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The Nature of Judge's Belief in Criminal Case Verdict

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ABSTRACT
The judiciary is a state institution that has the main task to examine, hear, decide and resolve cases submitted by citizens. Dispute resolution through the judiciary will only run well, if all parties involved in it, both litigants and judges themselves follow the rules of the game honestly in accordance with existing regulations. Legal proof in a criminal case is a process to convince a judge of the truth of an event that is the basis of a claim or defense in an applicable law. The purpose of legal proof is to reach a verdict that is fair, true and in accordance with the facts and the law. That the judge may not impose a sentence on someone, unless he has two valid evidence, so that he obtains a conviction that a crime has actually occurred and the defendant is guilty of doing it. Therefore, legal proof requires an increase in the quality, professionalism and integrity of judges. The methods used are philosophical approach, conceptual approach and case approach. By looking at whether our procedural law is still relevant to the existing cases, then how to solve the problem with the views and doctrines that develop in the science of criminal procedure law. Legal proof in criminal cases is also closely related to the judge's belief, so the judge is obliged to apply the decision rationally, objectively, according to the juridical facts at trial and consider the value of justice, benefit and legal certainty for the justice-seeking community.
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A. Introduction

Humans are God's creations that have the power to exploit and explore the world. Humans are actors or subjects not tools or objects that have interests and demands that are expected to be carried out properly.[1] The rule of law protects human interests against dangers that threaten and also regulates relationships between humans. Law is an important tool in regulating people's lives, the law functions to separate what actions are prohibited and actions that are not prohibited.

The Unitary State of the Republic of Indonesia is a state based on law (rechtstaat) and not a state of power (machtstaat), so the position of the law must be placed above all. Every action must be in accordance with the rule of law without exception.[2] In connection with the conception of the rule of law, the true purpose of law is to provide legal certainty, legal justice and legal benefits for humans and society. Gustav Radbruch argues that the purpose of law is justice, certainty and expediency. Justice must have the first and most important position than legal certainty and legal expediency. All state activities in organizing government or in carrying out development must be based on legal provisions.[3]

The mouth of this criminal procedure law is punishment, punishment is carried out by one of the state institutions, namely the judiciary through a judicial mechanism held by judges. This judicial power has been enshrined in the 1945 Constitution of the Republic of Indonesia in the provisions of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that Judicial Power is an independent power to administer justice in order to uphold law and justice.

In law, especially criminal law, it is divided into material criminal law and formal criminal law or Criminal Procedure Law. Material criminal law contains the substance of criminal law itself, while formal criminal law or criminal procedure law contains the operational application of material law. Thus, formal criminal law is criminal law in a state of motion or execution or is in a process.[4]

According to van Bemmelen, the science of criminal procedure law has the aim of studying the rules created by the state, due to alleged violations of criminal laws. The judge in his authority and with his conviction decides whether or not the act committed by the defendant is proven, if he has at least 2 (two) valid evidence according to Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as KUHAP).[5]

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[1] Sudikno Mertokusumo.2012. Teori Hukum (Edisi Revisi). Yogyakarta: Cahaya Atma. p.13
[2] Jimly Asshiddiqie, 2006, Konstitusi dan Konstitusionalisme Indonesia, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, Jakarta, p. 69
[3] Musakkir, 2013. Putusan Hakim Yang Diskriminatif Dalam Perkara Pidana, Suatu Tinjauan Sosiologi Hukum dan Psikologi Hukum. Cetakan Pertama, Yogyakarta: Rangkang Education, p. 3.
[4] Andi Hamzah. 2008. Asas-Asas Hukum Pidana. Edisi Revisi. Jakarta: Rineka Cipta, p. 45
[5] NimerodiGulo, Cornelius DikaeZolohefona Gulo, Timbulnya Keyakinan Hakim Dalam hukum Pembuktian Perkara

The function of the rule of law is to protect human interests, both individually and in groups, so that humans who have legal interests are respected, obeyed, implemented and enforced. According to Sunaryati Hartono, law as a tool is a suggestion and step taken by the government to create a national legal system in order to achieve the ideals of the nation and state goals.

In addition, judges are one of the objects for the study of legal sociology, where many people feel worried and disappointed, but there are also those who have hopes for the judge's decision in a case. In general, this assumption is valid, at least there is a reason from the community, namely the almost loss of public confidence in the judiciary, due to the revelation of various cases of bribery involving court officials, especially judges.

Therefore, judges must consider juridical truth (law) and philosophical truth (justice) in deciding a case. Juridically normative, what has been carried out by judges in the Republic of Indonesia has become a discourse of discussion among the justice-seeking community, because it is no secret that the hope of the community is to seek justice. In fact, it is only legal certainty that is applied normatively. According to Achmad Ali, he expressed the opinion that in the world of justice, where the positivist view gave birth to the legis flow, where judges are seen as limited to the trumpet of the law. Meanwhile, legal certainty emphasizes that the law or regulation is enforced as desired by the sound of the law or regulation "Fiat Justitia Et Pereat Mundus - even though the world is collapsing, the law must be enforced".

The development of criminal procedure law in Indonesia from the past until now is inseparable from what is called proof. R. Subekti said that proof is the judge's belief about the truth of the arguments presented in a case. Furthermore, the Indonesian evidentiary system in the Criminal Procedure Code adheres to the wettelijk system as stipulated in the provisions of Article 183 of the Criminal Procedure Code which states "the judge may not impose a sentence on a person, unless with at least two valid means of evidence, he is convinced that a criminal offense has actually occurred and that the defendant is guilty of committing it". Evidence is not an effort to find the guilt of the perpetrator alone, but is the main goal to seek truth and material justice.

The enforcement of criminal law identifies the freedom of judges to provide the widest possible freedom to be able to see the value of truth in legal events, not otherwise used to carry out an act that has transactional value. In this case, judges are required to uphold law and justice, not win cases that are oriented towards economic, pragmatic values, so that they can distort moral, ethical values, the text of the law, deflect the value of truth, the logic of rationality based on reasoning on the principle of formal legality.

What often happens in practice, in the consideration of a decision, often happens that the judge's belief assessment occurs without really testing and linking that belief with the way and means of evidence revealed or various rational arguments that really become the basis for his belief.

Therefore, the consideration contained in the court decision is only a descriptive description without any argumentative reasoning and does not contain a conclusion of opinion which is a combination of evidence with the judge's belief in the criminal case that was decided, only stating something very unclear, ambiguous and vague in meaning. This is reflected in several criminal cases including the cases of Jessica Kumalla Wongso and Wayan Mirna Salihin, six child buskers who were victims of wrongful arrest by Polda Metro Jaya and Novel Baswedan.

The considerations made and determined by judges may be erroneous even though they have been done honestly, carefully and respectfully, but there is more to it than that. Based on the background description above, the author can provide the following problems:1. What is the philosophical basis for the judge's belief in the verdict of a criminal case? 2. How is the interpretation of judges in the evidentiary system of criminal cases in Indonesia?

B. Research Methods

The research uses normative juridical research methods. This research is normative or doctrinal legal research complemented by empirical data, which will examine and analyze the judge's belief in criminal case decisions. In normative legal research, only library materials or secondary data are studied, which includes primary legal materials, secondary legal materials and tertiary legal materials. Meanwhile, the analysis of the materials used in the research is carried out qualitatively and comprehensively.

C. Results and Discussion

1. Philosophical Basis of Judge's Conviction in Criminal Case Decision Making

The philosophical and legal basis for the judiciary as an independent institution is contained in Article 24 of the 1945 Constitution (hereinafter referred to as the 1945 Constitution), which states that "judicial power is an independent power to administer justice in order to uphold law and justice". This means that judicial power is an independent state power in order to uphold law and justice based on Pancasila and the 1945 Constitution, in

order to realize the rule of law of the Republic of Indonesia.

Therefore, judges as a central part of the basic human resources that organize the judiciary in Indonesia, in carrying out the main functions and functions of the judiciary are required to maintain the independence of the judiciary through the integrity of the freedom of judges to consider and decide cases as stipulated in the provisions of Article 39 paragraph (4) of Law No. 48 of 2009.[1]

Pancasila and the 1945 Constitution as the basic foundation of judicial institutions in upholding the law, so that the freedom of judges as a material object needs to be considered from the point of view of the philosophy of Pancasila.

In Law Number 48 of 2009 concerning Judicial Power, where the authority of judges in deciding a case includes three aspects, namely: a). Receiving reports that have been submitted to the judge, looking for information and evidence; b). examine, look carefully at the defendant's case file; c). decide, the sentence of a case that is being examined and tried by the judge. When exercising this authority, especially in adjudicating a judge's decision, it is the crown and culmination of the case being examined and tried by the judge.[2]

Therefore, of course the judge in making a decision must pay attention to all aspects of it, namely the accuracy of the indictment, the facts of the judge in the trial, the situation of the community in the trial. With the reasons for consideration as a court decision is the responsibility of the judge in carrying out his duties, to examine, hear and decide cases.[3]

In addition, the provisions of Article 183 of the Criminal Procedure Code emphasize that a judge in imposing punishment on the defendant must not impose the punishment, unless with at least two valid evidences, so that the judge is convinced that a criminal offense has actually occurred and the defendant is guilty of committing it. The explanation of the provisions of Article 183 KUHAP aims to ensure legal certainty for a person. In this case, the word at least two legal evidence means at least two pieces of evidence from legal evidence according to the Criminal Procedure Code, as stipulated in the provisions of Article 184 paragraph (1) of the Criminal Procedure Code regarding the legal evidence referred to are: 1). Witness testimony; 2). Letter testimony; 3). Clues; 4). Statement of the defendant; 5). Expert testimony.[4] In this case, it is also considered that the defendant's actions are against the formal law and fulfill the elements of the criminal offense committed. Likewise, the philosophical consideration of punishment is the guidance of criminals, so that after the convict leaves the Prison Institution, he will be able to improve himself and not commit crimes again. In sociological consideration, it means that the judge in imposing punishment is based on the social background of the defendant and considers that the punishment imposed has benefits for the community.[5]

Judges in carrying out judicial power have duties and authorities that they carry out. The duties and authority of judges in general are to accept, examine, hear, decide and resolve every case submitted to them. Judges in receiving cases are passive or wait until a case is submitted to them without seeking or pursuing the case. The judge's task does not stop until the verdict is rendered, but finishes until its implementation. In civil cases, judges must assist justice seekers and try to overcome all existing obstacles so as to achieve simple, fast and low cost justice.[6]

Judges as homo yuridicus in deciding a case are obliged to refer to and apply laws and regulations and other sources of law, because based on the provisions of article 2 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it states that the functions and state courts apply and uphold law and justice based on Pancasila, so that judges as officials holding judicial power have two functions, namely applying and upholding law and justice based on Pancasila.[7]

Judges in deciding a case have the nature of independence or independence from the intervention of any party, whether executive, legislative or public power (press). Independent judicial power guarantees the realization of an honest and fair trial, thus fulfilling legal certainty in society based on applicable law.[8]

In deciding a case, the judge must be preceded by the words "For the Sake of Justice Based on God Almighty" according to Antonius Sudirman. This means that in deciding a case a judge, apart from relying on the law, must not ignore the voice of his conscience in order to benefit himself, give satisfaction to the authorities, benefit the powerful (politically and economically) or for the sake of maintaining legal certainty alone.[9]

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[1] Pasal 39 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

[2] Rimdan, 2012, Kekuasaan Kehakiman, Jakarta: Prenada Media Grup, hal. 36.

[3] Bambang Waluyo, 2008, Pidana dan Pemidanaan, Jakarta: Sinar Grafika, p. 80

[4] Satjipto Rahardjo, 1998, Bunga Rampai Permasalahan dalam Sejarah Peradilan Pidana, Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum, p. 11.

[5] Sudarto, 1986, Kapita Selekta Hukum Pidana, Bandung: Alumni, p. 67.

[6] Lihat ketentuan pasal 2 ayat (4) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

[7] Sunarto, 2014, Peran Aktif Hakim Dalam Perkara Perdata, Jakarta: Prenada Media Grup, p. 61.

[8] Firman Floranta Adonara, 2015, Jurnal "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi, Vol. 12, No. 2, p. 230.

[9] Wildan Suyuthi Mustofa, 2013, Kode Etik Hakim, Semarang: Prenada Media Grup, p. 105.

In judicial practice in Indonesia, what judges will look for in criminal cases is to find a formal truth. This means that in searching and finding the judge must be bound by the formal evidence set out in the trial. This is in line with the principle of criminal procedure law, which states that judges are passive, where judges do not determine the scope or subject matter of the case submitted to them, but the litigants themselves determine. Meanwhile, in criminal cases, judges have the responsibility to form strong convictions before handing down a verdict.

The importance of a judge's conviction in carrying out their duties. This conviction becomes the foundation for the decisions made, so a deep understanding of the values of justice and law is very important. In this case, it can be explained that the judge's confidence includes not only an understanding of formal law, but also moral and ethical values that guide decisions.

In deciding a case, judges must have confidence based on evidentiary grounds accompanied by applicable legal rules. The evidentiary process in the Indonesian criminal justice system gives judges the freedom to draw and conclude their beliefs from existing evidence, but these beliefs must be based on a conclusive conclusion. The judge also has the belief that the defendant is guilty of committing a criminal offense based on the facts and evidence available.

In addition, judges must also interpret the law actually, dare to play a role in creating new laws or as law makers, dare to do contra legem, be able to play a role in judging casuistically and can act as a mouthpiece of law and justice that is beneficial to society. Thus, judges must carry out their duties with mental maturity that is harmonized with the norms prevailing in society.

In addition to juridical accountability, judges must also be accountable from an ethical aspect. The ethical aspect is related to the judge's obligation to maintain integrity, professionalism, and independence in carrying out their duties.

The judge in the trial process acts as a leader. Judges who are leaders in the trial process in the application of law for the sake of law must realize their responsibilities, so that they act and act not just to impose a decision, but all of their actions are always directed at realizing justice based on the almighty God. This is what the judge must realize in the court session which is also a realization of his responsibility as a case decider.[1]

In current legal developments, although formal truth is still used as a guideline in resolving criminal cases, theoretically there is a view that in applying formal truth there is no need to be too rigid. Basically, in criminal cases, judges are sufficiently based on formal truth. This material truth only appears, if there is a rebuttal from the opposing party. Actually in the examination of criminal cases there is no line between formal truth and material truth. The most important thing for the judge in making a decision must be with sufficient reasons and considerations based on complete information and facts at trial, so that his decision is legally justified.

The intended material truth is the truth that is balanced between punishment and guilt, where the measure of punishment is in accordance with the reprehensibility of the evil nature of an act, so that it can consider all the circumstances so that a criminal act can occur. According to Mardjono Reksodiputro, the criminal justice system is a crime control system consisting of the police, prosecutors, courts and correctional institutions. Mardjono Reksodiputro also said that the criminal justice system is a system in a society to overcome the problem of crime. Overcoming is defined as controlling crime so that it is within the limits of society's tolerance.[2]

2. Judges' Interpretation in Criminal Case Evidence System

In Criminal Case Decision Number 777/Pid.B/ 2016/PN.Jkt.Pst in the murder of the victim Wayan Mirna Salihin, Decision Number 1131/Pid.An/ 2013/PN.Jkt.Sel, in the murder of 6 (six) child buskers who were victims of mistaken arrest by Polda Metro Jaya and Decision Number 372/Pid.B/ 2020/PN.Jkt.Utr, in the case of Novel Baswedan's torture.

Interpretation is a method to understand the meaning contained in legal texts to be used in resolving cases or making decisions on concrete matters. The judge's judgment in the Criminal Case Decision above, can prove the case using circumstantial evidence based on the theory of intent, which is objectified. According to the theory of evidence based on the law and the judge's belief (negatief wettelijke) that the judge believes in a criminal offense, if 2 (two) valid evidence is proven and accompanied by the judge's belief.

Therefore, judges assess based on the instincts and beliefs of judges based on the provisions of article 10 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, that judges as the main organ of the court and the executor of judicial power are obliged to find the law in a case, even though the legal provisions are absent and unclear, because judges are considered to know the law (ius curia novit) and can make decisions based on their own knowledge and beliefs.

[1] Ahmad Kodir Jailani Tanjung, Hari Purwadi, Hartiwiningsih, Paradigma Hakim Dalam Memutuskan Perkara Pidana di Indonesia, Jurnal Pasca Sarjana Hukum UNS, Vol. VII, No. 1, Januari-Juni 2019, p. 47

[2] Mardjono Reksodiputro, 1997, Bunga Rampai Permasalahan Dalam Sistem Peradilan Pidana, Kumpulan Karangan Buku Kelima, Jakarta: Pusat Pelayanan Keadilan Dan Pengabdian Hukum Universitas Indonesia, p. 31

However, in this case, the Panel of Judges only assessed indirect evidence and used their beliefs which focused on the motive of intent and planning carried out by the defendant to eliminate the life of the victim Mirna but used valid evidence in accordance with the provisions of Article 183 of the Criminal Code.

That the position of circumstantial evidence in criminal law cannot be used as the only evidence to convince judges in deciding criminal cases, because it must be in conjunction with other evidence. If the evidence is less than 2 (two) pieces of evidence and applies indirect evidence (circumstantial evidence), it is considered not to have permanent legal force, because it includes weak evidence.

Therefore, the aspect of the position of indirect evidence (circumstantial evidence) cannot be used as the only evidence to convince the judge to decide the crime, without using other evidence. Judges in handling criminal cases brought before them must be able to handle objectively according to the law, so the decision-making procedure by judges must be based on the principle of legal certainty, the principle of justice and the principle of expediency.

In this case, a judge's decision is prohibited from resting on the law as an absolute system, because the judge's decision is based solely on the system, the spirit and purpose of criminal law (material law) and criminal procedural law (formal law) in legal principles will not become a reality. Ultra Petita is a decision on a case that is not prosecuted or decided more than what is necessary. Within the framework of KUHAP, the decision is taken because the prosecutor's indictment is not perfect is a form of progressive legal progress, where the judge is not only a legal spokesperson but also a spokesperson for justice who makes quality decisions by finding valid and appropriate sources.

Concretely, if the judge has been able to determine the existence of truth, this aspect is proof of a matter. strictly speaking, proof that includes dimensions:

a. Mention of the evidence that can be used by the judge to create a picture of the past event;
b. A description of the manner in which the evidence is used;
c. The strength of the proof of each of the evidence. Furthermore, in order to establish proof or the law of evidence.

The judge starts from the evidentiary system with the aim of knowing how to put an evidentiary result on the case being tried. For this reason, theoretically for the application of the evidentiary system, basically 3 (three) theories of the evidentiary system are known, namely:[1]

1) **Positive statutory system of proof**

Basically, the positive statutory system of proof has developed since medieval times. According to this theory, the positive system of proof relies on the tools of evidence as mentioned limitatively in the law. At its level, the law has determined the existence of evidence which can be used by the judge, how the judge must be able to use it, the strength of the evidence and how the judge must decide whether or not the case being tried is proven. In this aspect, the judge is bound by the adage that the evidence has been used in accordance with the provisions of the law. The judge must determine that the defendant is guilty, even if the judge believes that the defendant is actually innocent. Vice versa, if it cannot be fulfilled by using the evidence as stipulated in the law, the judge must declare the defendant innocent even though according to his belief the defendant is actually guilty. In essence, according to D. Simons, the system or theory of proof based on positive legislation seeks to eliminate all subjective considerations of judges and bind judges strictly according to strict evidentiary rules.[2]

2) **Evidence system based on judge's belief**

In the system of evidence based on the judge's belief, the judge can make a decision based on mere belief without being bound by a regulation. In its further development, the system of proof based on the judge's belief has two forms of polarization, namely: 1). conviction intime, namely the defendant's guilt depends on mere belief, so that the judge is not related to a regulation; and 2). conviction raisonce, namely the judge's belief still plays an important role in determining the defendant's guilt, but the application of the judge's belief is carried out selectively in the sense that the judge's belief is limited by having to be supported by clear and rational reasons in making decisions.

3) **Negative statutory system of evidence**

In principle, the negative statutory system of proof determines that the judge may only impose a sentence on the defendant, if the evidence is limitatively determined by law and is also supported by the judge's belief in the existence of the evidence. From a historical aspect, it turns out that the negative statutory system of proof is a combination of the positive statutory system of proof and the system of proof based on the judge's belief. With this merger, the substance of the negative statutory proof system is certainly inherent in the existence of analysis:

[1] Fransisco Jero Runturambi, Penjatuhan Pidana Berdasarkan Dua Alat Bukti Dan Keyakinan Hakim, Jurnal LexCrimen, Vol. IV, No. 4, Edisi Juni 2015, p. 166-170

[2] Andi Hamzah. 2005. Pengantar Hukum Acara Pidana Indonesia. Jakarta: Sinar Grafika, p. 229

a. Evidentiary procedures in accordance with the evidence as limitatively determined by the Law; and
b. The judges will evaluate the evidence both materially and procedurally.

As described above, there are 3 (three) theories regarding the evidentiary system, namely the positive statutory evidentiary system, the evidentiary system based on the judge's belief and the negative statutory evidentiary system. Of these three theories, which evidentiary system does the KUHAP and judicial practice adhere to as a futuristic polarization of future owners?

This can be seen in the provisions of Article 183 of the Criminal Procedure Code which states that: "the judge may not impose a sentence on a person, unless with at least 2 (two) valid evidence, he is convinced that a criminal offense has actually occurred and the defendant is the guilty party.

The limited statutory system is also known as the negative statutory system, which is formulated in the provisions of Article 183 of the Criminal Procedure Code (KUHP) namely:

1). The ultimate goal of evidence is to decide a criminal case, which if it meets the requirements of evidence can impose a sentence.

In fact, the evidence is intended to decide a case in a criminal case and not merely impose a sentence. Because, to impose a sentence, it is still necessary to prove the guilt of the defendant in committing a criminal offense.

If after the evidentiary activities are carried out and based on a minimum of two valid evidences, the panel of judges gets a conviction, namely: (1). It is proven that a criminal offense occurred; (2). The defendant committed it; and (3). The conviction of the defendant is guilty (without any evidence of criminal negligence during the trial), then the defendant is sentenced. Conversely, if the judge believes that the criminal offense charged is not proven, the defendant will be acquitted. If the criminal offense charged is proven to have a basis / reason that negates the punishment both in the law and outside the law, then the defendant is not acquitted and also not convicted but a verdict of release from prosecution is imposed.

According to the author, basically the evidentiary activities are carried out to impose a decision in the case of withdrawing the verdict by the panel of judges. Evidence is carried out first in an effort to achieve the highest degree of justice and legal certainty in the judge's decision. So it is not intended to impose punishment alone. The norm of the provisions of Article 183 of the Criminal Procedure Code is to determine the requirements that must be met in terms of evidence to impose the sentence.

2) Standards or requirements regarding the results of evidence to impose punishment.

In fact, there are 2 (two) requirements to achieve an evidentiary result, in order to impose a sentence that are interconnected and inseparable, but can be distinguished, namely:

a. Must use at least 2 (two) valid evidence. This means that valid evidence is the evidence referred to in the provisions of Article 184 paragraph (1) of the Criminal Procedure Code;
b. By using at least two pieces of evidence, the judge obtains confidence.

Regarding the first requirement, the case of at least 2 (two) pieces of evidence, does not mean that the type must be two, such as one witness (witness testimony), and the other testimony of the defendant or letter, but what is meant by at least 2 (two) valid evidence is that it can consist of 2 (two) pieces of evidence of the same type, for example: witness A and witness B who testify to the same thing.

Regarding the second requirement, the judge's conviction. The judge's conviction must be formed on the basis of legal facts obtained from at least two valid pieces of evidence. As above it has been explained that there are 3 (three) judge's beliefs that must be formed on the basis of using at least two valid evidence lats. First, the belief that a criminal offense has occurred as charged by the Public Prosecutor (hereinafter referred to as the Public Prosecutor). Second, the conviction that the defendant did it. Third, the judge is convinced that the defendant is guilty of committing the crime.

The three requirements for the judge's belief are multilevel, inseparable but distinguishable. The first conviction is a conviction about the occurrence of a criminal offense, meaning a conviction of an objective event. The facts obtained from the two pieces of evidence (something objective) that form the judge's belief that the criminal offense charged has actually occurred. In practice, the criminal offense charged by the prosecutor has been proven legally and convincingly. Legally means using evidence that meets the minimum requirements, namely two or more valid evidence. The belief that the criminal offense charged by the prosecutor has been proven is not sufficient to impose a sentence on the defendant, but the next two beliefs are also needed.

The second belief that the defendant did it is also a belief in something objective. The two beliefs are referred to as objective things that are subjectified. A conviction is something subjective that the judge gets on something objective. However, the third conviction of the judge

may be different from the first and second convictions.

In the third belief of the judge, namely the belief that the defendant is guilty in terms of committing a criminal offense, it can occur on two things / elements, namely the first subjective thing. The conviction on objective matters is the judge's belief about the defendant's guilt which is formed on the basis of objective matters. Objective matters are the absence of justification in committing a criminal offense. With the absence of justification on the defendant, the judge is convinced of the defendant's guilt. This means that when committing a criminal offense, there is no excuse (fait d'excuse) on the part of the perpetrator.

The three types of conviction are absolute. No one conviction is formed, for example from two valid pieces of evidence, where the judge is convinced that the crime did not really occur, and the second conviction is that the defendant did it. However, if the third level of conviction is not fulfilled, meaning that the judge is not convinced that the defendant is guilty of committing the crime charged, either due to the existence of legal facts that fall under the excuse or justification reasons, both within the law and outside the law, such as the absence of guilt or the elimination of the materially illegal nature of the act (in a negative function), then the punishment will not be imposed. Instead, a release from prosecution will be imposed.

From what is described above, it can be concluded that the existence of two valid evidences is not sufficient for the judge to impose a sentence on the defendant, if the judge does not obtain a conviction that the criminal act really happened and that the defendant is guilty of committing the criminal act.

D. Closing

1. That the judge's belief has a big and important role in order to be able to consider the decision given to the defendant. In obtaining the judge's confidence in the verdict imposed must be based on rationality, objectivity, conformity of juridical facts in the trial including witness testimony, expert testimony, letters, instructions and testimony of the defendant which are valid evidence according to the Criminal Procedure Code and with conscience.
2. That the interpretation of law by judges in the criminal case evidence system is absolutely necessary in order to find law or form law in order to produce decisions with legal certainty, have a sense of justice and provide benefits to the community. But in reality, the interpretation of the law by judges in the evidentiary system of cases as mentioned above, does not attempt to find and form law in order to assess whether the evidence presented at the trial has evidentiary power or not, but in this case the judge is only based on the elements of the crime, and on that basis the judge has the belief that the defendant is legally and convincingly guilty of committing a crime.

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