

## RETRACTED ARTICLE: The Role of Justice Law Enforcement by Judges in Handling Criminal Cases

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**Abstract**—This article has been retracted with agreement of the journal editors. The retraction is due to a significant overlap with an article by the same authors that has been published in another journal (*Legalis : Journal of Law Review*). This constitutes a case of duplicate publication, which is a breach of our journal's publication ethics policy. The authors apologize to the readers and editors of both journals for this oversight. The journal is committed to upholding the integrity of the scientific record.

**Keywords:**

### Introduction

Indonesia is a country of law. As a concept of a state, a country of law is not something new in discussions about how the state is run, because normatively the affirmation of Indonesia as a country of law has been stated very firmly and clearly in our country's constitution, namely the Constitution of the Republic of Indonesia, especially in Article 1 paragraph 3, which states that Indonesia is a country of law.

The concept of a country of law written in the Indonesian constitution contains guarantees of human rights, the principle of a free and impartial judiciary and guarantees justice for everyone. From this simple description of the concept of a country of law, there is actually an acknowledgment that the law has the highest position because the law in its enforcement must always respect human rights and be applied equally to everyone.

In the concept of a country of law, in essence the law itself is the determinant of everything in accordance with the principle of nomocracy and the doctrine of 'the rule of Law, and not of Man'. Within the framework of the rule of law, it is believed that there is recognition that the law has the highest position (supremacy of law), equality before the law and government (equality before the law), and the application of the principle of legality in all its forms in practical reality (due process of law). Thus, the law is not made to guarantee the interests of a few people in power, but to guarantee the interests of all people and citizens and in accordance with the values reflected in Pancasila. The Pancasila rule of law applies law in national and state life based on applicable regulations or legal rules in order to achieve the objectives of the law, namely justice, benefit, and certainty. These three objectives of the law receive attention from the state proportionally and in balance in the life of society. This is because the state in its implementation is given the authority to formulate it in the form of laws and regulations, which in this case is carried out in a system termed the Integrated criminal justice system. This system is then tasked with implementing the law in order to enforce the law. Therefore, it is very important that law enforcers who are members of the Integrated criminal justice system maximally enforce the law seriously and responsibly. In fact, in carrying out the implementation of the law, law enforcers are needed as the embodiment of law enforcement in order to achieve and create a better community life by upholding justice and legal certainty.

Law enforcement is one of the main foundations in maintaining order, justice, and security in a country, including Indonesia. Law enforcement is the process of making efforts to uphold or function legal norms in real terms as a guideline for behavior in traffic or legal relations in community and state life. Therefore, the legal process that is running and taking place in the courtroom must be maximized without discriminating against people. One of the parties who has the authority in the law enforcement process is the judge. In this case, the judge not only decides the case, but also acts as a facilitator for justice seekers. The judge is obliged to help them understand the trial process and ensure that their rights are fulfilled. The judge is obliged to create an efficient and effective trial. The judge always tries to realize a simple, fast, and low-cost trial, especially in civil cases. This aims to create easy and affordable access to justice for all people. No less important, judges are required to have integrity and an impeccable personality, honest, impartial, professional, and experienced in the legal field. This integrity is the main foundation in carrying out their duties based on the provisions contained in the Criminal Procedure Code (KUHAP). As is known, the Criminal Procedure Code is the legal basis for law enforcement officers to carry out their duties and authorities. The Criminal Procedure Code regulates investigations, inquiries, detentions, arrests, prosecutions, and court decisions and other matters that regulate the procedures of a criminal act as regulated in the Criminal Code (KUHP).

Therefore, criminal procedure law as the implementer of criminal law contains the meaning of legal norms in the form of authority given to the state to act, if there is a suspicion of a violation of criminal law. So criminal procedure law must be able to limit the power of the ruler so that it does not become arbitrary on the one hand and on the other hand the power of the ruler is a guarantee for the validity of the law, so that human rights are guaranteed.

This article then wants to see how judges should play a role in enforcing impartial laws when handling existing criminal cases? Then what factors hinder law enforcement in examining criminal cases, thereby injuring the public's sense of justice?

## Method

The research method used in this writing is the normative legal research method. In this study, the data used is secondary data obtained through literature studies. After the data is collected, an analysis is carried out to answer the existing problems.

## Discussion

### The Role of Judges in Enforcing Impartial Laws

That criminal acts can never be separated from human survival. It will always follow every process of growth and development of community life, even though there are already laws and regulations governing its sanctions.

Sanctions are given so that society complies with every norm that exists in its life. According to Satjipto Rahardjo, a norm or rule can survive because of sanctions, namely anyone who commits a violation will be threatened with punishment. Sanctions are a reinforcing factor for the implementation of existing norms and those who violate norms are part of the reaction.

The purpose of norms is to be obeyed and to be obeyed, sanctions are needed. In legal science, various forms of norms are known that apply in society. Norms of politeness, moral norms, customary norms, religious norms and legal norms. Among these norms, the form of sanctions in criminal law is sanctions in the form of suffering or misery given consciously and intentionally to someone who has committed a violation of the law. Article 10 of the Criminal Code stipulates four forms of basic punishment for a person who commits a crime, namely the death penalty, imprisonment, detention and fines. In imposing sanctions on people who violate norms, judges are law enforcement officers who are given responsibility by a law. Therefore, it is undeniable that judges are central figures in the Indonesian criminal justice system to provide punishment for perpetrators of crimes. Judges play a crucial role in upholding law and justice. There is a great and noble responsibility that must be borne by judges behind their large toga to handle and decide cases objectively and professionally for the sake of upholding the law. Judges have independent powers and are free from any influence. In Article 24 of the 1945 Constitution and Article 1 of Law Number 48 of 2009 concerning Judicial Power, it is explained that judicial power is the power of an independent state to organize trials to uphold law and justice based on Pancasila, for the sake of the implementation of the rule of law of the Republic of Indonesia. The implementation of judicial power is carried out by a Supreme Court and the courts below it, namely: (1) the general court environment; (2) the religious court environment; (3) the military court environment; (4) the state administrative court environment, and by the Constitutional Court (Article 24 paragraph (2) and Article 2 of Law Number 49 of 2009 concerning Judicial Power).

In order to uphold law and justice based on Pancasila, for the sake of the implementation of the rule of law of the Republic of Indonesia as mandated by the 1945 Constitution above, then in their duties and responsibilities as law enforcers for justice seekers, judges are required to explore, follow, and understand the legal values and sense of justice that live in society. This is important to ensure that the decisions made are in line with the values and norms adopted by society.

There are many important things that judges must pay attention to so that the decisions to be made are just. Even a judge is required to withdraw from the trial if they are related by blood or marriage to the third degree, or a husband or wife relationship even though they have divorced, with the chairman, one of the member judges, prosecutor, advocate, or clerk. And also a judge is required to withdraw from the trial if he has a direct or indirect interest in the case being examined, either of his own free will or at the request of the litigants.

B. M. Taverne, a Dutch legal expert described judges with the statement; "Give me good judges, prosecutors, police and advocates and I will eradicate crime even without a piece of law". What B. M. Taverne said above implies to us that the position of a judge is very important in law enforcement. The importance of the judge's position can certainly be seen through his/her quality decisions and provide a sense of justice for the community. What is the meaning of a good law, but if there are no good judges, then law enforcement has no meaning. If we look closely at the present time, there are decisions by certain judges that are contrary to the sense of justice and ignore conscience. However, we also cannot deny that there are

decisions by judges that are in accordance with the sense of justice by prioritizing conscience. However, when a sense of justice is not achieved in a judge's decision, it will clearly disappoint the community as seekers of justice. Moreover, the judge who tried a case is indicated to have accepted bribes from the defendant or other parties. So that in the end it influences the judge's decision.

Among the judge's decisions that caused a stir and violated the sense of justice can be seen in the decision against the defendant Ronald Tannur some time ago. At least three judges at the Surabaya District Court were named suspects because they were suspected of accepting bribes and gratuities. This case then became the focus of many parties, because in this case many law enforcement officers were involved.

In addition to being a criminal act, judges who accept bribes are classified as a form of violation of the code of ethics, namely not behaving honestly. One form of honest behavior of a judge is not to ask for or accept and must prevent his family from asking for or accepting gifts, inheritances, gifts, awards, loans or facilities from: advocates; prosecutors; people who are being tried; other parties who are likely to be tried; parties who have an interest either directly or indirectly in a case that is being tried or is likely to be tried by the judge concerned which is reasonably considered to have the aim or intent to influence the judge in carrying out his judicial duties.

When the judge's decision does not match the expectations of the community as justice seekers, then where else will the community get legal justice. In fact, the judge through his decision (court decision) is the determinant of every case tried in court, whether the defendant is acquitted or punished. The judge is one part of the law enforcers who are a subsystem in the criminal justice system.

According to Friedman, there are three elements related to the legal system. First, legal structure. Second, legal substance and third, legal culture. The legal structure includes law enforcement institutions, including the professionalism of law enforcement officers which is closely related to the quality of human resources. Two things related to professionalism and the quality of human resources are recruitment patterns, education systems and career levels. Legal substance includes the content of the rules, even more than that, legal substance also includes how to form them? Is the legal substance responsive to developments in society? Will the legal substance cause problems in enforcement or not. Then legal culture is essentially the legal awareness of society. Public obedience to a rule is the main prerequisite for a legal system to work properly. This public legal awareness cannot be separated from the values contained in a nation. Obedience to the rule of law must be autonomous. This means that there is an awareness of conscience to obey the rules. Obedience to the rule of law should not be heteronomous, meaning that such obedience is based on pressure or coercion from outside oneself.

Judges have a very noble task in determining the fate/color of the law in the eyes of the public when viewed from their duties and authorities as the deciding party. Judges have a strategic position to determine whether someone is guilty of the law or not. Judges have a primary role in the law enforcement process. It is in the hands of judges that the fate of law enforcement will be determined. Judges are not allowed to discriminate in the treatment of law enforcement. This is where Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that the Court adjudicates according to the law without discriminating against people

In the judicial institution, a judge is a state official who is given the power to judge by law. In this case, judging is a series of judges' actions used to judge according to applicable laws. The authority to judge according to law requires judges to carry out their duties fairly without discrimination, and more importantly not to be influenced by any party.

The law has become the main source of law for civil law system countries such as the Netherlands, France, Italy and Indonesia. However, for countries that adopt the common law system, the law is the second source of law after court decisions (precedent). The law is the main law for countries that adopt the civil law system, it is the first place for judges and anyone to find out what the law is about something. The law is the first place to look for and find the rules of life.

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In the future, all law enforcement officers including judges must of course make improvements and learn from cases that have occurred. Work in accordance with existing laws and do not deviate from the provisions contained in the law. Because only the law is then the basis for the judge in deciding whether or not someone is guilty of committing an act that is contrary to the law besides his beliefs. The judge must obey the applicable law so that his life can be better, peaceful and safe and far from existing legal problems.

"According to Utrecht, people obey the law for various reasons, namely: First, feeling the rules as law and having an interest in the implementation of these rules; Second, pursuing a peaceful life and only by obeying the law, a peaceful life can be achieved. On the other hand, those who violate the law will suffer because legal sanctions have been prepared; Third, because society wants it. In the reality of community life, the importance of the law is only felt when a legal sanction has been experienced by a violation of the law. The law is only desired when the side of his life is disturbed by others, or feels the existence of the law if the extent of his interests is limited by existing legal regulations; Fourth, Social coercion (sanctions). People feel ashamed or worried about being accused of being asocial if they violate social/legal norms."

If someone commits a crime, it will certainly make people's lives difficult. Even people who do evil will also feel the consequences of their actions. There are articles that regulate it and explain how much the criminal threat is for people who commit crimes. Now it remains how judges work well according to existing laws. It must be understood that in carrying out their duties to examine and try and decide someone who has committed a crime, judges must work according to existing legal regulations. After going through the process of proof in court for the perpetrator of the crime, then if there is an article that he violates, he must be punished according to that article. That is why the sanctions and legal consequences that must be received are in accordance with the crime he committed.

Various incidents and events that befall the judiciary such as judges accepting bribes and gratuities in carrying out their duties can be used as valuable momentum as a turning point to carry out total reform in the world of justice. Therefore, judges who are proven to have played around with the law should be given strict sanctions. Once again, this is the clean-up work that must be done in order to carry out judicial reform, including later by continuously increasing supervision and guidance for judges on duty.

## Inhibiting Factors in Criminal Law Enforcement

Hans Kelsen defines law as a coercive order against all human behavior, which is regulated by the main rules and norms that contain sanctions. Therefore, it can be said that law is a set or collection of principles and rules arranged in a system to determine what is allowed and what is prohibited for individuals in community life. One of the laws that explains what is allowed and what is not allowed with the application of sanctions is criminal law.

The functionalization of criminal law in achieving public order and security (social order) is aimed at creating social policies, so that to achieve it, criminal law acts as a means to eradicate it both repressively and preventively. Meanwhile, in achieving order, criminal law acts as a means of regulating it, so that social justice is achieved.

In the existing legal trial process, the judge must be able to present just criminal law rules if there is a legal subject who violates any existing legal norms. Legal regulations that have been made and compiled in an existing legal system must be applied to individuals (humans) who commit a criminal act while still adhering to the principle of legality. The principle of legality is a very fundamental principle in criminal law with its main objective being to achieve legal certainty in its application and prevent arbitrary actions by the authorities. The principle of legality is explicitly stated in Article 1 paragraph (1) of the Criminal Code (KUHP) which emphasizes that no act may be punished, except by the power of criminal provisions in existing laws prior to the act (nullum delictum, nulla poena, sine praevia lege poenali).

Therefore, no law enforcement officer, including judges, may play with the law in the sense of ignoring the legal rules that have been made as stated in the principle of legality above. A person can only be

punished if there is a statutory provision that regulates it. In this case, it should also be noted, especially by judges who will decide a case, where when the law already exists, it must be enforced in accordance with the mistakes made by a person who commits a criminal act. Although it is emphasized that the law must be enforced on every legal subject who commits an act that is contrary to the law, there are still law enforcement officers (judges) who ignore the law's orders in carrying out their duties and responsibilities. Some judges are involved in buying and selling cases, with defendants, even lawyers and other related parties. If we look at it, there are obstacles or difficulties encountered by judges in making decisions originating from several causal factors, such as defense attorneys who always hide a case, witness statements that are too convoluted or fabricated, and conflicting statements between one witness and another and incomplete material evidence needed as evidence in court. The judge in making his decision intentionally benefits the defendant or other parties because of money factors that are contrary to the rule of law.

In trying an existing case, the judge must comply with the existing principles and laws. In the criminal law system based on the conclusions of several opinions of legal experts, that the criminal law system consists of three levels, namely: First, namely the principle, only contains positive values and the principle does not regulate its actions and sanctions. Second, the law as a positive law and third, the court decision, which consists of police investigators, public prosecutors, courts, correctional institutions. Of all these levels, the court decision must not conflict with the second level, namely the law as a positive law and the second level of the law must not conflict with the first level, namely the principle.

In practice, sometimes there are many court decisions by judges that should be based on the provisions of the law in the guilty verdict, but in reality they are acquitted. Therefore, the form of the judge's decision can be in the form of those who are actually proven but are acquitted, it is appropriate for the judge's decision to impose a sentence, because there is money and then it is only decided for a few years.

If such a thing happens, then the judge who decides must be punished according to the threat of punishment contained in the law on the eradication of criminal acts of corruption. Why is that, because the judge must be firm in imposing a sentence in a case. If someone has been proven legally and convincingly based on evidence and in accordance with the provisions of law and legislation, then he must be sentenced to a sentence in accordance with the mistake he has made. This aims to ensure that criminal law enforcement can be realized as optimally as possible.

"In his writing, Indra Purba Harahap, conveys several obstacles experienced by judges in sentencing, namely: First. In the trial. Obstacles that are often encountered in examining defendants often complicate evidence, so that the indictment which should be a guideline in sentencing, the defendant has rejected its truth even though the indictment is based on the minutes which when viewed in trial practice, it is not uncommon for the officers themselves to deliberately dig up convoluted information. Second. Parties in the work environment. The purpose of this obstacle is that after the investigation has been completed, the files have been presented to the courtroom, usually the defendant's close family members will always try to cover up the defendant's personal information. So that with such conditions, it causes the judges to have difficulty when they want to make a correct and impartial consideration. Third. The defendant's ability. The defendant's ability here means to adjust to the trial situation, where the defendants during the evidence usually and their mentality has fallen. So with such physical conditions, it causes the questions asked to him, whether asked by the public prosecutor, legal advisor or judge, to no longer be answered as expected. So with the defendant's condition like that, and when the time comes to consider the verdict, the judges cannot do much. Fourth. Record of violations that have been committed. In general, it can be said that the risk of imposing a lighter sentence for a defendant who has committed a crime for the first time will be lighter than a defendant who has been convicted. However, not all violations can be used as material to aggravate the sentence. But it must be examined first what he has done. So for the purposes of this research, it turns out that the materials for that are still less than perfect. So that in the sentencing it is not uncommon to cause difficulties due to the absence of these materials. Fifth. The physical and psychological condition of the defendant. The importance of this issue is also considered because it is related to criminal responsibility, where in the sentencing of minors or other people whose souls are not normal. It seems that as much as

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possible regarding this matter, information from an expert is really needed. However, in practice, it is not uncommon for this problem not to be considered or prepared by the public prosecutor after presenting the defendant in court so that when the time comes for sentencing the panel of judges has difficulty with the data.

"According to Septy Oktafiani and Syaiful Munandar, the factors causing an act of bribery are: First, Internal Factors. Internal factors mean factors that originate from a person who already has the intention to commit a criminal act of corruption. The intentions of the perpetrator include the need for greed or avarice possessed by the perpetrator. Second, External Factors. External factors include the existence of an opportunity to commit corruption by following existing intentions. This opportunity is influenced by the environment, including the system where the perpetrator works, as well as factors such as superiors and colleagues."

"In a study conducted by Fence M. Wantu, there were obstacles for judges in creating legal certainty, justice and benefits, including the issue of appointing judges. Many assume that the recruitment of judges has not been based on the norms of professionalism or the personal abilities of the judge concerned, which ultimately results in deviations in the judicial process that produce judges' decisions that do not reflect legal certainty and a sense of justice in society. In fact, in the recruitment of judges, intellectuality (related to the ability to master material law, formal law and legal discovery correctly and properly) is required; integrity (honesty); education, coaching, refreshing, periodic meetings, and training, and efficient and effective steps for training classes."

The existence of judges who accept bribes in handling cases is clearly a form of action that cannot be allowed to continue to occur. If there is strong evidence that judges accept bribes in carrying out their duties, then there is no other way, strict laws must be given to the judge, according to the mistakes he made.

However, in the future, what is more important for judges to do wherever they serve in the world of justice is that judges must prioritize professionalism, integrity, honesty and responsibility in carrying out their duties. This is important because judges have the freedom to handle cases. Judges are free to try cases without interference from outside parties. The nature of the judicial power is that it is independent, free to examine a case and try a case without any interference from external parties, including the government, superior judges, or demands from the public prosecutor in this corruption case.

## Conclusion

Judges must play a role in enforcing impartial law when handling existing criminal cases. Therefore, judges are required to work in accordance with existing laws and must not deviate from the provisions contained in the law. Because only the law is then the basis for judges in deciding whether or not someone is guilty of committing an act that is contrary to the law, besides of course also based on their beliefs. If in the examination process someone is proven guilty and the articles they violated confirm the threat of punishment, then they must be sentenced according to the articles violated. Judges should not play around with existing laws by committing acts that are contrary to the sense of justice of the community. Therefore, various incidents and events that befall the judiciary such as judges accepting bribes and gratuities in carrying out their duties can be used as valuable momentum as a turning point to carry out total reform in the world of justice.

The factors causing an act of bribery are: originating from a person who already has the intention to commit a criminal act of corruption. There is a factor of an opportunity to commit corruption by following an existing intention. Then there are also obstacles or difficulties encountered by judges in making decisions such as defense attorneys who always hide a case, witness statements that are too convoluted or fabricated, and there are conflicting statements between one witness and another and the incompleteness of the material evidence needed as evidence in the trial. In addition, many people think that the recruitment of judges has not been based on the norms of professionalism or the personal abilities of the judge concerned,

which ultimately results in deviations in the judicial process.

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