www.bircu-journal.com/index.php/birci
Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
Budapest Institute

Originalist Interpretation: A Method of Discovery in Criminal Law (*Rechtsvinding in Het Strafrecht*)

Peter Jeremiah Setiawan[1], Mahendra Harun Ar Rasyid[2], Alfian Rasyidi[3], Wisnu Andriawan[4]
[1]*Universitas Surabaya, Surabaya, Indonesia*
[2,3,4]*Universitas Airlangga, Surabaya, Indonesia*
Peterjsetiawan@staff.ubaya.ac.id, mahendraharuna@gmail.com, rasyidilfian@gmail.com, wisnuadriawan.123@gmail.com

Abstract
Law enforcers are often faced with difficulties when faced with events that meet the formulation in criminal provisions but these are not following the nature (dem wesen nach) of the criminal provisions. To deal with these provisions, one of the legal discovery methods which can be used is to use the interpretation of originalism. The research method in this article is legal research with a statutory approach, conceptual approach, and case approach. Based on the research in this article, it was found that First, the characteristics of the interpretation of originalism as a method of discovery in criminal law is to interpret a statutory regulation according to the original intent of the legislator, so it does not deviate from the original will of the legislator. Second, the use of interpretation of originalism in criminal cases can be seen in the decision number 121/Pid.Sus/2019/PN Mll, which incidentally the judge used the interpretation of originalism related to the true meaning of competence and in the decision number 72/Pid.Sus/2020 /PN Psb, the judge used the interpretation of originalism to interpret the element "Hostile, abuse or blasphemy against a religion professed in Indonesia".

Keywords
criminal law; originalsm interpretation; discovery in law

I. Introduction

The increasing global competition in the economic, technological, socio-political fields, as well as the increasingly complex problems that arise in society make the state required to increase its role in protecting its citizens (Koloay, 2016). One of the roles of the country that is trying to be carried out is by forming new laws or developing existing laws in the hope of solving new problems that arise and prevent new problems from occurring. Informing new laws or developing existing laws, Indonesia, which incidentally is a country with a Continental European system (*civil law system),* translates it by forming various types of new laws and regulations (Moonti, 2017). The existence of various new laws and regulations that were born caused new problems in Indonesia is the creation of hyper regulations in Indonesia (Chandranegara, 2019). Jimly Asshiddiqie, even stated that the condition of Indonesian country which is "legally obese" is a “hyper-regulated society” (Asshiddiqie, 2019).

One of the bad impacts of the occurrence of hyper regulations in Indonesia is there are many law enforcement officers (legal structure) have not been able to understand the true meaning and *ratio legis* from the laws and regulations made (Mustriadhi, 2020). This is logical, because the fact that there are so many laws and regulations have been born, it

DOI: *https://doi.org/10.33258/birci.v4i3.2360*

makes law enforcers unable to study holistically the laws and regulations that were made. If these law enforcement officers are going to study an existing statutory regulation, it is not long before a new rule is born. This is very dangerous in law enforcement, because law enforcement officers are the core of creating effective law enforcement (Soekanto, 2014). The importance of law enforcement in law enforcement is parallel with Bernardus Maria Taverne's opinion which states: "*Geef me goede rechter, goede rechter commissarisen, goede officieren van justitien, goede politie ambtenaren, en ik zal met een slecht wetboeken van strafprocessrecht het goede beruke* (Give me good judges, prosecutors, police and lawyers, I will surely eradicate crime even without laws) (Suhardin, 2009)."

One of the law enforcement agencies affected by the lack of understanding of law enforcement regarding the true meaning and *ratio legis* of the laws and regulations were born is (*criminal law enforcement*). There is a lack of understanding of law enforcement regarding the real meaning and ratio legis of a statutory regulation (criminal legislation relating to criminal law in particular), making law enforcement officers (especially criminal law enforcers) ultimately only interpret the legislation following the law written (law in text), without understanding the context (law in text) of the legislation. Satjipto Rahardjo, stated that the condition of criminal law enforcement like it is law enforcement that succeeds in creating "legal justice" (legal justice), but fails to capture "(social justice) (Ismansyah, 2010).

Acts against the law and Abuse of authority in criminal acts of corruption are regulated in Article 2 and Article 3 of Law Number 31 of 1999 as amended to Law Number 20 of 2001 concerning Eradication of Corruption (UUPTPK). There is a fundamental difference between the two acts, even though the two acts are elements that determine whether or not an action can be declared a criminal act, furthermore the two acts are also important to determine whether someone can be blamed for corruption or not. (Purba, I and Syahrin, A. 2019)

As described above, related to law enforcers who only look at the text of existing laws and regulations, there are times when the police in carrying out their duties also do this. In the context of the police determining a criminal event, it turns out that sometimes the police only look at the formulation of an offense, without looking at the context of the article. Thus, if the incident fulfills the formulations in an offense, the police will determine the incident as a criminal event. Even though the event fulfills the formulation of an offense, the event "in essence (*dem wesen nach*)" is not an offense (Christianto, 2017).

Popmpe in N.J. 1938 Number 929, gives an example (Hamzah, 2012), for example, person A steals an object from person B, then person B buys the item from person A. In its development, person B finds out the item that he bought from person A is his own. If seen from Person B's action, it can be seen that person B's action fulfills the formulation of the offense of detention (*heling*) regulated in Article 480 paragraph (1) of the Criminal Code (KUHP) which reads (Lamintang & Samosir, 2019): "*met gevangenisstraf van ten hoogste vier Jaren of geldboete van ten hoogste zestifg gulden wordt gestraft: 1. Als schuldig aan heling, hij die eenig voorwerp waarvan hij weet of rederlijkwerwijs moet vermoeden dat het door misdrift is verkregen, koopt, hurt, inruilt, in pand neemt, als geschenk aanneemt, of uit winstbejag verkoopt, verhuurt, verruilt, in pand geeft, vervoert, be wart of verbergt*;" (In Indonesian it reads: "Punished with a maximum imprisonment of four years or a maximum fine of sixty rupiahs: 1) Due to wrongful conduct of detention, whoever regarding an object that he knows or should reasonably suspect, that the object has been obtained because of a crime, buying renting, exchanging, receiving as a pledge, receiving as a gift, or because you want to make a profit selling renting, exchanging, giving as a means of transporting, storing or hiding;").

If the case given by the Pompe is turned out to be forwarded to the examination process in court, then the last criminal law enforcement guard who incidentally is the only one who has the authority to impose a crime or not based on Article 183 of the Criminal Procedure Code is the judge. In terms of dealing with criminal cases such as the example of Pompe, then of course there will be a dilemma. On either contrarty, the incident fulfills the formulation of the offense and does not have a basis for eliminating the crime *(in casu*: justification basis [r*echtvaardigingsgronden* and basis for forgiveness [*schulduitsluitingsgronden*]) (Mulyati, 2019), but on either contrary, if found guilty, then, it is not following the nature of the formulation of the offense and of course contrary to the sense of justice that lives in society (*justum animatum)* which incidentally must be explored and followed by judges based on Article 5 paragraph (1) of Law Number 48 in 2009 about Judicial Power (Helmi, 2020).

If the judge is faced with a case as given by the P0mpe example, then one of the means that the judge can use in making a decision is to use the method of interpretation of originalism. In essence, this original interpretation is to interpret a statutory provision following *the original meaning or original intent* of the legislation (Lailam, 2014). Through this interpretation, judges can impose criminal decisions following the nature of an offense or the r*atio legis* of the existence of an offense, so that judges can fulfill the sense of justice that lives in society.

This original interpretation is a method of legal discovery (*rechtvinding*) which was initially widely used in *constitutional review* cases at the Constitutional Court to explain the text, context, purpose, and structure of the constitution following the wishes of the *founding fathers* of the constitution (Hapsoro & Ismail, 2020). However, in its development, the interpretation of originalism has begun to be widely used in several criminal cases, for example in cases with registration number 121/Pid.Sus/2019/PN Mll and number 72/Pid.Sus/2020/PN Psb. In cases with registration number 121/Pid.Sus/2019/PN Mll, the judge uses an interpretation of originalism related to skills and in cases with register number 72/Pid.Sus/2020/PN Psb, the judge uses an interpretation of originalism related to the offense of blasphemy of religion as regulated in Article 156a of the Criminal Code. Thus, it can be seen that there are many uses of the interpretation of originalism as a method of discovery in criminal law **(***rechtsvinding in het strafrecht***)** by judges in Indonesia. Based on the description of the background above, the formulation of the problem in this article is **First**, the characteristics of the interpretation of originalism as a method of discovery in criminal law, and **Second**, the use of interpretation of originalism by judges in deciding criminal cases. There are articles in scientific journals in the field of law are similar to this article, but there is a *(*novelty*)* which distinguishes them from these articles.

II. Research Methods

The research is legal (legal research). According to Jonaedi Effendi and Johnny Ibrahim, legal research is (Effendi & Ibrahim, 2020): "a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena by analyzing them, except that, then an in-depth examination of the legal facts is also held to then seek a solution to the problems that arise in the phenomenon concerned". In this article, legal phenomena will be described, related to the use of interpretation of originalism as a method of deep discovery by judges in deciding criminal cases

III.Result and Discussion

3.1 Characteristics of the interpretation of originalism as a method of discovery in criminal law

Not long after the issuance of the *code penal*, Napoleon Bonaparte commented, that: "*mon code est perdu* (woe to my law book)" (Ruviaro, 2019). The existence of comments from Napoleon Bonaparte, the penal code maker which can be said to be the "source" of the Indonesian Criminal Code (Purwoleksono, 2013), actually shows that although the legislator is trying to make a legislation perfect as possible, but there will certainly be imperfect provisions. The imperfection of a statutory regulation takes various forms, such as there are provisions that conflict with other provisions; either higher or equal, there are unclear provisions, and so on. It is actually logical, because legislation is a law made by humans (*Rechtsgesetze*) which incidentally is not like a perfect scripture and has no gaps. It is parallel with the opinion of Heinz Mohnhaupt which states that the characteristics of law made by humans are (Mohnhaupt, 2008): "*Its characteristics are that it is "not absolute", and is created by human beings*…"

On the basis that laws and regulations are the product of humans who have the potential to have loopholes and if these gaps are allowed to cause many problems in society, then one way to cover this gap is to use the legal discovery method. In terms of legal discovery, there are 2 (two) classification methods, are (Juanda, 2016):

a) Legal Interpretation Method
   This method is used if the rules exist, but it is not clear that they can be applied to concrete events. In the process of interpreting the text of the legislation, still, adhere to the text's sound. Examples of legal interpretation methods are grammatical interpretation, systematic interpretation (logic), restrictive interpretation, and so on.
b) Legal Construction Method
   This method is used if the regulations do not exist. Thus, it can be said that this method is used if no laws and regulations are governing the event. Examples of legal construction methods are the analogy method, the *argumentum a contrario* method, the legal refinement method (*rechtsverfining*), and so on.

The following is a table of examples of various methods of legal interpretation that are often used in legal discovery.

Table 1. Types of Legal Interpretation Methods

No.	Types of Legal Interpretation	Explanation	Example
1.	Subsumptive Interpretation	This interpretation method is a method of applying a statutory text to a case *in concerto* by not entering the stage of using more complicated reasoning and interpretation, but simply applying a syllogism (concluding the major premise and minor premise).	Major Premise: Whoever takes the life of another will be punished Minor premise: Mr. Andi killed Mr. Budi Conclusion: Because of Mr. Andi killed Mr. Budi, Mr. Andi will be punished
2.	Grammatical Interpretation	This interpretation method is to interpret the words or terms in the laws and	The word "embezzlement" in Article 372 of the Criminal Code can also be

		regulations according to the language rules (applicable law or grammar). Some call this interpretation an interpretative interpretation based on grammar or linguistics (*de gramatikale of taalkundige interpretatie*).	interpreted as "the act of eliminating".
3.	Systematic Interpretation (*Sistematische Interpretatie*)	This method interprets a statutory regulation by relating it to other legislation or the entirely legal system.	To understand "land buyers with good intentions", not only look at Law Number 5 in 1960, but it must also look at other provisions, such as Burgerlijk Wetboek, Government Regulation Number 24 in 1997. Land Registration, Circular Letter of the Supreme Court Number 7 in 1997. 2012, Supreme Court Circular Number 5 in 2014, and Supreme Court Circular Letter Number 4 in 2016.
4.	Historical Interpretation	This method interprets the meaning of statutory regulations according to the occurrence of statutory regulation. In this method, interpreting a statutory regulation by examining history, both legal history, and the history of the formation of statutory regulation (*wethistorie interpretative*).	An example of this interpretation is the judge using Memorie van *Toelichting* (MvT) which is an explanation from Wetboek van *Strafrecht* which incidentally became the basis of the Criminal Code in interpreting the elements in the Criminal Code.

Source: (Fauzan, 2014)

From the several interpretation methods, one of the interpretation methods which are starting to be used frequently today is the interpretation of originalism. The interpretation of originalism is widely used in the interpretation of the constitution. It can be seen from its definition, in the Merriam-Webster dictionary which states that the interpretation of originalism is(Merriam-Webster, 1982): “a legal philosophy that the words in documents and especially the U.S. Constitution should be interpreted as they were understood at the time they were written.” From this definition, it is clear that the interpretation of originalism is to interpret the constitution following the original will of the constituents of the constitution.

There is a view that assumes that the interpretation of originalism is the same as the historical interpretation because the focus is both using a historical approach. Apart from the debate related to the "naming" of this interpretation, the authors argue that in essence,

this interpretation of originalism is **to interpret a statutory regulation according to the original intent of the legislator, so it does not deviate from the original will of the legislator**. The importance of understanding the will of the legislators, so it is not to deviate from the purpose of making a law, it is also following a classic legal adage, is (Davidson, 2017): "*Scire leges non hoc est, verba earum tenere, sed vim ac potestatem* ."

The interpretation of originalism is similar to the *wesenchau* teachings in the Netherlands. In the Netherlands, initially the teachings of *tatbestandmassigkeit* were applied in applying an offense (Hamzah, 2012). This *tatbestandmassigkeit* teaching essentially emphasizes that when there is an act that fulfills all the elements of the offense formulated, then the act automatically constitutes an offense (Fatkhurohman & Kurniawan, 2017). In its development, this teaching was replaced by the *wesenchau* teaching, is **even if an act is following the formulation of the offense in the criminal legislation, it does not automatically constitute an offense** (Akbar, 2020)**.**

The use of interpretation originalism in criminal law, several things can be done, to understand the original intent of a statutory regulation related to the criminal law. Several ways can be done to understand the original intent of a legislation related to criminal law, are:

a. Analyzing through academic texts

In Article 1 number 11 of Law Number 15 in 2019 about Amendments to Law Number 12 in 2011 about the Establishment of Legislations (Law Formation of Legislations), it is regulated that. "Academic Papers are manuscripts of research results or legal studies and other research results on a certain problem that can be scientifically justified regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/City Regional Regulation as a solution to the problem. And the legal needs of society."

b. Analyzing from the minutes of the meeting for the formation of laws and regulation

In drawing up a statutory regulation, it is generally carried out in a meeting. In the meeting, some minutes describe the discussion of the meeting. By analyzing through the minutes of this meeting, it can be seen that the debate which in the end gave birth to a criminal provision. Regarding the minutes of this meeting, for example, it can be seen on the site https://www.dpr.go.id/. From the site, it can be seen the minutes of the meeting discussing the draft law.

c. Hearing from parties who are directly involved in the process of forming related criminal laws and regulations

In the formation of a legislation, of course, some parties are directly involved in the process of forming the relevant criminal legislation. These parties can explain the debate, origin, and reasons for making the relevant laws and regulations, so the *original intent* of the establishment of the relevant criminal rules can be understood. Regarding concretization, bringing in parties who are directly involved in the process of forming these related criminal laws and regulations, for example bringing in the formation of related criminal legislation in the trial as experts in the trial to explain the criminal laws and regulations.

d. The judge explores directly from the relevant criminal laws and regulations

If there is a criminal case that reaches the trial stage, the judge can explore the "*original intent*" directly from a related criminal legislation. Judges can directly interpret the intent/objectives of the legislators who make up the relevant criminal legislation. It is certainly not wrong, because based on Article 5 of Law 48/2009 judges are indeed required to explore, follow, and understand existing legal values.

3.2 The Use of Interpretation of Originalism by Judges in Deciding Criminal Cases

Cum adsunt testimonia rerum, quid opus est verbist (when the evidence and facts are there, then what is the use of words?) (Dirgantara et al., 2020). The classical legal adage actually has a deep meaning, that in an argument, the most important thing is the evidence that supports the argument. Regarding the description of the use of the interpretation of originalism in the criminal law above, to complete this article, it will also be described related to the use of interpretation of originalism by judges in deciding criminal cases as a form of implementation of the use of interpretation of originalism in this criminal law.

a. Decision number 121/Pid.Sus/2019/PN Mll

1. Legal Facts

In this case, the defendant is named Kinas Alias Mantu Bin Sije. On Friday, May 17, 2019 at approximately 20.00 WIT, the Defendant and Witness Amiruddin met at Mr. Wandi's house, which is located behind the Masamba Hospital, Ksimbong Vilage, Masamba Sub-District North District Luwu after they broke their fast and at that time Amiruddin Alias Ami invited the Defendant to go to Bone-Bone at the house of Witness Amiruddin's sister. After the two had eaten, Defendant and Witness Amiruddin headed to Bone-Bone using a brown Yamaha fino brand motorcycle belonging to Witness Amiruddin, while Witness Amiruddin's motorcycle was carried while the Defendant was carried.

While still on the Trans Sulawesi axis road to be precise in the Baliase Village area at the chicken coop owned by Haji Ikki, the Defendant and Witness Amiruddin stopped and at that time Witness Amiruddin gave money to Defendant in the amount of Rp. 800,000 to buy methamphetamine from Pak Haji Ikki. At first, Defendant said he was afraid to buy the methamphetamine, but Witness Amiruddin said "it's okay if anything happens to me" then Witness Amiruddin said he gave this money to Haji Ikki because he just met Jeki Mantu. At that time, Defendant took the money and the Defendant said they were both thereafter that they both went to the side of the chicken coop and when the Defendant arrived in the chicken coop the Defendant saw Haji Ikki's chickens not long after that the Defendant saw Haji Ikki coming to the coop and then the Defendant asked Haji Ikki "Haji is there Ami wants to buy shabushabu then Haji Ikki answered adaji the money" and the Defendant said "Iyye adaji with me Rp. 800,000 (eight hundred thousand)" after that the Defendant immediately handed over the money to Haji Ikki. Furthermore, Haji Ikki handed over to Defendant 1 (one) sachet of methamphetamine after receiving the methamphetamine, the Defendant immediately gave it to lel. Amiiruddin alias Ami. After that, the Defendant immediately said goodbye to Haji Ikki and the two headed to Bone-Bone and after arriving at the district. Bone-bone, precisely at the house of Witness Amiruddin's sister at around 21.00 WITA The Defendant immediately rested and fell asleep not long after that at around 01.30 WITA the Defendant heard someone calling the Defendant and knocking on the door of the house and at that time the Defendant woke up and opened the door of the house after that the police officers immediately took action. arrested and carried out an examination and officers found evidence of 1 (one) black Samsung brand cell phone which was in the house after that the Defendant was secured and taken to the car and that's where Defendant met Witness Amiruddin and then headed to the East Luwu Police Station for further proceedings. For this action, the defendant was charged with an alternative charge, is Article 114 Paragraph (1) of the Republic of Indonesia Law. Number 35 in 2009 about Narcotics or Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 in 2009 about Narcotics.

In course of the trial, the judge found legal facts, that although the defendant was able to answer the judge's questions, the defendant had a behavior (disorder) called the Inner Child, is the defendant's actions were not in accordance with his mental age. Furthermore, in the legal facts, it was found that it was this condition that was used by Witness Amiruddin to deceive the defendant so that the defendant bought Witness Amiruddin narcotics.

2. Judge's Decision

1. To declare that the Defendant Kinas Alias Mantu Bin Sije has not been legally and convincingly proven guilty of committing a criminal act as stated in the First Indictment or the Second Indictment of the Public Prosecutor;
2. Exonerated the Defendant from all of the Public Prosecutor's Indictments;
3. Restoring the rights of the accused in his ability, position, dignity, and worth as before;
4. Ordered the Defendant KINAS Alias Mantu Bin SIJE to be immediately released from detention;
5. Determine the evidence in the form of:

a. 3 (three) medium-sized sachets containing methamphetamine type narcotics weighing 5.14 (five-point fourteen) grams which are weighed with the sachets;
b. 1 (one) sheet of white yellow gold aluminum foil;
c. 1 (one) sheet of silver black aluminum foil;
d. 1 (one) white Samsung brand cellphone belonging to Amiruddin Alias Ami Bin Muh. Amin;
e. 1 (one) unit of a brown Yamaha Fino brand motorcycle without a plate belonging to Amiruddin Alias Ami Bin Muh. Amin; Returned to the Public Prosecutor to be used in the case of Amiruddin Alias Ami Bin Muh.Amin;

6. Charge the State with court fees in the amount of Rp. 5,000.00 (five thousand rupiahs);

3. Analysis

One of the judges' considerations, thus acquitting the defendant from the prosecution's demands, was because the judge considered that the defendant was incompetent. Related to this incompetence, based on the judge's interpretation of the original intent of the meaning of the skill. The judge does not only think that the defendant can answer correctly and it is immediately considered competent, but it must be analyzed holistically regarding the condition of the victim. It is as described by the judge in his consideration which states that:

- Considering, that because Defendant can answer correctly, the Panel of Judges has fulfilled the Elements of Everyone against Defendant. Furthermore, what is meant by the application of the law is not merely a problem of applying norms but more than it, the problem of applying constitutional norms, both regarding the original intent and the regulatory ideal (the author's thickening);
- Considering, that due to the description of the considerations above regarding the element of each person where there is the phrase "the Defendant can answer correctly", the Panel of Judges deems it necessary to further interpret it grammatically (original intent and regulatory ideal) (bold by the author), then the matter it can qualify as a skill. Furthermore, the skill itself means being able to do something, able or able;
- Considering, that then, on the other hand, original intent and ideal regulative existence of the phrase competence must be interpreted according to the material and material (bold by the author). For the same time, what is meant by competence in a material sense is skills that are a sich or skills in their physical properties, while material skills are the properties contained in the skills themselves;

From the judge's considerations in Decision number 121/Pid.Sus/2019/PN Mll, it can be seen that the judge uses an interpretation of originalism related to the true meaning of proficiency, so that even though the defendant can answer questions from the judge and there is no certificate stating that he suffers from a mental disorder, but according to the judge the mental condition of the defendant cannot be said to be materially competent.

b. Decision number 72/Pid.Sus/2020/PN Psb

1. Legal Facts

In this case, the defendant's name is Ahmad Fadil (Fadil's nickname). From October 19, 2019, to October 24, 2019, the West Pasaman Islamic Student Association (HMI) held a series of Cadre Training I (LK I) Islamic Student Association (HMI) West Pasaman branch which took place at the Regional Government Mess in Air Bangis which was attended by 35 (thirty-five) participants with the theme of the Basic Values of Struggle activity. Whereas in one of the series of activities of LK I, the committee presented the defendant Fadil as the presenter (master) and witness Joni (separate prosecution) as the instructor accompanying the presenters using the committee providing a schedule slot for material reporting, while the content of the material was fully determined by the defendant Fadil and witness Joni, namely regarding by inculcating the basic values of the HMI struggle.

On Tuesday, October 22, 2019, at around 03.00 WIB, the defendant Fadil and witness Joni sat on the speaker's chair while the participants sat facing the speaker. Defendant Fadil and witness Joni asked witness Riski Habibi as the event equipment section to provide the holy book Al-Quran in which the Defendant would use the Qur'an as a tool in the emptying method in the material for inculcating the basic values of the HMI struggle and then witness Riski Habibi gave it to Defendant Fadil and witness Joni by witness Riski Habibi gave the training participants from the door and then the participants handed over from hand to hand until it was accepted by Defendant Fadil and then Defendant Fadil placed the Al-Quran on the speaker's table.

For Fadil's actions, Fadil was charged with Article 156a of the Criminal Code which reads: "A sentence of a maximum imprisonment of five years whoever deliberately publicly expresses feelings or commits the following actions: a. which are hostile, abuse or blasphemy against a religion professed in Indonesia.", because it is considered to be blasphemy against the Al-Quran which is the holy book of Islam which should be respected and glorified and treated very well.

2. Judge's Decision

1. Declare the Defendant ahmad fadil pgl. Fadil has been legally and convincingly proven guilty of committing a criminal act "intentionally committing an act that is blasphemy against a religion professed in Indonesia;
2. Sentencing the defendant as mentioned above, therefore, with imprisonment for 1 (one) year and 2 (two) months;
3. Determine that the period of detention that has been served by the Defendant is deducted entirely from the sentence imposed;
4. Determine that the Defendant remains in custody;
5. Determine evidence in the form of: - 1 (one) holy book of Al-Quran in red color printing by PT. Tanjung Mas Inti, Jalan Semarang Demak KM 19 Demak is in the possession of Riski Habibi; Returned to HMI Pasaman Barat Branch through Brother Asmar Habibi;
6. To charge the Defendant to pay court fees in the amount of Rp. 2,000.00 (two thousand rupiahs).

3. Analysis

One of the judges' considerations, so that the Defendant was found guilty was because the defendant fulfilled one of the formulations in Article 156 letter a of the Criminal Code, is the element: "It is hostile, abuses or desecrates a religion professed in Indonesia." In interpreting this element, because there is no explanation regarding the meaning of "hostile, abuse or blasphemy against a religion professed in Indonesia", the judge uses the interpretation of originalism. It can be seen from the judge's considerations, are:

- Considering that with the considerations mentioned above, the Panel of Judges thinks that there is a need for a definitional limitation as an indicator of the certainty of this crime which cannot be separated from its contextual formation with the following description (boldition by the author):
- Considering that what is meant by abuse is an act that is not in place or conditions something that is not following its designation;
- Considering that what is meant by abuse is an act that is not in place or conditions something that is not following its designation;
- Considering that what is meant by blasphemy is Istihza in Arabic which means aukhriyah which means harassing or *al Huzu* which means hidden gurai or playing games, making fun of, mocking or ridiculing;

Thus, it can be seen in the judge's consideration, that the judge uses the interpretation of originalism to interpret the element of "hostile, abuse or blasphemy against a religion professed in Indonesia." to provide clear boundaries for these elements so that they are following the principle of *nullum crimen, nulla poena sine lege certa* (no crime without clear rules) (Hiariej, 2015).

IV. Conclusion

The characteristic of the interpretation of originalism as a method of discovery in criminal law is to interpret a statutory regulation according to the original intent of the legislator, so it does not deviate from the original will of the legislator. To understand the original intent of the legislator, several ways that can be done are by analyzing through academic texts, analyzing from the minutes of the meeting of the formation of laws and regulations, hearing from parties directly involved in the process of forming the relevant criminal legislation, and/or or the judge can dig directly from the criminal legislation related to the legislation.

In its implementation, judges have begun to use the interpretation of originalism as a method of discovery in criminal law, for example in decisions number 121/Pid.Sus/2019/PN Mll and number 72/Pid.Sus/2020/PN Psb. In decision number 121/Pid.Sus/2019/PN Mll, the judge used an interpretation of originalism related to the true meaning of proficiency, so that although the defendant could answer questions from the judge and there was no certificate stating that he suffered from a mental disorder, according to the judge of the mental condition of the defendant cannot be said to be materially competent. In the decision number 72/Pid.Sus/2020/PN Psb, the judge used the interpretation of originalism to interpret the element of "hostile, abuse or blasphemy against a religion professed in Indonesia".

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