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Counseling Analysis of Criminal Actions on the Judge's Decision Number 55 / PID.B/2015/PN-BNA AND 79/PID.B/2013/PN.SKA.

Rini Mihartika[1], Rizanizarli[2], Suhaimi[3]
Faculty of Law, Universitas Syiah Kuala, Indonesia
mihartikarini@gmail.com, rizanizarli@unsyiah.ac.id, pak_emy@unsyiah.ac.id

Abstract

In light of the arrangements of Article 143 section (2) letter B of the Criminal System Code that the material necessities of the public prosecution should portray cautiously, obviously, and the criminal demonstration that is being accused of referencing the overall setting of the wrongdoing being perpetrated. Notwithstanding, in the choice No.55/PID.B/2015/PN-BNA and the Surakarta Locale Court Choice Number 79/PID.B/2013/PN.SKA the unmistakable components alluded to in the article have not been satisfied just as in the legitimate contemplations of the adjudicator's choice. , which doesn't plainly hold back the juridical realities uncovered at the preliminary. Since the appointed authority can't choose a case outside of the public investigator's prosecution. This composing plans to see and discover how the appointed authorities' contemplations in these 2 cases made the adjudicators just interested in 1 criminal demonstration and how the adjudicator settled on concursus. To accomplish this objective, the scientist utilizes a regulating legitimate exploration technique that leaves from lawful issues with a similar strategy. This review utilizes optional information sources comprising of essential lawful materials, auxiliary lawful materials that incorporate authority archives, books, and examination brings about the type of reports. The information was examined by subjective strategies. The outcomes showed that the appointed authority was considered unseemly in considering his choice where the sentence got by the litigant was not equivalent with what activities the respondent had submitted against the choice No.55/PID.B/2015/PN-BNA and the Surakarta Locale Court Choice Number 79/PID .B/2013/PN.SKA. It is suggested that the Public Examiner (Prosecutor) should be more cautious in setting up his arraignment as per Article 143 section (2) of the Criminal Technique Code. Similarly, the appointed authority in giving his choice. It is trusted that the appointed authority in giving the choice should contain juridical realities by considering the realities uncovered at the preliminary, so the choice given by the adjudicator doesn't contain blunders in settling on the choice, so nobody is hurt and upsets the general population by the appointed authority's choice.

Keywords
counseling analysis; criminal actions; criminal technique code

I. Introduction

One of the complexities of criminal acts nowadays is that a defendant commits two or more offenses either simultaneously or separately. Cases of offenses committed by more than one defendant and each of which there is no judge's decision among the offenses is referred to as concursus. The concursus referred to above is divided into three parts, namely, first; idealist concursus, second; continuing and third action; realist consensus.

The existence of a judge's decision or commonly referred to as a "court decision" is very necessary to resolve criminal cases. With this "judge's decision", it is hoped that the

parties in criminal cases, especially for the defendant, can obtain legal certainty about their status and at the same time be able to prepare for the next steps, among others, in the form of accepting the decision, or taking legal remedies such as appeal, cassation or review.

Court decision is the result or conclusion of something that has been considered and assessed based on the indictment with everything that is proven in the examination in court, either in written or oral form. Article 1 number 11 of Law No. 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) contains the definition of a Court Decision, namely: "a judge's statement pronounced in an open court session, which can be in the form of sentencing or free or free from all lawsuits in terms of and according to the method regulated in this law".

The implementation of decision-making must be based on the indictment made by the public prosecutor and everything that is proven in court proceedings. All court decisions will be valid and have permanent legal force if they are pronounced in a trial open to the public.

The fact is that many judges' decisions do not reflect legal certainty in accordance with statutory regulations. We can see this in Decision Number 55/PID.B/2015/PN-BNA and Decision Number 79/Pid,B/2013/PN.SKA. In this decision, the judge only decides 1 criminal act. In fact, the perpetrators committed more than one crime.

II. Review of Literature

The indictment as the basis for examination at the trial, the indictment will also clarify which legal rules were violated by the defendant. Thus, the judge may not decide or try a criminal act that was not charged. Against the court's decision Number 55/Pid.B/2015/PN-Bna, in his decision the Judge stated that 1 (one) bong and a meth smoker were confiscated to be destroyed. However, in the contents of this decision, the judge did not explain in detail about the existence of the bong and the meth smoker and this evidence was not indicted by the Public Prosecutor. so that the determination of the evidence that is destroyed in this judge's decision can cause the defendants to avoid other criminal acts. Because the evidence of bongs and meth smokers is evidence of a special crime, namely the Narcotics Crime.

The Public Prosecutor in compiling the indictment at the decision of the Surakarta District Court No.79/Pid.B/2013/PN.Ska, did not charge the defendant with Article 286 of the Criminal Code regarding rape and also did not charge the defendant with Article 55 of the Criminal Code even though it was clearly stated in the court decision. In this case, the defendant participated in a criminal act, not the main perpetrator in committing the crime of theft with violence. Thus the indictment becomes unclear and incomplete.

The form of the indictment prepared by the Public Prosecutor in the decision of the Surakarta District Court No.79/Pid.B/2013/PN.SKA is a form of subsidiaryity. Even though it is clear that the defendant committed more than one crime at the same time and place (concursus idealis, eendaadse samenloop) or at different times and places (concursus realis, meendaadse samenloop). The Public Prosecutor's decision was deemed inappropriate in compiling the indictment in the form of subsidiary.

III. Research Method

Types and Approaches of Research This type of research is normative juridical. This type of research is used because it goes through a series of reading, citing, reviewing the legislation relating to the object of research. While the research tool used is a document study which is a study of legal documents in the form of court decisions related to the case under study.

The normative juridical research stage is carried out through a literature study (a review of the literature. The normative juridical studies/approaches include legal history and comparative law, as well as legal philosophy. The problems that have been formulated in this research will be solved using normative juridical research methods that refers to the facts obtained, meaning research that seeks to see the law in a real sense, or it can be said to see, examines how the law works in society.

Data Collection Resources and Techniques

The data source is the place where the desired data is obtained. Knowledge of data sources is very important to know so that there are no errors in choosing data sources that are in accordance with research objectives. While the data collection technique is the method used by a researcher to obtain the necessary data. With the right data collection method in a study, it will enable the achievement of a valid and reliable problem which will eventually allow objective generalizations.

IV. Results and Discussion

4.1 Judge's Judgment in Deciding Criminal Acts

The basis for the judge's consideration must be based on the statements of witnesses, evidence, testimony of the defendant and documentary evidence and the facts revealed in the trial, as well as elements of the articles of crime suspected of the defendant and juridical and non-juridical considerations.

Judges, in principle, cannot examine and adjudicate outside the scope of the indictment, this means that the judge cannot examine, hear and decide on a criminal case other than that stated in the indictment. Thus the indictment has a central function in court trials in criminal cases. The consequence is that if an error occurs in the preparation of the indictment, it can result in a person being released by the court even though the person is proven guilty of a criminal act. In criminal court proceedings in Indonesia, there have been many cases where a defendant has been acquitted by the court even though he has been proven guilty because of a mistake made in the preparation of the indictment.

Likewise, the Surakarta District Court Decision Letter Number 79/PID.B/2013/PN.SKA and Decision Number 55/PID.B/2015/PN-BNA. The judge makes a decision on what the prosecutor has indicted.

Article 140 paragraph (1) of the Criminal Procedure Code provides instructions that the person authorized to make an indictment is the Public Prosecutor. With the function of such an indictment, a Public Prosecutor is required to have the capability to make an indictment so that an error in making an indictment which results in a defendant who is actually guilty can be acquitted of the indictment need not occur.

The indictment is made by the Public Prosecutor based on the preliminary Investigation Report (BAP) by the investigator. The Public Prosecutor as the official charged with making the indictment must carefully describe the criminal act (feit) committed and must also be clear and understandable by the defendant, both those who understand the law and those who are blind to the law. If the maker of the indictment is not

careful and uses sentences that are not understood and the formula is unclear, the result will be that the charge will be annulled.

The function of the indictment in court proceedings is the basis and starting point for examining the accused. Based on the formulation of the indictment, the defendant's guilt was proven. Examination of a case at a court hearing may not deviate from what is formulated in the indictment, because the judge may not examine a case outside of the indictment. Therefore, the law requires the public prosecutor to make indictments clearly, carefully and completely so that it is easy to direct the trial.

The selection of this type of indictment is considered inappropriate because in fact in the legal events that occurred there were other criminal acts, namely rape. Therefore, the most appropriate type of indictment is cumulative indictment.

In case number 79/Pid.B/2013/PN.SKA, although it is clearly known that the crime was committed jointly by several perpetrators, in the indictment the Public Prosecutor did not include articles related to concurrent or concursus which contained in the act of the crime in question.

The freedom of judges in the judicial process is something that is "absolute" but that freedom is not unlimited, the limitations of judges' freedom in imposing crimes are expected to be in accordance with the Pancasila philosophy. What is meant by the philosophy of Pancasila is that in imposing a sentence, the judge must behave like someone who has an orderly, disciplined life behavior and has a clean mentality.

4.2 Judges in Deciding the Crime of Coalition

Basically, the judge considers everything from several aspects in making a decision, namely:

a. Juridical aspects.

   In the theory and doctrine of criminal law there is what is called a criminal act (strafbaarheid van heit feit) and criminal liability (strafbaarheid van de person/ van de dader). The criminal acts committed by the defendants must be held accountable in terms of the quality of the act. Everyone is responsible as far as what he has done. The judge, seeing this, is of the opinion and believes that the guilt charged to the defendants is indeed balanced.

b. Philosophical aspects.

   It is an effort to instill new views and attitudes for the accused in terms of ontological (existing facts), epistemological (true knowledge), axiological (good values) which radically and thoroughly provide understanding and enlightenment that the principle of doing good deeds and do not do evil deeds is a value, norm, and culture that must be maintained and applied in every activity and daily life from an early age so as not to be dragged into further difficulties. Psychological aspects. That is an effort to instill a psychological sense of shame to anyone who violates the law. The right punishment will not only have a legal impact on the defendant as well.

In Article 183 of the Criminal Procedure Code it is stated that a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it. Thus, if an act is suspected of being a criminal act, if it does not fulfill the elements of at least two pieces of evidence, then the act cannot be said to be a criminal act. In line with this, the explanation of legal evidence has been regulated in Article 184 of the Criminal Procedure Code which states that legal evidence is:

a) Witness Testimony
b) Expert Information

c) Letter
d) Instructions
e) Defendant's Testimony

The judge's considerations consist of juridical considerations, namely judges' considerations based on juridical facts revealed in the trial and by the Criminal Code which have been determined as things that must be included in the decision. The things referred to include "the allegations of the Public Prosecutor, statements of the defendant and witnesses, evidence and articles in criminal law regulations.

In his judgment, the judge must include the juridical facts that were revealed in the trial, but in this case, the judge did not consider all the facts of the situation that were found during the examination process at the trial, with which the judge only considered the evidence submitted, namely testimony of witnesses and statements of the defendant, but did not consider in detail the evidence relating to a specific crime, namely narcotics crime which was also submitted to the trial. So such a decision is classified as a decision that lacks legal considerations.

However, in the decision Number 79/Pid.B/2013/PN.SKA there is an oddity if the Public Prosecutor does not find any qualifications for the crime of rape in the legal event experienced by Ika Oktaviana.

V. Conclusion

The judge's considerations consist of juridical considerations, namely judges' considerations based on juridical facts revealed in the trial. The things referred to include "the allegations of the Public Prosecutor, statements of the defendant and witnesses, evidence and articles in the criminal law regulations". In his consideration, the judge only considered the evidence submitted, namely witness testimony and the defendant's statement, but did not consider in detail the evidence relating to a specific crime, namely narcotics crime which was also submitted to the trial. the evidence that bongs and meth smokers were confiscated to be destroyed is not appropriate. This is because the defendants not only committed theft but were also related to narcotics crimes. So that this judge's decision, can cause the defendants to avoid other crimes they have committed, namely narcotics crimes.

The Public Prosecutor is not right in determining the qualifications of the crime that occurred because he ignored the rape crime experienced by the victim on the grounds that he did not find an element of violence. Whereas the Public Prosecutor only pays attention to elements of violence in the form of physical violence and does not consider the possibility of threats of psychological violence. This is possible for the victim Ika Oktaviana who is limited (mute) dealing with four adult male perpetrators who are in a drunken state. So that the victim can be declared not daring to give resistance because the person concerned is physically, psychologically and socially weak. Whereas the Public Prosecutor should include the classification of the crime of rape and compile the indictment in a cumulative form so that the sentence imposed on the perpetrator can be more severe.

The judge's decision in the case Number 79/PID.B/2013/PN.Ska and Decision Number 55/PID.B/2015/PN-Bna. incorrect.

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