

# The Basis of Judges' Authority in Adjudicating Criminal Cases in the Perspective of Judicial Power in Indonesia

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## Abstract

The writing is entitled: The Basis of Judges' Authority in Adjudicating Criminal Cases in the Perspective of Judicial Power in Indonesia. This writing examines the basis of judges' authority to adjudicate criminal cases by comparing between the provisions of Law No. 8 of 1981 on Criminal Procedure Law (based hereinafter referred to as Criminal Code Procedures) with the provisions of Law Number 48 of 2009 on Judicial Power (hereinafter referred to as the Judicial Power Law) based on legislation approach and case approach. The results of this paper show that the basis of judges' authority to adjudicate the criminal cases in the perspective of judicial power is based on the presence of justice and judicial power in the framework of law and justice enforcement.

**Keywords:** Basis of Judges' Authority, Adjudicating Criminal Cases, Judicial Power

## 1. Introduction

### 1.1 Background

Indonesia is a constitutional state. One of the forms of state power as the consequence of the state law is the presence of judicial power. Judicial power is regulated in the constitution of the State namely the 1945 Constitution of the State of the Republic of Indonesia of Amendment (hereinafter referred to as the 1945 Constitution). Article 24 paragraph (1) of the 1945 Constitution states that: *judicial power is an independent power to administer the judiciary to enforce the law and justice*. Judicial power has the function of administering justice. The regulation of the authority of judicial administration is the regulation basis of the authority to adjudicate cases regulated in Law Number 48 of 2009 regarding Judicial Power (hereinafter referred to as the Judicial Power Law). Article 1 of the Judicial Power Law reinforces judicial power as an independent state power to administer justice to uphold law and justice.

In various Indonesian laws relating to judicial power, the judge as a judicial power is always personified by the process or institution of the judiciary, whereas the judicial power in judicial proceedings to adjudicate cases in real cases lie with the judge. For example, in Article 25 (2) of the Judicial Power Law, the general court as referred to in paragraph (1) is authorized to examine, adjudicate, and decide criminal and civil cases in

accordance with the provisions of legislation. Also, in Article 50 of the General Courts Act states that the District Court has the duty and authority to adjudicate, decide upon and settle criminal and civil cases at the first instance. The presence of that which encourages the emergence of the Draft Law on the Position of Judges as a proposal from the House of Representatives which seeks to position of the Justice Court clearly as a judicial power who has the authority to judge in real terms.

The basis of judges' authority to adjudicate cases is the source of law which provides the basis for the judges' power to resolve the case submitted to them. The arrangement basis of the judges' authority to adjudicate cases is within the scope of judges' authority and different judicial institutions adapted to the types of cases which one of them is a criminal case. The arrangement basis of the court jurisdiction is the rule of law on the basis, procedure, and limits of the judges' authority to resolve criminal cases within the scope of the general judiciary.

The arrangement basis of judges' authority in adjudicating criminal cases in Indonesia is in Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as Criminal Code Procedures). Article 1 of the Criminal Code Procedure has declared that: *adjudicating is a series of judicial actions to receive, examine and decide criminal cases on the basis of free, fair and impartial principles in court in respect of and in accordance with the manner regulated in this law*. The presence of Article 1 to 9 of Criminal Code Procedure is a restriction that the basis of the judges' authority to adjudicate criminal cases only in terms and in the manner set forth in this Act or under the Criminal Code. The sense of adjudication as contained in the Criminal Code Procedure is an understanding of the basis of the judges' authority to adjudicate criminal cases in Indonesia. The sense of adjudication in the Criminal Code Procedure is not elaborated in the article or in any further articles, whereas the explanation of the Criminal Code Procedure is only stipulated that the article is sufficiently clear.

There is a redactional difference between the Criminal Code Procedure and the Judicial Power Law including the word of adjudicating. In Criminal Code Procedure, then the word "adjudicating" placed as a series of actions of judges to receive, examine, and decide upon, whereas in the Law of Judicial Power then the word "adjudicating" placed parallel with the actions of other judges that examine, adjudicate, and decide a case without any further explanation about the law rationality.

The arrangement basis of the judges' authority to adjudicate criminal cases as contained in the Criminal Code Procedure has problems that become legal issues in this writing. The issues are that the provisions of the Criminal Code Procedure are often not implemented by judges. The judges in adjudicating criminal cases are not always in matters and the manner stipulated in the Criminal Code Procedure as it turns out that the judges in the judgment also uses other legislation and often also makes legal discovery against the provisions of the Criminal Code Procedure by basing its authority on the independent judicial authority based on the Judicial Power Law.

The presence of differences in the arrangement basis of the judges' authority to adjudicate the cases between the provisions of the Criminal Code Procedure and the Judicial Power Law is related to the fact that the judges adjudicate criminal cases not always based on the Criminal Code Procedure is a distinction which is not only limited to technical matters but the most fundamental is the difference in understanding the nature of Article 1 Paragraph (3) of the 1945 Constitution which states: *The State of Indonesia is a state of law*. Harahap (2007) argues both in terms of jurisprudence doctrine, jurisprudence discipline, and judicial practice so that law enforcement officers are given the authority to conduct *descretion* through the form of *power of interpretation*.

The difference is important when it comes to the understanding that the Law of Judicial Power is the rule of law for the basis of the judges' authority in general or in comprehensive matters so that the legal nature is wider, while the Criminal Code Procedure is the legal rule for the basis of the judges' authority in particular or in partial cases, in this case, it is only for criminal cases so that the legal essence is narrower, that is based on Criminal Code Procedure only.

The differences in understanding the nature of law as the basis of judges' authority in adjudicating criminal cases becomes a legal issue in writing in so that within the scope of understanding the basic nature of the judges' authority to adjudicate criminal cases, it is important to conduct research to discuss about the issues. This writing is a legal research by comparing the provisions of the Criminal Code Procedure and the provisions of the Judicial Power Law based on legislation approach and cases to analyze the legal issues. The presence of this writing has a purpose to obtain clarity on the basis of the judges' authority to adjudicate criminal cases in the perspective of judicial power in Indonesia. Marzuki (2015) provides examples of legal issue research, research within the scope of freedom of judges by studying the views of legism and seeking views against the view with reference to jurisprudence and understanding of philosophical theories and thoughts about the position of judges in the implementation of law.

## 1.2 Research Problems

What is the basis of the judges' authority to adjudicate criminal cases in the perspective of judicial power in Indonesia?

## 2. The Basis of Judges' Authority in Adjudicating Criminal Case Based on Judicial Power Perspective in Indonesia

### 2.1 The Basis of Judges' Authority in Adjudicating Criminal Cases in Legislation

The basis of the judges' authority to adjudicate cases can be understood in the perspective of judicial power. The perspective of judicial power is always related to the independence of judicial authority which concerns on the judges' freedom in terms of an entire side both on the personal judges and the duties of judges in adjudicating. Philip Kurland as cited by David W. Neubauer states: *The provision for the independence of the judiciary was not created for the benefit of the judges, but for the benefit of the judged.* The statement illustrates that the question of judicial power independence is the essence of the basis of judges' authority that should be maintained. The independence of judicial authority is not only a matter of personal judges but also of judges' decisions within the scope of jurisdiction which must be regulated in the legal provisions of a country (Neubauer, 1991).

Understanding in the perspective of judicial power means that it must also interpret the meaning and function of judicial power. The term and understanding of the judicial authorities in Indonesia can be traced to the various provisions of the existing law. Legal provisions on judicial power in Indonesia can be found in the constitution as well as several laws. The provisions on judicial power include the following:

- (iv) Article 24 of the 1945 Constitution: *Judicial power is exercised by a Supreme Court and other judicial bodies accordingly Constitution.*
- (v) In the section of weighing Law Number 19 of 1964 on the Provisions Basis of Judicial Power: *To implement the provisions of Article 24 of the Constitution, it needs to set the basic provisions concerning the judicial authority in accordance with Pancasila as the basis of the State, the instrument of the Revolution and the Political Manifesto of the Republic of Indonesia as the State Policy ...*
- (vi) In the section of weighing Law Number 14 of 1970 on the Basic Provisions of Judicial Power: *Law 19 of 1964 on the Basic Provisions of Judicial Power (Statute Book of 1964 No. 107) is not a pure exercise and article 24 of the 1945 Constitution, because it contains provisions that are contrary to the 1945 Constitution and in Article 1 of Law Number 14 of 1970 on the Provisions Basis of Judicial Power: *Judicial Power is the power of an independent state to organize Justice.**
- (vii) Article 24 of the 1945 Constitution Amendment: *Judicial Power is an independent power to administer the judiciary to enforce law and justice (the third amendment).* Sulaiman (2017) based on the Amendment of the 1945 Constitution has described the journey of Judicial Power Discussion in Amendment to the 1945 Constitution so that it invites the Understanding of Judicial Power as in the 1945 Constitution that is known today. King Faisal Solomon divides his discussion treatise on several stages namely:
  - (1) In the discussion at the Ad Hoc III Committee (PAH III) on 7-13 October 1999, the discussion of Judicial Power Chapter was agreed to be continued after the General Assembly of the People's Consultative Assembly of the Republic of Indonesia in 1999, where the formulation work of the amendment of the 1945 Constitution was reported at the People's Consultative Assembly Working Body (BP) factions in the People's Consultative Assembly in the presentation of the general scene at the Plenary Session of the People's Consultative Assembly General Assembly from 14-21 October 1999. General Session in 1999 resulted in the first amendment at the same time recommending the 1945 People's Consultative Assembly to continue and set up a second amendment of the 1945 Constitution.
  - (2) In the decision of the second amendment of the 1945 Constitution, the annual session of People's Consultative Assembly of the Republic of Indonesia (MPR RI) has decided on People's Consultative Assembly Decree Number IX/MPR/2000 concerning Assignment of People's Consultative Assembly Working Body (BP MPR) to prepare the amendment draft to the 1945 Constitution which its design material is related to the Chapter of Judicial Power.
  - (3) The final result of the amendment of Chapter IX Judicial Power as we know it today has been set.
  - (4) Discussion in PAH III People's Consultative Assembly Working Body (BP MPR) of the existing draft results is reported to People's Consultative Assembly Working Body (BP MPR) through the decision of the Plenary Meeting of People's Consultative Assembly Working Body (BP MPR) then the draft is

- submitted and to the People's Consultative Assembly Plenary Session forming Commission C of the Assembly to discuss it with the results reported to the plenary session of the Assembly to be decided by acclamation. At the time of the amendment, a team of Experts has also been formed who accompany the PAH I People's Consultative Assembly Working Body (BP MPR). The amendments to the articles on judicial power resulting from the third amendment of 2001 and the fourth amendment of 2002 finally could be completed.
- (viii) In the section of weighing Law Number 35 of 1999 on Amendment to Law Number 14 of 1970 about Provisions Basis of Judicial Power: *Judicial power is an independent power and therefore to realize an independent judiciary power and regardless of the power of the Government, it is deemed necessary to carry out a strict separation between the judicial functions of the executive, organizing, administering, and financial arrangements of bodies courts located in each Department.*
- (ix) In the section of weighing Law Number 4 of 2004 Concerning Judicial Power: *Judicial Power under the 1945 Constitution of the Republic of Indonesia is an independent power by a Supreme Court and a subordinate court, and by a Constitutional Court, to organize the judiciary to enforce law and justice ...* and in Article 1 of Law Number 4 of 2004 Concerning Judicial Power: *Judicial power is the power of an independent state to administer the judiciary to enforce law and justice pursuant to Pancasila for the sake of implementation of the State of the Republic of Indonesia.*
- (x) In the section of weighing Law Number 48 of 2009 on Judicial Power: *Judicial power under the 1945 Constitution of the State of the Republic of Indonesia constitutes an independent power by a Supreme Court and a judicial body under it* and in Article 1 to 1 Law Number 48 of 2009 on Judicial Power: *In this law, the meaning of Judicial Power is the power of an independent state to administer the judiciary to enforce law and justice pursuant to Pancasila and the Constitution of the State of the Republic of Indonesia of 1945, for the implementation of the State Law of the Republic of Indonesia.*

Based on the aforementioned provision, the perspective of judicial power is the viewpoint of the judges' authority in carrying out its duties and functions to administer the judiciary. The perspective of judicial power has existed since the independence period in Indonesia and is still continuously updated and enforced to nowadays. The perspective of judicial power has a philosophical, theoretical, and juridical basis of law which is binding on the judges in Indonesia in carrying out its duties and functions largely.

The authority of the judges to adjudicate criminal cases is approached through an understanding of the nature of the authority owned by judges to adjudicate cases, especially regarding its validity. The validity basis of judges authority to adjudicate criminal cases shall be determined whether they are sourced and by law only or sourced and by law in a broad sense. Bernard Lonergan concerning it has developed Max Weber's classic view of authority from the legitimacy point of view of the law. Max Weber's view of power is political legitimacy which in the West is often referred to as the dominance of the law. The dominance of the law is the power that is based on the authority of the law rule. The dominance of the law comes from the formal legal rationality which is seen as a complement of charismatic and traditional domination. Bernard Lonergan in Cotterell (2012) writes that: *Authority is legitimate power. Power is carried out by any community, since the source of power is cooperation. There is cooperation down the ages: power today results from all the achievements of the past that have been accumulated, developed, integrated. There is also cooperation here and so: the group can do so much more efficient than the isolated group. Again, groups can themselves be grouped again and again, and, with each reapplication that results in an organic whole, power is multiplied.*

Bernard Lonergan has formulated the authority from the point of view of dialectics which become the principle and foundation of that power. Bernard Lonergan holds that dialectically the meaning of authority is essentially legitimate authority (*authority is legitimate power*) (Sugiono and Husni, 2000). Sudarmo and Sudarsono (2013) share the same view with Bernard Lonergan on that subject. Sudarsono argues that authority is defined as a legitimate power then the question is about the validity on whether legislation is valid in accordance with legislation regulation or valid in accordance with law. There are two opinions about the validity: the first opinion is that the legitimate power is the power coming from the legislation (the law in the narrow sense) and the second opinion is that the legitimate power is the power that comes from the rules of law and/or the the general principles of good governance (law in the broad sense).

The perspective of judicial power is a very important judicial point of view, especially in relation to the basis of judges' authority in criminal cases. The perspective of judicial power is used to assess judges' judgment in adjudicating criminal cases which are fully contained in a decision. In this research, the judicial point of view will be related to the provisions of Article 1 to 9 of Criminal Code Procedure so that it can interpret the basic

nature of the judges authority to obtain a thorough and complete discussion on the existing legal issues.

Ma'arif (2016) holds that every legislation including a court decision must have juridical conformity, philosophical appropriateness, and sociological suitability. The definition of the concept is that juridical appropriateness means that it cannot contradict the higher level of legislation, philosophical conformity means conformity with the *rechtsidee* that grows and develops from the cultural value system of society, and the sociological suitability means the conformity with social society and society's tendency direction.

## 2.2 The Basis of Judges' Authority in Adjudicating Criminal Cases in Some Court Verdicts

The basis of the judges' authority to adjudicate criminal cases in some court decisions will be related to the provisions of Article 1 of the Criminal Code Procedure. Several judgment verdicts that exist in the judicial process there are not in accordance with the provisions of Criminal Code Procedure. The process of adjudication which is inconsistent with the provisions of the Criminal Code Procedure or breakthrough in criminal procedure law is a fact where the breakthrough in the criminal procedure law does not occur at all times but occurs in decisions that are so important that such Criminal Code Procedure breakthroughs are not merely complementary but something that is fundamental to determine the basis of the judges' authority to listen criminal cases, especially in the case of the discovery of the law in the form of interpretation and construction of the provisions of the criminal procedure law.

The basis of the judges authority to adjudicate a case is also based on several principles including the principle of *ius curia novit* (the judge is considered knowing the law) and the principle of *res judicata pro veritate habetur* (the judge's ruling is considered true before any other higher judge's verdict states otherwise). This principle contained in Article 10 paragraph (1) of the Law on Judicial Power states are prohibited from refusing to adjudicate a court case filed. The provision is in conformity with Article 22 of the General Regulations on Legislation for Indonesia or AB (*Algemene Bepalingen van Wetgeving voor Indonesie*) or *Staatsblaad* Number 23 dated April 30, 1847 which was enacted during the Dutch Colonial period when a judge refused to settle a case by the reason that the relevant law does not mention it, is unclear, or incomplete, then it can be prosecuted for refusing to adjudicate (Mertokusumo, 2007).

The provision and understanding of judicial power in Indonesia shows the presence of a reflection of the independence of judges in adjudicating cases. The presence of judicial power in the context of independence of powers and the freedom of judges to adjudicate cases is also a matter of principle but the limitation of judge's freedom in performing certain actions such as conducting legal discovery depending on the legal teachings held by a country. Mertokusumo (2007) argues that the term of legal discovery (*rechtsvinding*) is as an activity in legal practice such as the process of law formation by judges is more appropriately used than the law enforcement term (running law without dispute or violation), the implementation of law (implementing regulation) law on concrete events without law events), the formation of the law (formulation of generally accepted rules), and the creation of the law (impressed the law is not existent when the law is not always written) The teachings of law in general is the parliamentary sovereignty (*law made by parliament are supreme and cannot be questioned in the court*) which teaches judges to decide cases based only on the laws and the teachings of *judge made the law* that teach judges are free to apply the law in accordance with the development of society (Kamil, 2010).

The provisions of the Judicial Power Law, especially in Article 5 of the Judicial Power Law, have declared: *judges and constitutional judges shall explore, follow, and understand the legal values and sense of justice living in the community*. Whereas the provisions of the Criminal Code Procedure, especially in Article 1 of the Criminal Code Procedure (KUHAP), have stated: *to listen is a series of judicial actions to receive, examine and decide criminal cases on the basis of free, fair and impartial principles in court in respect of and in accordance with the law*. Several judges' decisions adjudicating criminal cases beyond the provisions of the Criminal Code Procedure are in large part in considering and taking note of the provisions of the Law on Judicial Power. In the Law on Judicial Power, there is a legal provision that explicitly recognizes the basis of the judges' authority in adjudicating criminal cases under the law in the broad sense of the legal values and sense of community justice and the discovery of the law. In addition, from a number of existing court rulings, the breakthrough provisions in the Criminal Code Procedure are actually conducted by the Supreme Court Justices of the Supreme Court of the Republic of Indonesia as the highest court in Indonesia by relying on the Law of Power Justice.

In this research, the researcher will relate it to 7 (seven) judges' decision in criminal cases which is not in accordance with the provisions of Article 1 of the Criminal Code Procedure, in which the researcher believes it is a *landmark decision* to understand the basis of the judges' authority to adjudicate criminal cases. Some judges'

rulings in adjudicating criminal cases that do not follow the provisions of the Criminal Code Procedure which are the most famous and the most relevant in this writing are:

- a. Decision on the permission of the Public Prosecutor to file an appeal against the verdict when the Criminal Code Procedure does not regulate it (Supreme Court Decision Number 275K/Pid/1983 on behalf of Defendant named R. Sonson Natalegawa).
- b. Decision on the permission of the Public Prosecutor to file a review of the decision on appeal even though the Criminal Code Procedure does not regulate it (Supreme Court Decision Number 55 PK/Pid/1996 on behalf of Defendant named Muchtar Pakpahan).
- c. Decision on the permission of the Public Prosecutor to file a review of the decision of the cassation even though the Criminal Code Procedure does not regulate it and the judge handed down the criminal in the decision of the judgment beyond the criminal sanction imposed in the original decision even though the Criminal Code Procedure prohibits it (Supreme Court Decision Number 109 PK/Pid/2007 on behalf of Defendant named Pollycarpus Budihari Priyanto).
- d. Decision on the allowance of the surviving defendant but not present in the hearing files a request for review by being represented by his family or heir even though the Criminal Code Procedure does not regulate it (Supreme Court Decision Number 97 PK/Pid.Sus/2012 on behalf of Defendant named Sudjiono Timan).
- e. Decision that punishes a corporation to pay a tax penalty when the corporation is not charged as a defendant in the case whereas the Criminal Code Procedure decides to be based on the indictment of the public prosecutor (Supreme Court Decision Number 2239K/Pid.Sus/2012 on behalf of Defendant named Suwir Laut aka Liu Che Sui aka Atak).
- f. Decision on the determination of a suspect as a pre-trial object not regulated in Criminal Code Procedure (South Jakarta District Court Decision Number 38/Pid.Prap/2012/PN.Jkt.Sel on behalf of the Petitioner named Bachtiar Abdul Fatah).
- g. Decision on the determination of a suspect as a pre-trial object not regulated in Criminal Code Procedure (Decision of South Jakarta District Court Number 04/Pid.Prap/2015/PN.Jkt.Sel. on behalf of Petitioner named Budi Gunawan).

In some of the decisions, the judge considers that the judge's authority to disobey the provisions of the Criminal Code Procedure is based on judicial power. Judicial power authorizes the judges in making legal discovery either in the form of interpretation or legal construction of the provisions of the Criminal Code Procedure with the aim of realizing law enforcement and justice.

### *2.3 The Basis of Judges' Authority in Adjudicating Criminal Cases which are Not in Accordance with Criminal Code Procedure Based on Judicial Power Perspective*

Understanding the implementation of the Criminal Code Procedure is based on the perspective of judicial power, especially by connecting the provisions of Article 1 to 9 of the Criminal Code Procedure with the Law of Judicial Power through the approach of legislation and case approach. The legislative approach that will be used herein is an approach that relates to the intent of the Criminal Code Procedure or legal considerations by the legislator in the sense of conducting an analysis of the legal rationale of the legislator which is the basis of a law or rule in the law so that the statutory approach - the legislation that will be used is related to the intent of the lawmakers in formulating Article 1 to 9 of the Criminal Code Procedure. A case approach is a legal consideration by a judge in the sense of analyzing the legal rationale of the judge on which a judgment is based. The approach to the Criminal Code Procedure with a case approach is to gain a full understanding of the existing formulation by considering the breadth and depth of its legal source which will always be restored in the perspective of judicial power, so that the case approach that will be used herein is related to the purpose of the judge in his judgment in adjudicating the criminal cases. Marzuki (2015) views in legal research then there is a case approach in which researchers study the ratio decidendi or legal reasons used by judges. Ratio decidendi shows that the jurisprudence is a prescriptive science in which dictum court decision is something that is descriptive while ratio decidendi is prescriptive. The judge's actions give the reasons for creative action because it is not impossible that the legislative ratio is the choice of the various possibilities.

Based on the explanation of the Criminal Code Procedure establishment, the Presidential Regulation Number R.06/PU/IX/1979 dated 12 September 1979 regarding the Draft Law on Criminal Procedure Law (hereinafter referred to as the 1979 Criminal Code Law Draft) there is no thought to emphasize that the procedure of criminal

procedure law is directed only in terms and manner set out in the Criminal Code as a consequence of the principle of legality. Based on the Criminal Procedure, it can be seen that the Criminal Code Procedure is the elaboration of the Law on the Principles of Judicial Power. In discussing the draft of the Criminal Code of 1979, there is a consensus of the Criminal Code Procedure formers to include new provisions in the draft of Law on Crimes of 1979 which reveals the concept and understanding of justice. The concept and understanding of this adjudication limits the authority of judges to criminal prosecution resulting in a rigid and strict regulation of the authority of the judiciary by recalling the judicial authority is more free and independent than the authority of other law enforcement apparatuses of the police and prosecutors in criminal procedure law. The principle of legality and restriction of the authority of the existing judges is intended in order to maintain a balance between the state and the individual with an emphasis on the protection of human rights in the Criminal Code Procedure.

The consideration of the legislator based on the principle of legality is based on the presence of individual protection philosophy from the concept of certainty in the judgment so that the basis of the judges authority should be limited by written law (*lex scripta*), clear (*lex certa*), without analogy (*lex stricta*), and non retroactive (*lex praevia*) which is further manifested by the arrangement basis of the judges' authority in terms and manner provided for in Article 1 of the Criminal Code Procedure. The consideration of lawmakers in terms of legal theory is based on theoretical reasoning of the law that judicial power is a power which must be limited by the principle of legality in administering the judiciary to enforce the criminal procedure law contained in the Criminal Code Procedure so that judges only have the authority to apply clearly defined legal procedures in Criminal Code Procedure.

Legislative considerations embodied in Article 1 to 9 of the Criminal Code Procedure are often not exercised by judges in adjudicating criminal cases. The judges' consideration in adjudicating criminal cases is not entirely based on the Criminal Code Procedure is the authority of judges in adjudicating set in judicial power. Judicial power in Indonesia is based their philosophy of balance between the protection of individual and community protection that comes from the concept of balance in judging that the basic authority of the magistrate judge also should not be restricted by written law (*lex scripta*) which in turn is realized by setting the basis of the judges' authority to adjudicate a case based on the Judicial Power Law.

The authority of the judge to adjudicate criminal cases theoretically follows the Theory of Authority within the framework of the judicial power which teaches the source of law in adjudicating which is not only regulation but also law. The authority of the judge to adjudicate criminal cases is also based on the Legal Discovery Theory in the case of judges forming or creating law. Judge's consideration is based on the thought or consideration that judicial power is based on a realistic and non-legalistic epistemology which is seen as a perspective in understanding a written legal code (*lex scripta*) in a formal form of legislation in a broad sense including law. Judge considerations in terms of legal theory in adjudicating criminal cases are also based on thought or consideration in legal theory that judicial power is an independent power in administering justice to enforce law and justice so that judges not only have the authority to apply clearly defined legal procedures in Criminal Code Procedure.

The judges' authority in adjudicating criminal cases that are not based on the Criminal Code Procedure cannot be interpreted as legally as a judge in violation of procedural law because the judges authority based on the ruling is based largely on the Judicial Power Law. Based on the consideration of the Criminal Code Procedure, the Criminal Code Procedure is a law that is based on the Law on the Provisions Basis of Judicial Power. Based on the Legislation Theory especially Hans Kelsen's view of Stufenbau Theory, the judges' consideration is a legitimate consideration because based on the systematic, the 1945 Constitution has included the definition of judicial power as contained in the Judicial Power Law where the sense of adjudication is based on law. Manan (2004) explains there is a fact showing that there is no a rule of law that is always able to conform to the events of law or reality that exist so that it conforms. with one of the principles that the court should not refuse to examine, adjudicate, and decide a case by law rationality is absent or less obvious but obligatory to examine and adjudicate it.

Consideration of a judge in adjudicating a case is not always in the way and manner set forth in this law as well as provisions in the Criminal Code. The consideration of a judge in adjudicating criminal cases which is not based on the provisions of the Criminal Code Procedure is the affirmation of the justice principle and judicial authority in the framework of law enforcement and justice. Thus, the basis for regulating the authority of the judge to adjudicate cases in the criminal procedural perspective is narrower, that is only based on the law only, while the arrangement basis of the judicial authority to adjudicate the case in the perspective of judicial authority is broader, that is based on law and also the legal values and sense of existing justice in society. The basis of the judges' authority to adjudicate criminal cases in the perspective of judicial power is based on the presence of the

justice principle and judicial authority in the context of law and justice enforcement in accordance with the provisions of the 1945 Constitution and the Law of Judicial Power so that strict and rigid legal principles in the provisions of Criminal Code Procedure are not ruled out in the practice of the existing criminal justice.

### 3. Closing

#### 3.1 Conclusions

From the writing that has been conducted above, it is concluded that the basic arrangement of the judges' authority to adjudicate cases in the criminal procedural perspective is narrower, that is only based on the law only; while the arrangement basis of the judges' authority to adjudicate cases in the perspective of judicial power is broader, that is based on law and as well as the legal values and sense of justice existing in society so that the basis of the judges' authority to adjudicate criminal cases in the perspective of judicial power is based on the justice principle and judicial authority in the framework of law enforcement and justice.

#### 3.2 Suggestions

The judges in understanding the basis of the judges' authority in adjudicating criminal cases should have a good view and conviction that adjudicating criminal cases has a broad dimension within the framework of justice enforcement in accordance with the perspective of judicial power in Indonesia.

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