

The Analysis of Judicial Authority in Issuing Acquittal Decisions

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Abstract

The existence of courts aims to ensure fair and effective law enforcement. However, cases involving acquittals by the courts have caused controversy, especially when acquittals are deemed inconsistent with the public's sense of justice. This study analyzes the limits of the judge's authority in granting an acquittal. The research method in this study uses a normative juridical approach, focusing on analyzing the legal aspects that underlie the judge's decision. This study found that the importance of the integrity and morality of judges and the need to uphold the principles of justice in every decision taken. This study provides several suggestions, including the need to strengthen supervision of judges' authority and increase transparency in every court decision with clear and detailed explanations.

1. Introduction

The 1945 Constitution of the Republic of Indonesia states that "The Indonesian state is based on law (*rechtstaat*) not based on mere power (*machstaat*)". This shows that law plays an important and strategic role in people's lives. All actions of the government and society must be in accordance with established rules, ensuring that the law becomes the main foundation in regulating every aspect of life, including protecting the rights of citizens and maintaining order and social justice. Law enforcement in Indonesia aims to ensure that applicable rules are implemented consistently, non-discriminately and fairly. The effectiveness of law enforcement is only fulfilled if the five pillars of law can run well, namely legal instruments, law enforcement officials, equipment, society and bureaucracy.¹ In the implementation of law enforcement, it must bring justice, benefit and legal certainty to the community, where these three elements are a unity that is difficult to separate.² So that the role of law enforcement officials such as police, prosecutors and judges is needed to ensure that the law is enforced in accordance with the principles of justice.

The effectiveness of law enforcement depends not only on the consistency of the application of applicable regulations but also the success of the Criminal Justice System in carrying out its function to tackle the problem of crime. The system is considered successful if the majority of reports and complaints from the public can be resolved by bringing the perpetrators of crimes to court and then being found guilty and receiving appropriate punishment.³ In ensuring fair and effective law enforcement, the existence of courts is important as the last bastion for justice seekers (justiciable) in resolving a case. Courts not only function in law enforcement but also reach out to uphold justice.⁴ Courts are responsible for providing decisions that are perceived as fair by the community. Unfair verdicts, or the failure of the court to punish criminals will shake public confidence in the law.⁵ The judge as the core executor who functionally carries out judicial power as well as the determining factor in the smooth settlement of a criminal case has full authority in deciding the fate of the perpetrator of the crime, either in the form of a guilty verdict, acquittal or release.⁶ This authority is regulated in law which gives judges the discretion to interpret and apply the law in accordance with the facts revealed at trial. The independence of

¹ Dr. Disiplin F. Manao, S.H., M.H., D.Th dan Dr. Dani Elpah, S.H., M.H. (2017). *Hakim : Antara Pengaturan dan Implementasinya*. Jakarta : Yayasan Pustaka Obor Indonesia, p 59

² Dr. Jonlar Purba, S.H., M.H. (2017). *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan dengan Restorative Justice*. Jakarta : Jala Permata Aksara, p 1

³ Mardjono Reksodiputro. (2020). *Sistem Peradilan Pidana*. Depok : PT Rajagrafindo Persada, p 343

⁴ Dr. H. Margono, S.H., M.Hum., M.M. (2019). *Asas Keadilan, Kemanfaatan dan kepastian Hukum dalam Putusan Hakim*. Jakarta : Sinar Grafika, p 123

⁵ Mardjono Reksodiputro, *Ibid.* p 345

⁶ Dr. Febby Mutiara Nelson, S.H., M.H., Ramon Wahyudi, S.H., M.H., dan Intan Hendrawati, S.H. (2022). *Hukum Acara Pidana Dalam Teori dan Praktek*. Jakarta : Damara Press, p 32

judges is the main weapon or shield of judges in carrying out their main duties and functions. According to Franz Magnis Suseno, the freedom of judges in carrying out their duties as judges means that judges have the freedom to do whatever they want without being bound or pressured by anyone.⁷ However, in some cases, decisions issued by judges can cause controversy in the community, especially when they are considered not in line with the public's sense of justice.

The case of Gregorius Ronald Tannur in case no. 454/Pid.B/2024/PN.Sby is one example that attracted widespread attention. The defendant, who was allegedly involved in a case that led to the death of the victim, was acquitted by the judge, which then triggered various reactions from the public. Many people questioned the legal basis and considerations used by the judge in giving the verdict. The strong reactions from the public showed dissatisfaction with the decision and highlighted the importance of further studies on the limits of judges' authority in granting acquittals.⁸ This led to the dismissal of the three Surabaya District Court judges who examined and tried the case.⁹ The authority of judges in granting acquittals should not only consider aspects of legality, but also moral and ethical aspects, as well as the social implications of the decision. This is important because people tend to judge justice from the results of decisions that are felt to be in accordance with facts and common logic, not just from formal legal procedures.¹⁰ This study aims to analyze the extent to which the authority of judges in criminal law can be applied proportionally through a case study review using 7 (seven) court decisions in granting acquittals related to the crime of murder. Thus, it is hoped that this study can provide deeper insight into the control mechanism over the authority of judges in granting acquittals and strive for the resulting decisions to be in line with the public's sense of justice.

2. Research Methods

The methodology in this research uses a normative juridical approach to analyze in depth the phenomenon of the authority of judges in giving acquittals by examining 7 (seven) cases of Court Decisions related to the crime of murder. The approach used is a case approach. This approach is used to understand the legal

⁷ Franz Magnis Suseno. (1987). *Etika Dasar Masalah-Masalah Pokok Filsafat Moral*. Jakarta: Pustaka Filsafat, p 33 see in Dr. Disiplin F.Manao,S.H.,M.H.,D.Th and Dr. Dani Elpah,S.H.,M.H. (2017). *Hakim : Antara Pengaturan dan Implementasinya*. Jakarta : Yayasan Pustaka Obor Indonesia, p 61

⁸ See in Ambrosius Harto Manumoyoso, “ Massa Geruduk PN Surabaya, Tuntut Keadilan Untuk Dini”, 29 July 2014, available at <https://www.kompas.id/baca/nusantara/2024/07/29/pn-surabaya-direguduk-massa-pengecam-vonis-bebas-ronald-tannur> accessed on 15 October 2024

⁹ Thalatie K Yani, “DPR Apresiasi Komisi Yudisial atas Pemberhentian Hakim PN Surabaya yang Vonis Bebas Gregorius Ronald Tannur”, 01 September 2024, available at <https://mediaindonesia.com/politik-dan-hukum/697445/dpr-apresiasi-komisi-yudisial-atas-pemberhentian-hakim-pn-surabaya-yang-vonis-bebas-gregorius-ronald-tannur>, accessed on 18 October 2024

¹⁰ Vivi Ariyanti. (2019). “Kebebasan Hakim dan Kepastian Hukum dalam Menangani Perkara Pidana Di Indonesia”, *Jurnal Kajian Hukum Islam*, 4(2):162-174, p 165.

aspects that underlie the authority of judges in the criminal justice process. This research uses document study techniques on criminal decisions as primary data because criminal decisions contain various relevant legal information regarding the characteristics of the crime, the sitting of the case, legal considerations and the verdict taken by the judge in the decision-making process.

3. Results and Discussion

Categories of Judgements in Criminal Cases

The principle of freedom of judges in Indonesia has been regulated in Article 1 point 1 of Law Number 48 of 2009 concerning Judicial Power which states that "judicial power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the Republic of Indonesia Rule of Law". According to Oemar Seno Adji, "A free and uninfluenced court is an indispensable requirement for the rule of law. Free means that there is no interference or interference from the executive and legislative powers in carrying out the functions of the judiciary. He does not mean that he has the right to act arbitrarily in carrying out his duties, he is "subordinated", bound by the law. "Freedom and impartial judiciary", which calls for a judiciary that is free from all attitudes and actions and forms of multiple interventions, is a "universal" idea. "Freedom and impartial judiciary are the main characteristics and requirements for countries that adhere to the Anglo Saxon and Continental European legal systems that realize the alignment of the principles of the rule of law."¹¹ The principle of freedom of judges also includes freedom for judges in formulating legal considerations known as legal reasoning. The freedom of judges in exercising judicial power is divided into three essences, namely:¹²

- a. Judges are subject only to law and justice
- b. No one, including the government, can influence or direct the decision to be made by the judge.
- c. There are no consequences for the personal conduct of judges in carrying out their judicial duties and functions.

In making a decision, the judge must consider many things, including those related to the case being examined, the level of action and guilt committed by the perpetrator, to the interests of the victim and his family and consider the sense of justice of the community.¹³ Based on Article 1 point 11 of the Criminal Procedure Code, the types

¹¹ Oemar Seno Adji. (1987). *Peradilan Bebas Negara Hukum*. Jakarta: Erlangga, p 46 see in Dr. Disiplin F. Manao, S.H., M.H., D.Th and Dr. Dani Elpah, S.H., M.H. (2017). *Hakim : Antara Pengaturan dan Implementasinya*. Jakarta : Yayasan Pustaka Obor Indonesia, p 61 and 62

¹² Achmad Rifai, S.H., M.H. (2010). *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*. Jakarta, Sinar Grafika, p 104

¹³ *Ibid*

of decisions that can be imposed by the court through a judge's statement in a court session regarding a case can be:

- a. Free verdict (*Vrijspraak*), namely the defendant's guilt for the actions alleged / charged to him is not proven, (vide Article 191 paragraph (1) KUHAP)
- b. Release Decision (*Ontslag Van Alle Rechtsvervolging*), namely the actions alleged against the defendant are proven, but the actions do not constitute a criminal offense, (vide Article 191 paragraph (2) KUHAP)
- c. Sentencing Decision (*verordeling*) is a decision in which the court is of the opinion that the defendant is guilty of committing the crime charged against him, (vide Article 193 of the Criminal Procedure Code).

The court's decision is based on the judge's opinion regarding whether or not the public prosecutor's indictment is true after the indictment has been tested in the process of proof at trial as stipulated in Article 182 paragraph (4) of the Criminal Procedure Code. The indictment becomes the basis and guidance for Judges and Public Prosecutors in examining cases in court as well as a limit in the process of proving criminal cases. The determination of an assessment of evidence by the judge is based on the provisions of Article 183 of the Criminal Procedure Code which stipulates that the judge is only allowed to impose a sentence on a person if two conditions are met, namely there are at least two valid evidences and based on the judge's confidence in the truth of the crime and the perpetrator.¹⁴ The evidence determined by KUHAP is regulated in Article 184 paragraph (1).

The Boundaries of Judicial Discretion in Delivering Acquittal Decisions

Take a look at the table below :

No	Decision Register Number	Article of the Indictment	Judge's Consideration
1	Decision Number 43/Pid.B/2017/PN.Tmt	First: Article 338 of the Criminal Code	- Based on the facts of the law, there is no evidence/no evidence that the person/perpetrator willed or intended the death of the victim. The Panel of Judges is convinced that the person or persons who committed the act against the victim only wanted to injure the victim and/or only wanted the victim to suffer pain. - The Panel of Judges was convinced that the victim was indeed the victim of the crime of maltreatment that caused her death, but
		Second: Article 351 paragraph (3) Jo Article 55 paragraph (1) of	

¹⁴ Prof. Dr. Marcus Priyo Gunarto,SH.,MHum and Wahyu Sudrajat,SH.,MH.LI. (2018). *Dekonstruksi Putusan Bebas & Putusan Lepas Dari Segala Tuntutan Hukum*. Yogyakarta, Pustaka Pelajar, p 48 and 49

		the Criminal Code	there was nothing to explain who the perpetrator of the crime was. - The evidence that explains the perpetrator of the crime of maltreatment is only from the testimony of the victim when he was conscious, while the witnesses brought by the Public Prosecutor did not know who the perpetrator of the victim's beating was. - This decision is based on Article 185 paragraph (2) of the Criminal Procedure Code regarding witness testimony alone is not sufficient to prove the defendant guilty and Article 183 of the Criminal Procedure Code regarding the minimum principle of proof.
2	Decision Number 143/Pid.B/2018/PN.Kpg	First: Article 338 of the Criminal Code Jo Article 55 Paragraph (1) to 1 of the Criminal Code Second: Article 170 paragraph (2) 3rd of the Criminal Code Third: Article 351 paragraph (3) of the Criminal Code Jo	- Based on the photo of the injury suffered by the victim Paulus Nafi, where the injury is located on the left neck and left shoulder. Based on the Tribunal's assessment, with such injuries, it is not logical that there was another person holding the victim's left shoulder/hand when the witness Anggri Sumarjo Dillak swung the machete with a length of approximately 52 cm in that direction, because of course it would hit a person who was very close to the victim who was holding the victim's left shoulder/hand where such a position would block the swing of the machete, which is also consistent if you consider the confession of the witness Anggri Sumarjo Dillak as the person who made the cut and the testimony of the witness Aprilia Cantika Haba Walu's child. - Therefore, it was found that the defendant was not at the same place and time as Anggri Sumarjo Dillak when he chased the victim. Based on this, the Panel of Judges did not find any facts or circumstances based on the

			Article 55 paragraph (1) to 1 of the Criminal Code	presented at trial that convinced the Panel of Judges that there had been an act that could be qualified as participation (<i>medepleger</i>) of the Accused in the event / act committed by the witness Anggri Sumarjo Dillak as the culprit (<i>dader</i>) in swinging the machete / cutting the victim
3	Decision Number 240/Pid.B/2019/PN.Plp	First:	Article 338 of the Criminal Code	- Based on the legal facts presented during the trial, it does not appear that the Defendant intentionally took the life of another person and the Panel of Judges was also of the opinion that the maltreatment that caused the death of the victim was not fulfilled and not proven.
		Second:	Article 351 paragraph (3) of the Criminal Code	
4	Decision Number 53/Pid.B/2022/PN.Psr	First:	Primair: Article 340 of the Criminal Code Jo Article 56 to 1 of the Criminal Code	- The Panel of Judges did not find the existence of mens rea in the actions of the Defendant, because based on the legal facts obtained at trial, the actions committed by the Defendant <i>in this case</i> only followed the invitation of the witness Fadila Rohkman to leave the house without knowing what the intentions of the witness Fadila Rohkman were.
			Subsidiary: Article 338 of the Criminal Code Jo Article 56 to 1 of the Criminal Code	- The Panel considers that the mens rea / inner attitude of the Defendant when he followed the invitation at the time of the murder of the victim cannot be proven, because there was no intent or opzet on the part of the Defendant, because the Defendant in committing this act did not "want" or "know" what the witness Fadila Rohkman would do.
		Second:	Primair: Article 355	- The Public Prosecutor never presented evidence that could explain at trial that the planning of the murder was carried out by

		paragrap h (2) of the Criminal Code Jo Article 56 to 1 of the Criminal Code	the witness Fadila Rohkman together with the Defendant. This was never explained in the proof of the case <i>in casu</i> at trial. - The actions of the Defendant who did not report to the police after learning of the actions of the witness Fadila Rohkman cannot necessarily be a clue as to the involvement of the Defendant in planning the murder of the victim.
		Subsidiar y : Article 351 paragrap h (3) of the Criminal Code Jo Article 56 to 1 of the Criminal Code	
5	Decision Number 24/Pid.B/2023/PN.Rta	First: Primair : Article 340 of the Criminal Code Jo Article 55 paragrap h (1) to 1 of the Criminal Code	- Based on the legal facts at trial, the stabbing of Br. Andri (the victim) was carried out spontaneously by Witness Hirda, Witness Ahmat Mumaidi and Witness Muhammad Adidi and there was no coordination with the Defendants to carry out the stabbing of the victim. - The Defendants did not help crush the victim, did not do anything to the victim, the Witness Hirda, the Witness Ahmat Mumaidi and the Witness Muhammad Adidi never ordered, never promised anything, there was no order for the Defendants to help crush the victim. - The Panel of Judges did not find the mens rea/inner attitude or malicious intent of the Defendants who intended to provide opportunities, facilities/information to
		Subsidiar y: Article 338 of the Criminal Code Jo Article 55 paragrap	

		h (1) to 1 of the Criminal Code	Witness Hirda, Witness Ahmat Mumaidi and Witness Muhammad Adidi to commit the murder of the victim, nor did they find the role / actions of the Defendants to provide opportunities, facilities/information so that Witness Hirda, Witness Ahmat Mumaidi and Witness Muhammad Adidi could commit the override of the victim. - The Defendants did not have the same will or purpose as Witness Hirda, Witness Ahmat Mumaidi and Witness Muhammad Adidi.
		Second: Primair : Article 340 of the Criminal Code Jo Article 56 to 2nd of the Criminal Code	
		Subsidiar y: Article 338 of the Criminal Code Jo Article 56 to 2 of the Criminal Code	
		Third : Article 170 paragrap h (2) to 3rd of the Criminal Code	
		Fourth : Article 351 Paragrap h (3) of the Criminal Code Jo Article 55 paragrap	

		h (1) to 1 of the Criminal Code	
		Fifth : Article 351 paragrap h (3) of the Criminal Code Jo Article 56 to 2nd of the Criminal Code	
6	Decision Number 93/Pid.B/202 4/PN.Sdw	Primair: Article 340 of the Criminal Code Subsidia Article 338 of the Criminal Code More Article Subsidia 351 ry paragrap h (3) of the Criminal Code	- The Panel of Judges considers that although Witness M. Sulton and Witness Agusnanto did not see anyone other than the Defendant at the location where the body of Br. Prayitno was found, but these witnesses did not directly see whether there had been a criminal act of murder committed by the Defendant or the Defendant had committed other acts that could result in /cause the loss of a person's life, which in the case a quo was Br. Prayitno. Witness M. Sulton and Witness Agusnanto can only prove that they saw the Defendant who was pacing without doing any activities around the location where the body of Br. Prayitno was found from 16.30 to 18.00 WITA. - The Panel of Judges considered that there was no correspondence between the wound on the body of Br. Prayitno and the evidence in the form of wood which allegedly used by the Defendant to commit the crime of murder of Br. Prayitno, because the size of the wound on the body of Br. Prayitno only

		about 0.5 (zero point five) centimeters in the form of a depression pointing inward, while the evidence in the form of wood presented by the Public Prosecutor had a brittle texture and only a few parts had a hard texture because the wood evidence presented was burnt charcoal. There are parts that are slightly sharp and protrude outward on the side of the wooden head, but the location of the slightly sharp part is not possible to cause injury as mentioned in the post mortem results. - Even Expert Dr. RICKY RICARDO SANDY PUTRA, who conducted a post-mortem on the body of Br. Prayitno, testified at the trial that the Expert did not find traces of charcoal or ash on the body and head of Br. Prayitno's body, even though the Expert not wash the corpse before examination. - The evidence of burnt wood was not subjected to forensic laboratory tests that could be used as evidence from the Public Prosecutor, so it could not be known whether there was DNA or fingerprints of the Defendant on the wood, whether there was DNA or body parts of Br. Prayitno such as skin, hair or blood on the wood, as well as whether there was charcoal residue or chunks of wood attached to the body or wound of Br. Prayitno. - The Public Prosecutor also did not submit evidence in the form of forensic autopsy results that could provide information about the cause and manner of death of Br. Prayitno even though this case was an unnatural death, so that at the trial it was not known whether Br. Prayitno died due to illness, murder or other causes.
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			The Panel of Judges considered that the Public Prosecutor could not prove that the Defendant was the perpetrator of the murder or committed other acts that could result in/cause the loss of life of Br. Prayitno, so there was also no motive which was the inner attitude of the Defendant (mens rea) in committing an act of murder because in fact the Defendant and Br. Prayitno had just met on the day Sdr. Pryitno died, namely Tuesday, January 16, 2024, so it was impossible for Sdr. Prayitno who only knew and knew the Defendant from Witness Rudi Rahman to have a debt that caused a grudge so that the Defendant's intention to commit premeditated murder against Sdr. Prayitno arose.								
7	Decision Number 454/Pid.B/2024/PN.Sby	<table><tr><td>First:</td><td>Article 338 of the Criminal Code</td></tr><tr><td>Second:</td><td>Article 351 paragraph (3) of the Criminal Code</td></tr><tr><td>Third:</td><td>First : Article 359 of the Criminal Code</td></tr><tr><td></td><td>Second: Article 351 Paragraph (1) of the</td></tr></table>	First:	Article 338 of the Criminal Code	Second:	Article 351 paragraph (3) of the Criminal Code	Third:	First : Article 359 of the Criminal Code		Second: Article 351 Paragraph (1) of the	- Based on the observation of the CCTV results in the lenmarc basement parking area, connected with the opinion of the Driving Safety or Traffic Accident Expert brought by the Defendant's Legal Counsel, the Panel does not see any facts as described by the Public Prosecutor in his indictment, as shown by the CCTV in front of the trial which has been witnessed by all parties in a hearing open to the public, The Panel has examined it from the perspective of the CCTV camera, that the position of the Defendant's car from a parked position, will move, move, and then turn right, then go straight and stop, the existence of the position of the victim Dini Sera Afrianti was actually outside the flow of the vehicle driven by the Defendant - The Panel considers that there is nothing in the actions of the Accused that proves that the Accused acted with intent or intention to kill or (take) the life of another person or that
First:	Article 338 of the Criminal Code										
Second:	Article 351 paragraph (3) of the Criminal Code										
Third:	First : Article 359 of the Criminal Code										
	Second: Article 351 Paragraph (1) of the										

		Criminal Code	the Accused committed maltreatment that resulted in death.
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The similarities of the seven decisions above can be concluded that the Panel of Judges in imposing an acquittal (*vrijspraak*) is juridically influenced by two factors, namely:

- a. Does not fulfill the proof according to the Law negatively. The evidence obtained at trial was insufficient to prove the defendant's guilt and at the same time the defendant's guilt, which was not sufficiently proven, was not believed by the judge (vide Decision Number 93/Pid.B/2024/ PN.Sdw; Decision Number 143/Pid.B/2018/PN.Kpg; Decision Number 24/Pid.B/2023/PN.Rta, Decision Number 454/Pid.B/2024/PN.Sby).
- b. Does not fulfill the principle of the limit of proof. The guilt charged to the Defendant is only supported by one piece of evidence, in the provisions of Article 183 of the Criminal Procedure Code, in order to prove the guilt of the defendant, at least two pieces of valid evidence (vide Decision Number 43/Pid.B/2017/PN.Tmt; Decision Number 240/Pid.B/2019/PN.Plp, Decision Number 53/Pid.B/2022/PN.Psr).

Acquittals are generally based on an assessment of the judge's opinion, namely:¹⁵

- a. The guilt charged against the defendant was not proven at all, all of the evidence presented to the court in the form of witness testimony, expert testimony and instructions, as well as the testimony of the defendant, could not prove the guilt of the defendant. This shows that the actions charged were not proven legally and convincingly by the judge.
- b. The judge decides that the evidence of guilt does not meet the minimum requirements of proof. For example, the evidence presented at trial consisted of only one witness.
- c. The acquittal can also be based on a judgment that the judge's conviction does not support proven guilt. Such a judgment is adopted by Article 183 of the Criminal Procedure Code, which teaches that proof according to the law is negative. Proof of guilt charged by valid evidence must be supported by the judge's conviction.

The provisions of Article 191 paragraph (1) of the Criminal Procedure Code are the basis for an acquittal (*vrijspraak*) which determines that if the court is of the opinion that from the results of the trial examination, the defendant's guilt for the acts charged to him is "not proven" legally and convincingly, then the defendant will be acquitted. The defendant's guilt is the key determinant in Article 191 paragraph (1) of the Criminal Procedure Code. The judge before making a decision must first

¹⁵ Dr. Supardi,S.H.,M.H. (2023). *Hukum Acara Pidana*. Jakarta : Kencana, p 155

determine the existence of a criminal act and the existence of guilt proven from evidence with the judge's confidence in an accused person who is prosecuted before the court. In this case, the principle of no punishment without guilt (*Geen straf zonder Schuld or Nulla Poena Sine Culpa*) applies. This principle shows that a person can only be punished for his actions if there is a mistake (*schuld*). According to Andi Hamzah, fault in a broad sense includes: a) intentionally (*dolus / opzet*); b) negligence (*culpa*); c) can be accounted for, all three are subjective elements of the offense (*strafbaar feit*).¹⁶ Error as one of the conditions for punishment is error in the juridical sense, not error in the moral or social sense. Error that fulfills the juridical elements, namely:

- a. The perpetrator has the ability to take responsibility
- b. There is a mental connection between the perpetrator and the act
- c. There is no reason to remove the error

The intentionality of the perpetrator has a closer psychological connection to an action than negligence (*culpa*). Intentional means intending and knowing and knowing what he/she is doing. The term intentionality can be found in several articles in the Criminal Code with the use of different terms but with the same meaning, among others:

- a. Article 338 of the Criminal Code uses the term "intentionally"
- b. Article 164 of the Criminal Code uses the term "knowing about"
- c. Articles 362, 378, 263 of the Criminal Code use the term "with intent"
- d. Article 53 of the Criminal Code uses the term "intention"
- e. Articles 340 and 355 of the Penal Code use the term "with premeditation".

When a person commits an act "intentionally", it can be qualified into three shades of intentionality, namely:¹⁷

- a. Intentionality with intent (*opzet als oogmerk*): intentionality to cause the intended effect of the perpetrator which can reasonably be realized through his actions.
- b. Willfulness with consciousness of certainty of possibility (*opzet bij zekerheidsbewustzijn*) : willfulness to commit an act that causes two consequences, namely the result that is intended by the perpetrator and the result that is actually not intended but must occur.
- c. deliberate intent with awareness of the possibility (*dolus eventualis*): the perpetrator realizes that in order to achieve the desired result there is a possibility that another result will arise and it turns out that the intended result occurs.

¹⁶ Andi Hamzah. (2004). *Asas-Asas Hukum Pidana*. Jakarta : Rineka Cipta, hlm 103

¹⁷ Dr. Kurniawan Tri Wibowo, S.H., M.H., CPL., CCD., CTA and Warih Anjari, S.H., S.Pd., M.H. (2022). *Hukum Pidana Materiil*. Jakarta : Kencana, p 145-146

The purpose of Criminal Procedure Law is to reveal the comprehensive material truth in a criminal case. Criminal Procedure Law seeks to find the perpetrator (legal subject) responsible for the criminal event by being oriented towards the factual truth that occurs in a criminal event which then asks the court to examine and decide whether the criminal offense is proven and whether the defendant is to blame.¹⁸ The parameters to determine whether an act is a criminal offense are all the elements in the criminal offense formulation. If one of the elements of the criminal offense formulation is not fulfilled, the act does not constitute a criminal offense.¹⁹

Looking at the table above, for example in Decision Number 43/Pid.B/2017/PN.Tmt, the Defendant was acquitted because he did not meet the minimum principle of proof based on Article 183 of the Criminal Procedure Code, although it is true that the victim was a victim of maltreatment that caused the victim to die, but there were no witnesses who saw the incident directly, the victim's testimony alone cannot make the Defendant guilty based on Article 185 paragraph (2) of the Criminal Procedure Code.²⁰ In contrast to Decision Number 93/Pid.B/2024/PN.Sdw, although the death of the victim was an unnatural event where according to the judge's belief the Defendant was found not guilty and convincing of committing the acts he was charged with, in his legal considerations the Judge assessed the evidence brought by the Public Prosecutor as a clue to the victim's death and was connected to expert testimony where there was no correspondence between the injuries on the victim and the evidence. The Judge's opinion is in line with the expert testimony who did not find traces of the evidence on the victim, in addition to the Public Prosecutor who did not submit letter evidence in the form of post-mortem results (forensic autopsy) which can provide information about the cause and manner of death of the victim, so this case does not meet the minimum requirements of proof based on Article 183 of the Criminal Procedure Code.²¹ Both decisions are in accordance with Article 191 paragraph (1) of the Criminal Procedure Code as explained above. It should be noted that the limit of the Judge's authority in making a juridical acquittal decision as stipulated in Article 191 paragraph (1) of the Criminal Procedure Code is a minimum of two unmet evidences and the Judge's conviction.

¹⁸ Dr. Riadi Asra Rahmad,SH.,MH. (2019). *Hukum Acara Pidana*. Depok : Rajawali Pers, p 4

¹⁹ Prof. Dr. Marcus Priyo Gunarto,SH.,MHum and Wahyu Sudrajat,SH.,MH.LI. (2018). *Dekonstruksi Putusan Bebas & Putusan Lepas Dari Segala Tuntutan Hukum*. Yogyakarta, Pustaka Pelajar, p 43

²⁰ Tilamuta District Court, Decision Number. 43/Pid.B/2017/PN.Tmt.,*RI vs Fadli Latabila alias Fadli* (2017), p 46

²¹ West Kutai District Court, Decision Number. 93/Pid.B/2024/PN.Sdw.,*RI vs Yuliono alias Gombloh Bin Jumadi* (2024), p 119-121

Every decision given by a judge must be accountable and the location of this accountability is in the legal considerations which should be compiled with proper legal reasoning and based on applicable law.²² In the criminal justice system, judges basically have broad authority in determining decisions for defendants, but this authority is limited to two things, namely: Every decision made must be based on valid evidence and careful legal considerations, and every decision is in accordance with the prevailing principles of justice.²³ So that the authority of the judge is not absolute, but the judge in carrying out his function must remain within the corridors of the applicable law and be limited by existing rules and norms.²⁴ Judges in exercising their authority must be carried out with full responsibility and caution. The responsibility of judges is not only to the law, but also to society, where every decision taken must reflect justice, expediency and legal certainty, without showing arrogance of power or arbitrary freedom.²⁵

To ensure that judges do not act arbitrarily, the freedom of judges in handling a case is not absolute. This freedom is limited by the supervision carried out by the Supreme Court which is regulated in Article 32 of Law Number 3 of 2009 concerning the Supreme Court. Judges are given free and independent powers so that their decisions are not easily intervened by forces outside the court such as the authorities and other forces in society such as political and economic forces. In realizing the complete freedom of judges, the main requirement is the integrity of judges. Integrity is one part of the moral norms for judges which has been regulated in the Joint Decree of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number: 047/KMA/SKB/IV/2009 and Number 02/SKB/P-KY/2009 concerning the Code of Ethics and Code of Conduct for Judges.²⁶ Integrity is a factor that can limit the freedom of judges, because without integrity, the freedom of judges will not be meaningful. Integrity relates to the morality, attitude, and behavior of judges in carrying out their duties.²⁷ Judges who do not have integrity are vulnerable to being influenced by emotions, laziness, or persuasion that can affect their decisions. A judge's freedom is highly dependent on his or her integrity as a responsibility in realizing justice in society.

²² Yunanto. (2019). "Menerjemahkan Keadilan Dalam Putusan Hakim". *Jurnal Hukum Progresif*, 7(2) : 192-205, p 199

²³ Diah Pudjiastuti. (2023). "Penerapan Prinsip Akuntabilitas Dalam Independensi Hakim Di Indonesia". *Res Nullius Law Journal*, 5(2) :112-122, p 116

²⁴ Fahmiron. (2016). "Independensi dan Akuntabilitas Hakim Dalam Penegakan Hukum Sebagai Wujud Independensi dan Akuntabilitas Kekuasaan Kehakiman". *Jurnal Litigasi*, 17(2) : 3467-3515, p 3483,

²⁵ Dr. H.Margono,S.H.,M.Hum.,M.M. (2019). *Asas Keadilan Kemanfaatan & Kepastian Hukum Dalam Putusan Hakim*. Jakarta, Sinar Grafika, p 5

²⁶ Firman Floranta Adonara. (2015). "Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi". *Jurnal Konstitusi*, 12(2) : 218-236, p 227

²⁷ Dr. Anwar Usman,S.H.,M.H. (2020). *Independensi Kekuasaan Kehakiman (Bentuk-Bentuk dan Relevansinya Bagi Penegak Hukum dan Keadilan di Indonesia)*. Depok : Rajawali Pers, p 37

Decision Number 454/Pid.B/2024/PN.Sby, the Judge acquitted the Defendant where in his legal reasoning the Judge stated that there was no act of the Defendant that proved by showing the existence of the Defendant's actions with intent or intention to kill or (deprive) the life of another person or the Defendant's act of persecution which resulted in death. However, the judge in his consideration did not consider the defendant's testimony, expert testimony and CCTV footage as a clue to the case. In the statement of the Defendant, the Defendant clearly knew the whereabouts of the victim who was next to his car because the Defendant had opened the glass of his car with the intention of taking the victim home.²⁸ Based on the expert testimony, the Defendant continued to run his car, illustrating the mental attitude / mens rea of the Defendant who did not think about the possibility that the victim could be run over as a result of his actions. The Defendant's actions are included in the form of intentionality in the form of *dolus eventualis*.²⁹ This can be proven by looking at the CCTV footage played during the trial, so that in this case it should have fulfilled the minimum principle of proof and the Defendant's guilt can be proven in accordance with the Public Prosecutor's charges.

The verdict caused controversy in the community, in an investigation conducted by the Judicial Commission it was found that the three judges who examined and acquitted the defendant had violated the code of ethics and code of conduct for judges, where the three judges read out legal facts that were different from those read out in the trial and those listed in the copy of the verdict, The judge also read the elements of the article of the indictment that were different in the trial with the legal considerations in the copy of the verdict, the judge also read the legal considerations for the cause of the victim's death that were different from the results of the post mortem and finally the three judges in the verdict reading session never considered, mentioned or gave an assessment regarding the evidence in the form of CCTV in the basement parking area of the Landmark mall submitted by the Public Prosecutor.³⁰ What is surprising is that the three judges were involved in the alleged bribery and gratification in the case of Decision Number 454/Pid.B/2024/PN.Sby.³¹ The acquittal (*vrijspraak*) handed down to the Defendant in case No. 454/Pid.B/2024/PN.Sby not only indicates the failure of the prosecution by the

²⁸ Surabaya District Court, Decision Number. 454/Pid.B/2024/PN.Sby., *RI vs Gregorius Ronald Tannur Anak dari Edward Tannur* (2024), p 64

²⁹ Surabaya District Court, Decision Number. 454/Pid.B/2024/PN.Sby., *RI vs Gregorius Ronald Tannur Anak dari Edward Tannur* (2024), p 55-60

³⁰ Adrial Akbar, "KY : Hakim Pemvonis Bebas Ronald Tannur Bacakan Fakta Hukum-Hasil Visum Berbeda", 26 August 2024, available at <https://news.detik.com/berita/d-7509474/ky-hakim-pemvonis-bebas-ronald-tannur-bacakan-fakta-hukum-hasil-visum-berbeda>, accessed on 18 October 2024

³¹ Wilda Hayatun Nufus, "3 Hakim Tersangka Suap Vonis Bebas Ronald Tannur Dibawa Ke Jakarta Hari Ini", 05 November 2024, available at <https://news.detik.com/berita/d-7622957/3-hakim-tersangka-suap-vonis-bebas-ronald-tannur-dibawa-ke-jakarta-hari-ini>, accessed on 10 November 2024

Public Prosecutor, but also creates a bad image of law enforcement because it has hurt the sense of justice and is not in accordance with the objectives of handling criminal cases. If an acquittal (*vrijspraak*) injures the sense of justice in society then the judge can be considered to have exceeded the limits of his authority.

In this case, the integrity and morality of judges are inseparable factors in the decision-making process to ensure that every decision made is in accordance with the values of justice expected by society. Benjamin N. Cardozo, a former United States Supreme Court Justice, stated that the judge's decision was born not based on the facts revealed in the trial based on the provisions of the legislation alone but a combination of the facts revealed in the trial based on the provisions of the legislation with the behavior or morality of the judge himself.³² Although judges have freedom and confidence in making decisions, decision-making, apart from being based on juridical provisions, must still be limited by the integrity and morality of the judge so that the decision does not result in tarnishing law enforcement.

The verdict of acquittal (*vrijspraak*) has consequences for the attitude of the Public Prosecutor, namely to accept the verdict so that the verdict becomes a decision that has permanent legal force or to make cassation efforts.³³ Below are the three decisions that have been appealed in cassation

No	Register Number of First Instance Decision	Register Number of Cassation Decision	Amar	Judge's Consideration
1	Decision Number 43/Pid.B/2017/PN.Tmt	Decision Number 1438K/Pid/2017	Reject	- <i>The judex facti</i> who acquitted the Defendant did not err and had applied the rule of law properly. - Of the many witnesses presented by the Public Prosecutor, none of them personally knew, experienced, heard or saw the acts charged by the Public Prosecutor against Defendant.

³² DR. Dahlan Sinaga,S.H.,M.H. (2015). *Kemandirian dan Kebebasan Hakim Memutus Perkara Pidana dalam Negara Hukum Pancasila : Suatu Perspektif Teori Keadilan Bermartabat*. Bandung : Nusa Media, p 161

³³ M. Irsan Arief,S.H.,M.H. (2021). *Pertimbangan Yuridis Putusan Bebas & Upaya Hukum Perkara Pidana*. Jakarta : MCL Publisher, p 47

2	Decision Number 143/Pid.B/2018/PN.Kpg	Decision Number 638 K/Pid/2019	Accept	- <i>The judex facti</i> misapplied the law in adjudicating the Defendant's case and did not consider the juridically relevant trial facts. - The actions of the Defendant have fulfilled the elements of the crime charged in the first indictment, based on witness testimony that is mutually consistent and becomes a legal fact - The defendant was sentenced to 10 (ten) imprisonment.
3	Decision Number 240/Pid.B/2019/PN.Plp	Decision Number 675 K/Pid/2020	Reject	- Verification of the evidence and exhibits presented at trial by the <i>judex facti</i> resulted in correct legal facts regarding the aquo case which are not juridically consistent with the charges of the Public Prosecutor. - <i>The judex facti</i> did not misapply the law and the request for cassation by the Public Prosecutor is not supported by correct legal facts revealed at trial which are not juridically consistent with the Public Prosecutor's charges.

Examination at the cassation level only concerns whether a rule of law has not been applied or whether the trial method has not been carried out in accordance with

the provisions of the law and whether the court has exceeded the limits of its authority as referred to in Article 253 of the Criminal Procedure Code. The purpose of cassation is to correct or rectify mistakes and errors against decisions made by inferior courts (inferior or law courts) so that the injustice contained in the decision becomes fair and appropriate, and to maintain optimally and proportionally the function of law in the midst of community life. Cassation legal remedies can prevent arbitrary actions and abuse of authority by judges who may be tempted to abuse the freedom in their position.³⁴

4. Conclusion

Law plays an important role in the life of Indonesian society, with law enforcement aimed at ensuring justice, benefit and legal certainty. In the criminal justice process, judges have the freedom to make decisions, the authority of judges to give free decisions is part of the discretion regulated in the Indonesian criminal law system. This authority provides flexibility for judges to assess evidence and decide cases according to the facts revealed at trial. However, this authority is not absolute and must be exercised by taking into account the juridical limitations set out in Article 191 paragraph (1) of the Criminal Procedure Code, the behavior and morality of the judge and restrictions based on the principle of justice. Acquittal verdicts given by judges, such as in case No. 454/Pid.B/2024/PN.Sby, are considered to have harmed the public's sense of justice and judges are considered to have exceeded the limits of their authority characterized by a lack of consideration of the facts available, resulting in irregularities in the execution of justice. The acquittal in this case shows the importance of the integrity and morality of judges and the need to uphold the principles of justice in every decision made. It also shows the importance of supervision by a high institution such as the Supreme Court so that judges' independence is not abused. Good law enforcement requires a shared commitment to maintain public trust in the justice system, where judges' authority needs to be exercised carefully and within the corridors of applicable law. When a judge's decision is considered to have exceeded the limits of authority or harmed justice, legal remedies such as cassation can be taken as a form of correction for decisions that are considered unfair.

5. Advice

Based on what is explained above, the author reveals that it is necessary to strengthen supervision of the authority of judges to ensure that judges' decisions are in accordance with the principles of justice and legal certainty and increase transparency in every court decision with a clear and detailed explanation of the legal

³⁴ Dr. Jonaedi Efendi, S.H.I., M.H. (2018). *Rekonstruksi Dasar Pertimbangan Hukum Hakim : Berbasis Nilai-nilai Hukum dan Rasa keadilan yang Hidup dalam Masyarakat*. Depok : Prenadamedia Group, p 97 and 98

basis and factual considerations used in order to reduce suspicion of the judicial system and increase public confidence.

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