and knowledge, is objectively right and fair. At least a judge with a conscience can avoid a court decision that is the product of opinions outside of himself.

Conscientious judges are constantly in dialogue and, at the same time, listen to the whispers of their conscience, then act in the case of deciding criminal cases, following the voice of their sincere conscience. This ideal idea will become a reality if the judges are committed to applying it to real cases. The conscience authority of a judge allows him to assess the intensity of a criminal act, weigh wisely the indictment and criminal charges from the Public Prosecutor, the defendant’s defense note based on the articles in the Criminal Code (KUHP), the Criminal Code Criminal Procedure (KUHAP) and other laws, as well as connecting witness statements, defendant statements, and other evidence.

B. The Role of the Judge's Conscience in Making Decisions on Criminal Cases in Indonesia

1. The Importance of the Role of the Conscience of Judges in Criminal Justice

In essence, the primary task of judges in Indonesia is to uphold the law independently and impartially in the pursuit of justice. Additionally, the judge has the authority to review cases submitted by interested parties. Another authority of a judge is to determine whether someone is guilty or not guilty, prioritizing justice and truth.

In general, the primary duties and obligations of judges in the field of justice in Indonesia have been regulated in Article 3, Article 4, Article 5, Article 10, and Article 15 of the Law of the Republic of Indonesia No. 48 of 2009 on Judicial Power, namely: (1) In carrying out their duties and functions, judges and constitutional judges are obliged to maintain the independence of the judiciary; (2) The courts try according to law without discriminating against people; (3) Courts assist justice seekers and try to overcome all obstacles and obstacles to achieve justice that is simple, fast, and low-cost; (4) The court is prohibited from refusing to examine, try and decide on a case filed on the pretext that the law does not exist or is unclear, but is obligated to examine and try it; (5) The court is obligated to provide mutual assistance requested for the benefit of justice.

In carrying out the role mentioned above, judges face a classic problem in (criminal) decision-making: the conflict between legal certainty and justice. In a situation like this, a judge is required to determine which value should be prioritized: the value of justice or the value of legal certainty? For that purpose, Gustav Radbruch²⁷ offers a solution in the form of standard priorities, which states that what must take precedence is justice, not legal certainty. Likewise, the opinion of Bismar Siregar, a former Supreme Court judge at the Supreme Court of the Republic of Indonesia, places justice above the law (legal

²⁶ See Gustav Radbruch, *Legal Philosophy (Rechtsphilosophie)*, Stuttgart: K.F. Koehler, 1956, (n. 3, above), § 9, at 110.

certainty).²⁸ In line with that, Article 53 paragraph (2) of the Draft Indonesian Criminal Code (which was ratified by Dewan Perwakilan Rakyat (DPR/Legislative Assembly) in 2022 and will become effective in 2025)²⁹ emphasized that, if upholding law and justice, there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice over legal certainty.

The next question is, why should justice be prioritized, not legal certainty? This occurs because the ultimate goal of the law is to create justice in society, while legal certainty serves as a means to achieve this goal. Meanwhile, Soenarjati Hartono emphasized that the rule of law is not a goal but a bridge to reach the ideals aspired to, while the most essential purpose of the law is to achieve justice.³⁰ In this case, what is meant by justice is going beyond procedural justice to substantive justice.³¹ Substantive justice is defined as truth justice (actual justice). This is consistent with the characteristics of responsive law, namely, seeking the implied values contained in regulations and policies.

In addition, in certain situations, judges sometimes struggle to determine the applicable law in concrete cases because there are no regulations governing the matter or the rules are unclear, leading to multiple interpretations. Following the legal principle of “*Ius Curia Novit*”,³² a judge is prohibited from rejecting a case submitted to them

²⁸ Andrea Ata Ujan, 2009, *Filsafat Hukum-Membangun Hukum, Membela Keadilan*, Yogyakarta: Kanisius, Cet. V. p. 10.

²⁹ Draft Criminal Code that has been passed by Dewan Perwakilan Rakyat (DPR/Legislative Assembly) 2022, Jakarta: Directorate General of Law and Legislation, Ministry of Law and Legislation of the Republic of Indonesia.

³⁰ Antonius Sudirman, *Op. Cit.* p. 47.

³¹ Philippe Nonet and Philip Selznick, *Hukum Responsif: Pilihan di Masa Transisi*, translated by Raisul Muttaqien, Nusamedia, Bandung, 2007, p. 119.

³² Muhidin, Eman Suparman, M. Guntur Hamzah, and Indra Officer, *Implementation of The Ius Curia Novit Principle in Examining Cases at The Constitutional Court of The Republic of Indonesia*, *Baltic Journal of Law & Politics* 15:1 (2022). p.454. In an examination at the Constitutional Court of the Republic of Indonesia, a judge cannot refuse to examine a case because the law does not exist or is unclear. Compare to Cesare Cavallini, *Why is the Iura Novit Curia Principle not Applied Yet in English Law?*, *Global Jurist*, DE GRUYTER 2017 (1)

(https://www.researchgate.net/publication/318646777_Why_is_the_Iura_Novit_Curia_Principle_not_Applied_Yet_in_English_Law).

on the pretext that there is no rule; instead, they are obliged to try it and find the law. Rahmat Hidayat emphasized that a judge does not just take the law from a 'box', but in essence, the judge is given the freedom by law to exercise discretion³³ to determine the law in relation to an event. This follows the classical jurisprudence theory that a judge must take two steps in deciding to try. First, the judge tries to find the applicable legal provisions. Second, judges exercise independent discretion in creating laws to be applied retrospectively to existing cases.³⁴

To realize this, following the mandate of Article 5 of the Law of the Republic of Indonesia No. 9 of 2009 on Judicial Power, judges must be involved in the community to explore, follow, and understand legal values and a sense of justice that lives in society. In this regard, Sudarto³⁵ emphasized that the judge, who is the leader of the community, must put his ear above his heart so that he can hear and understand the heartbeat of the people and the value of justice that lives in society.

Furthermore, it is interesting to follow the legal behavior of Bismar Siregar, a former Indonesian Supreme Court judge,³⁶ when he makes a decision. First of all, Judge Bismar achieved this by attempting to engage in a dialogue with his conscience. He will ask himself whether it is right and fair or not before making the decision. After that, Bismar will have further dialogue, specifically with the legal values that exist in society, encompassing both customary law and religious law. Furthermore, Bismar will have a conversation with the law to seek a legal basis for his decision. After he has found the legal basis, the last step he will take is to critique the formulation of the provisions in the legislation, determining whether they are still relevant and should be implemented. A new decision is made if Bismar has found the answer to the question.

³³ Rahmat Hidayat, Diskresi Hakim Melalui Dissenting Opinion Dalam Pembentukan Putusan.
https://drive.google.com/file/d/0B5DxaF_9ujxbWTNvaEdLaGFmbG8/edit?resourcekey=0-e4ayo6P8ldVRYac4Deou8w.

³⁴ Andrea Ata Ujan, 2009, *Op. Cit.* p. 175.

³⁵ Antonius Sudirman, *Op. Cit.* p. 53-54.

³⁶ *Ibid.* p. 199.

In Indonesia's criminal justice system, judges are obligated to heed the whispers of their conscience in every decision they make in court. Because the aim of every criminal justice process is not to achieve formal truth (formal warhead) but material truth (material warhead). Material truth or true truth means the truth that follows the actual reality, without any manipulation or engineering from any party to protect the interests of certain parties.

That is why judges do not readily accept the formal evidence presented at a criminal trial; on the contrary, to address the doubts in their conscience, they must make various efforts to uncover the real facts. This is intended to reveal the truth and, ultimately, create justice for all parties, including the community, victims, and perpetrators of crimes.

It is impossible to imagine the impact that will arise if the judge decides on a criminal case based solely on the formal evidence presented at trial without digging further into the absolute truth. For example, a defendant testified at a criminal court hearing that he admitted to being the sole perpetrator of the offense against which he was charged; however, the information he provided was not accurate, as his confession was actually made to protect the interests of the real perpetrators of the crime. Then, based on the defendant's confession and supported by one other piece of evidence,³⁷ the judge sentenced the defendant. The impact that will occur is the creation of injustice, as those who are punished are often those who admit to being the perpetrators, while the real perpetrators of crimes go unpunished. The most serious impact is that the next crime victim will appear because

³⁷ See article 183 Law of the Republic of Indonesia No. 8 of 1981 on the Criminal Procedure Code, "A judge may not convict a person unless, with at least two valid pieces of evidence, he obtains confidence that a crime has actually occurred and that it is the defendant who is guilty of committing it." In the Elucidation of Article 183 of the Criminal Procedure Code, it is emphasized that "This provision is to guarantee the upholding of truth, justice and legal certainty for a person." These provisions show that Indonesia adheres to a minimum evidentiary system (*Negative Wettelijk*); In this case, the judge can impose a sentence on the defendant if the guilt of the defendant is proven based on at least two valid pieces of evidence accompanied by the judge's own convictions.

the perpetrator feels innocent and responsible for the crime he has committed, so he has the potential to repeat the crime (recidivism).

In addition, the role of the judge's conscience is vital if the judge is uncertain about the truth of the formal evidence in a criminal trial. In this situation, the judge may not make decisions that are detrimental to the defendant's legal interests. In this regard, there is one principle in criminal law that states, "*in dubio pro reo*."³⁸ In a sense, if there is doubt about something, it must be decided in favor of the accused. This principle is often³⁹ applied by the Supreme Court of the Republic of Indonesia to decide criminal cases; for example Supreme Court Decision No. 33 K/MIL/2009, where one of the considerations is emphasized: "That the principle in *dubio pro reo* which states that if there is doubt whether the Defendant is guilty or not, then things that are beneficial to the Defendant should be given, namely being acquitted of charges"

2. The Role of the Conscience of Judges in Criminal Justice Practices in Indonesia

Based on the practice of criminal justice in Indonesia, an overview is obtained, judges with integrity tend to decide cases based on the promptings of their sincere conscience. Thus, he can uphold the sacred mission of the judiciary to maintain law and justice. Meanwhile, an immoral judge typically has a dull conscience, so he lacks the will to make decisions that align with the sense of justice in society. They tend to make decisions that follow the interests of the powerful.⁴⁰

³⁸ Christophe J. Larouer, In The Name of Sovereignty? The Battle over In Dubio Mitius Inside and Outside the Courts, Cornell Law School Inter-University Graduate Student Conference Papers. Paper 22, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1050&context=lps_clacp, pp. 1-49. Asas In Dubio Pro Reo, used in criminal law, is a development of the principle of "in dubio mitius originated in the Roman law "maxim semper in dubiis benigniora praeferenda sunt", yaitu dalam hal "in doubtful matters preference should always be given to the more benign (benevolent) solution."

³⁹ Adi Condro Bawono, *Penerapan Asas In Dubio Pro Reo*, <https://www.hukumonline.com/klinik/a/asas-in-dubio-pro-reo-cl4142>.

⁴⁰ Antonius Sudirman, *Op.Cit.* p. 97-98.

In this regard, it is necessary to cite an example of a criminal case in a court in Indonesia, specifically the Decision of the Purwokerto District Court. 247/Pid.B/2009/PN.Pwt. stated that Minah was found guilty of committing the crime of theft as stipulated in Article 362 of the Criminal Code. In that case, it appears that the role of the judge's conscience is very significant in decision-making. The judge, in his decision, stated that the defendant's actions were proven, and therefore, he was sentenced to 1 month and 15 days in prison with a probationary period of three months. In this case, the convict does not need to serve their sentence unless they violate certain conditions during the probationary period. In the following, we briefly quote this case.

In August 2009, Grandma Minah, 55 years old, picked cocoa pods at the PT Rumpun Sari Antan (RSA) plantation in Darmakradenan Village, Central Java district, Indonesia. After Granny Minah picked the cocoa pods, she placed them on the ground. Not long after, the duty officer asked Grandma Minah, who had picked the cocoa pods, and Minah's grandmother answered honestly that she was the one who had picked them. Then the guard on duty reprimanded Grandma Minah for her actions, which were classified as theft of goods belonging to others without their consent. Realizing her mistake, Minah's grandmother apologized and promised not to repeat her actions. A week later, Minah's grandmother was summoned by the police to be examined as a suspect. Furthermore, the case was transferred to the Purwokerto District Court, and Minah's grandmother was charged with violating Article 362 of the Criminal Code, specifically for theft. The panel of judges, led by Muslih Bambang Luqmono, decided that Nek Minah was legally and convincingly proven to have violated Article 362 of the Criminal Code. Because of this, Minah's grandmother was sentenced to 1 month and 15 days in prison, with a probationary period of three months. The visitors who attended the trial welcomed the judge's verdict with joy.⁴¹

The court's decision needs to be appreciated because the judge applies the provisions of the law not in a rigid manner, following the letter of the law (*letter knechten der wet*), but according to the value of

⁴¹ Ariana Patria Dewi, Judge's Verdict vs Conscience, <https://kawanhukum.id/putusan-hakim-vs-hati-nurani/>.

justice for victims and perpetrators of crimes. This follows the Celsian principle⁴² which is widely accepted in contemporary legal thought, namely, the call for the law to carry out justice. “*Ius est ars boni et aequi*”: the law is the art of goodness and justice. In line with that, it is necessary to quote an interesting adage put forward by Cicero⁴³ namely, “*summum ius summa iniuria*” -which means, law enforcement fully leads to the greatest injustice. In other words, strict enforcement of provisions in the law creates injustice.

In addition, the judge’s decision above is seen as having monumental value because the sentencing is based on considerations of humanity and justice for elderly criminals.⁴⁴ This aligns with the modern conception of punishment, where punishment and sentencing are oriented towards respecting human dignity and are humanistic⁴⁵. In this regard, Rupert Cross⁴⁶ emphasized: “*A change in the penal system can properly be described as an endeavor to achieve penal reform if it is aimed directly or indirectly at the rehabilitation of the offender, or if its object is to avoid, suspend or reduce punishment on humanitarian grounds*”.

However, in certain cases, the judge’s conscience may become dulled due to encouragement or pressure from various extrajudicial powers, such as political pressure or influence. There are many judges’ decisions in criminal cases that are influenced by political pressure or

⁴² See Tamas Notari, *Summum Ius Summa Iniuria—Comments on the Historical Background of a Legal Maxim of Interpretation*, *Acta Juridica Hungarica*, Vol. 45 Issue 1-2 (2004), p. 301.

⁴³ See Tamas Notari, *Summum Ius Summa Iniuria—Comments on the Historical Background of a Legal Maxim of Interpretation*, *Acta Juridica Hungarica*, Vol. 45 Issue 1-2 (2004), p. 301.

⁴⁴ Ali Masyhar, Silaas Oghenemaro Emovwodo. *Techno-Prevention in Counterterrorism: Between Countering Crime and Human Rights Protection*. (*Journal of Human Rights, Culture, and Legal System*; 3(3): 625-655

⁴⁵ See Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KHP Baru*, Kencana Prenada Media Group, 2014, hlm.

⁴⁶ Rupert Cross, *Punishment, Prison and The Public: An Assessment of Penal Reform* in Twentieth Century England by *an Armchair Penologist*, London: Stevens & Sons, 1971, pp.46.

other extrajudicial powers.⁴⁷ However, what needs to be explained in this article is one of the most tragic criminal cases that ever occurred in the history of criminal justice in Indonesia, namely the decision of the Palu District Court No. 459/PID.B/2000/PN.Pl. April 5, 2001,⁴⁸ on the imposition of death sentences for Fabianus Tibo, Doweeks da Silva, and Marinus Riwu (hereinafter referred to as Tibo cs). The three convicts were accused of committing the crime of premeditated murder (moord), intentionally causing a fire and assault which was carried out together continuously, following the first indictment [340 Criminal Code in conjunction with Article 55 paragraph (1) 1st Criminal Code in conjunction with Article 64 paragraph (1) Criminal Code], the second indictment [Article 187 of the Criminal Code in conjunction with Article 55 paragraph (1) 1st of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code] and the third indictment [Article 351 of the Criminal Code in conjunction with Article 55 paragraph (1) of the 1st Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code].

⁴⁷ One of the judges' decisions that was allegedly influenced by mass pressure was the Decision of the Panel of Judges at the North Jakarta District Court Number: 1537/Pid. B/2016/PN. Utr. In this case, the defendant Ahok (Governor of the Special Capital Region of Jakarta, Indonesia) was charged with violating the provisions of Article 156a of the Criminal Code on Blasphemy of Religion or Article 156 of the Criminal Code regarding expressions of feelings of hostility, hatred or contempt for one or several groups of people. Furthermore, in their decision, the Panel of Judges decided that Ahok was found guilty of violating the provisions of Article 156 of the Criminal Code for his statement regarding Surat Al-Maidah, Paragraph 51 and was sentenced to two years in prison. However, there are allegations that the judge's decision in the Ahok case was influenced by the strong mass pressure, during which, during the trial, a group of people held a demonstration at the court demanding that Ahok be imprisoned on charges of blasphemy. This was briefly described in an article written by Dian Andriyanto entitled: "The Long Way to Ahok's Verdict (3), Controversy of Charges and Sentences, (Editor) [<https://nasional.tempo.co/read/873591/jalan-panjang-vonis-ahok-3-kontroversi-tuntutan-dan-vonis>].

⁴⁸ The decision of the Palu District Court was corroborated by the Decision of the Central Sulawesi High Court in Palu Number 19/Pid/2001/PT dated 17 May 2001 in conjunction with the Decision of the Supreme Court of the Republic of Indonesia Number 1225.K./Pid./2001 dated 11 October 2001 and in the Decision of the Judicial Review of the Supreme Court of the Republic of Indonesia Number 72/PK/Pid./2002 dated 31 March 2004.

In the death penalty case for Fabianus Tibo cs as described above, it is clearly illustrated that a judge's conscience can be shaken due to the influence of extra-judicial factors in the form of mass pressure and political interests. Eight arguments support this allegation as described below.⁴⁹

“(1) During the trial of the Tibo cs case, the atmosphere at the Palu District Court was not very conducive, because there were community groups holding demonstrations outside the courtroom to order Tibo cs to be sentenced to death. (2) There is an impression that the legal process against Tibo cs was forced to be tried quickly. (3) Based on the news in the media, there were 16 people suspected of being the masterminds behind the Poso riot, but the law did not touch them. (4) There is new evidence (novum) that indicates that Tibo cs was not the mastermind behind the Poso riot. (5) The Poso riot case was terrible, no less than 200 people died, but the mastermind behind this case was only Tibo cs. (6) The Poso riots occurred three times (1998-2000), but it doesn't make sense; the three people involved in the Poso case Volume III, who incidentally were not involved in the Poso cases I and II, were legally processed. (7) The plan to execute Tibo cs by the Attorney General of R.I. was carried out in haste without waiting for Clemency II by the President of the Republic of Indonesia. According to the provisions in UU RI No. 22 of 2002 on Clemency, for certain types of crimes (including those carrying the death penalty), a second pardon can be applied after two years have passed since the first pardon was granted. (8) The Poso riots were full of “SARA” content, politics, corruption, and power struggles between several groups that were facing each other. Still, those who were processed legally (death penalty) were members of one of the groups in society that did not have access to power.”

Based on the description above, it can be inferred that a judge may experience a deviance of conscience or have their conscience

⁴⁹ See Antonius Sudirman. *Eksistensi Hukum Dan Hukum Pidana Dalam Dinamika Sosial: Suatu Kajian Teori dan Praktik di Indonesia*. Semarang: BP UNDIP. 2009. p. 236-238.

become dulled if they are faced with tremendous pressure from the masses, political pressure, and/or power. The question is, what are the implications if the judge's conscience becomes dull? The implication is that a judge's decision will be made that does not align with the values of justice that are upheld in society. The decision is likely to cause resistance from the community, as the sentence imposed was deemed too lenient and disproportionate to the crime. The various impacts caused by this decision are (1) The loss of public trust in the judiciary. People will tend to take the law into their own hands (*Eigen Richting*) against each other.⁵⁰ The emergence of Street Courts or mass trials of criminals. (2) People will be apathetic to the law enforcement process. In this case, community members often hesitate to report suspected criminal activity to law enforcement officials. (3) People should not be deterred from committing crimes or repeating crimes (recidivism). Thus, it will thrive on crime in society.

The judge, in his capacity as a law enforcer, should not be affected by various kinds of pressure from external parties. In this case, his conscience assists him in exercising his intellectual authority as a judge. There is a correlation between reason/mind awareness and conscience awareness. Conscience often precedes giving consideration long before the awareness of reason exists/reveals itself. This awareness of the conscience of judges encourages them to seek innovations in legal interpretation that, in principle, are pragmatic and concrete, rather than merely normative or rigidly legalistic. In this regard, it is interesting to quote the opinion of Antonius Sudirman, who emphasized:

“...to re-enforce the law that has been violated, the judge may not be bound by the words of the law alone (let’terknechten der wet), but must be able to create his law through his decisions, which are commonly called judge-made law (laws made by judges).”⁵¹

⁵⁰ Hart, H.L.A. *The Concept of Law*, translated by M. Khozim, Cet. ke-4, Penerbit Nusa Media, 2011, p.152.

⁵¹ Antonius Sudirman, *Ibid.* p. 58.

The statement shows that in carrying out his function as a lawmaker⁵² or creator of law (Law creator),⁵³ a judge has the authority to translate and/or interpret the written “words of the law” for the sake of justice and truth. However, in the context of criminal law, the interpretation of statutory provisions must be carried out carefully because it is related to the principle of legality (*Legaliteit Beginsel or Principle of Legality*).⁵⁴ The principle of legality is one of the fundamental principles of criminal law. The principle of legality was introduced by *Paul Johann Anselm von Feuerbach*, a 19th-century German criminal law expert (1775-1833), in his book “*Lehrbuch des Peinlichen Rechts*” (1801). Related to his theory in the form of teaching psychological coercion (“*vom psychologischen zwang*” or “*de leer van de psychologische dwang*”). This principle is written in Latin: “*Nullum delictum nulla poena sine praevia lege poenali*”, which means: *there is no delict, and there is no crime without prior criminal provisions being held. Furthermore, in Indonesian Criminal Law, this principle is stated in Article 1, paragraph (1) KUHP: “An act cannot be punished unless it is based on the strength of existing criminal law provisions. By these provisions, four critical things need attention: (1) Criminal Law based on written legislation (nullum crimen sine lege scripta). In a sense, prohibited actions are stated in advance in laws made by the legislature. (2) Criminalization of human behavior through rules that are specific and as clear as possible so that they are not interpreted differently*

⁵² See Sudikno Mertokusumo, 2000, *Penemuan Hukum*, Yogyakarta: Liberty, p. 37. “That the formation of law through court decisions can contain two elements, namely, as a means of solving a problem concretely and as a legal regulation for the future.”

⁵³ See opinion John P. Dawson as described in the book written by Harold J. Berman, *Talks on American Law*, translated by Gregory Churcill, Cet. 1, Jakarta, PT. Tata Nusa Indonesia, 1996. “For us, it is inevitable that judges take a role in creating law, creating while implementing it. We believe that in any legal system, judges, in deciding cases before them, always adapt legal doctrine to new situations and thereby give new meaning to that legal doctrine.

⁵⁴ Douglas N. Husak and Craig A. Callender, *Ibid.*; Shahram Dana, *Beyond Retroactivity To Realizing Justice: A Theory On The Principle Of Legality In International Criminal Law Sentencing*, *The Journal Of Criminal Law & Criminology*, Northwestern University, School of Law, Printed in U.S.A, Vol. 99, No. 4, 2009, p. 857-927.

(*nullum crimen sine lege stricta*). (3) Criminal Provisions may not apply retroactively (*nullum crimen sine praevia lege*). (4) It is forbidden to apply criminal rules by analogy.⁵⁵ This is based on the principle of legality, which aims to protect individual independence and privacy from the arbitrariness of authorities or the government. In this case, the authorities, including judges, may not act arbitrarily, including convicting someone without existing criminal rules.

Even so, judges are always encouraged to uphold the law, not according to what is written in the law, but according to the nature of the law, namely, for the realization of justice. In this regard, Douglas N. Husak and Craig A. Callender,⁵⁶ emphasized that: Fidelity to the law cannot be construed merely as fidelity to statutory law but must be understood as fidelity to the principle of justice that underlies statutory law. However, for this purpose, judges may not depart from the fundamental principles of upholding the rule of law without intervention from any party. Satjipto Rahardjo,⁵⁷ a progressive legal adherent emphasized that executing the law is not only according to the black-and-white words of the regulations (according to the letter), but according to the spirit and more profound meaning (to the very meaning) of the law, or law, that law enforcement is not only with intellectual intelligence but with spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, and commitment to the well-being of the nation, accompanied by the courage to find alternative ways to achieve justice, rather than the usual methods.

⁵⁵ Edy O.S. Hiariej, *Prinsip-prinsip Hukum Pidana*, Edisi Revisi, Cahaya Atma Pustaka, Yogyakarta, 2003., p. 92-93. Hiariej said, if we rely on the principle of legality, with one of the meanings contained therein, “*nullum crimen, noela poena sine lege stricta*”, then implicitly, the application of analogies. The prohibition of using analogies is formulated in the adage: “*ein palladium der burgerlichen freiheit or lagalantie essentielle de la liberte*”. And most countries in mainland Europe still prohibit the use of analogies in applying criminal law.

⁵⁶ Douglas N. Husak and Craig A. Callender, “Wilful Ignorance, Knowledge, And the “Equal Culpability” Thesis: A Study of The Deeper Significance of The Principle of Legality in Thomas Morawetz (Ed.), *Criminal Law*, Ashgate Publishing Comp. Burlington, USA, 2000, p. 203. And 207.

⁵⁷ *Ibid*, p. xii-xiii.

In this context, it is necessary to quote Roscoe Pound's affirmative opinion:

*The law, in its procedural as well as substantive aspects, is essentially made and administered by persons, whose views and interpretations are buffeted by the winds of change through the year, so that it has become a truism that the quality of justice depends more on the quality of the (persons) who administer the law than on the content of law they administer.*⁵⁸

The quality of judges determines the quality of court decisions. In other words, the ability of a judge to decide cases in court, especially in criminal justice, is presumed to be a determining factor in upholding justice and truth. Here, a judge is confronted with his own "law of conscience". The law of conscience often comes into concrete contact with moral norms, or called "Moral Law" in popular terminology. In other words, if in a court case decision, there is an injustice made by a judge, then immediately the judge has entered himself into his own "trial of conscience". Whether you like it or not, that conscience will continue to call someone to return to their ethical awareness. Humans, even judges, cannot avoid the "trial of their consciences" because the nature of conscience is transcendent and absolute and requires direct accountability.

It can be argued that the highest law in the context of a judge's decision, in principle, is the moral law (moral responsibility), which manifests itself in the form of an "awareness" of conscience, which is binding. This means that a judge cannot simply decide whether a case is right or wrong and what the sanctions are because he is a human being whose level of awareness of his conscience presumably "must" be high, deeper support, and or balance aspects of his understanding of the legalistic elements of the law. In deciding cases, the experience of moral responsibility becomes the basis for forming awareness, becomes a measure of deep understanding, and all dimensions of a judge's life

⁵⁸ Henry J. Abraham, 1993, *The Judicial Process*, Sixth Edition, New York: Oxford University Press, p.3.

experience are metaphysically centered on his conscience, leading to faith in God.

So, a judge can find perfection in carrying out his judicial duties and responsibilities properly, not bound by rigid formal legal provisions, free from the role of anyone, if he is aware of the support of intellectual authority, morality, and a sincere conscience. However, judges must be ready to accept all risks from every decision, including decisions in criminal cases, which they do objectively and proportionally to ensure a sense of justice in society. Following the adage in the law “Fiat Justitia Pereat Mundus” (“Justice Must Be Done, Even If The World Is Destroyed Because of It”).

Conclusion

Based on the description above, it can be concluded as follows. First, a person who pursues the profession of a judge must have personal integrity that is beyond reproach, be honest, fair, and professional, and this must be measured by the ability to use his sincere conscience to achieve legal certainty (Rechtzekerkeit), benefit (zweckmassigkeit) and a sense of justice (gerechtigkei). These various aspects are accounted for before or after a court decision. Judges who have a sincere conscience always decide cases by prioritizing legal principles and the value of justice that lives in society.

Second, in the context of criminal justice in Indonesia, the role of a judge's conscience in making decisions is something absolute (*conditio sine quanon*) to be carried out to realize true truth and justice. Meanwhile, on the other hand, these efforts faced various challenges and obstacles, namely, interference from extra-judicial powers that influenced the judge's decision. The various things referred to are political pressure or power, and the parties to the litigation. This causes the emergence of various kinds of judges' decisions that do not follow the principles of law and the value of justice in society and resulting in the emergence of resistance and uproar in society.

To form a judge's personality with a sincere conscience is not an easy job, turning the palm of one's hand, but it requires a long process involving various components of the nation. For this reason, through

this article, it is necessary to outline several important recommendations so that they can be followed up on in the future.

First, the whole family must be responsible for giving birth to judges with a sincere conscience, because the family is the cell of society. A good family will produce good citizens, law enforcement officers, and judges, and vice versa, if the family experiences an identity crisis. Accordingly, it is expected that parents can guide and educate their children well. For example, parents teach their children the importance of a simple life, honesty, commitment, discipline, and responsibility.

Second, optimizing the role of the judicial commission in the form of financial and policy support so that the institution can recruit and monitor judges' behavior in a professional, transparent, and free of collusion and nepotism manner.

Third, there is the need for imposing severe sanctions against judges who commit violations and or abuse of judicial power. Sanctions given must be maximal, ranging from sentencing, revocation of rights, and deactivation from duties and positions to life imprisonment which is adjusted to the quality and impact of the judge's actions in abusing authority and legal justice, because law enforcement is a determinant of state administration and determinant of respect for human rights, is the last bastion for the governance of national and state life. The judge is a symbol of the highest standard of morality in guaranteeing a sense of human justice.

Fourth, there is a need to reorganize the mechanism and/or process for court decisions that are more transparent and open to access by the public and the mass media. In the judicial process, it is necessary to increase technical efforts (protocol) to prevent various potential roles for the conscience of judges in handling cases.

Fifth, in addition, it is necessary to strengthen the coordination function between law enforcement officials (police, prosecutors, lawyers, judges, clerks) in every judicial process, starting from the level of investigation, prosecution, and court trials up to the issuance of decisions and implementation of court decisions.

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