

Basic Considerations of Judges in Determining the Criminal Action of Fraud or Embracement (Case Study of Decision of Sukoharjo State Court Number:194/Pid.B/2021/Pn.Skh.)



Andar Beniala Lumbanraja

Master of Law Universitas Sebelas Maret Surakarta, Surakarta, Indonesia

ABSTRACT: The aim of this study is to analyze the basic considerations of judges in deciding to acquit perpetrators of fraud or embezzlement (Case Study of Suoharjo District Court Decision Number: 194/Pid.B/2021/PN.Skh.). This research uses a normative juridical method. Normative legal research is studied based on rules or norms which are the basis for behaving according to the rules that apply in society which are considered appropriate and appropriate in the national legal system. That the basis for the judge's consideration was to acquit the perpetrators of the crime of fraud or embezzlement (Case Study of Sukoharjo District Court Decision Number: 194/Pid.B/2021/PN. Skh) is based on the provisions of Article 191 paragraph 1 which reads "If the court is of the opinion that from the results of the examination at the trial court the guilt of the actions charged against him has not been legally and convincingly proven, then he is acquitted". Where the subjective and objective elements in the Prosecutor's Indictment in Articles 378 or 372 are not legally and convincingly proven. Based on the provisions of Supreme Court Regulation No. 1, the case against the perpetrator should have been suspended, given the fact that there was an agreement that became the realm of civil law.

KEYWORDS: Court Decision, Consideration of Judges, Justice, Freedom

INTRODUCTION

Courts play an important role in enforcing the law for justice seekers, therefore courts must be free to examine or adjudicate a case without any intervention from any party. The meaning of the word "free" here, is not as free as possible, but will be limited by applicable legal norms.¹In court, the role of the judge in trying something case crime is reflected in the contents of the decision or verdict made and read out before the court. Based on the provisions of Article 50 of Law Number 48 of 2009 concerning Judicial Power, it explains that a court decision apart from containing the reasons and basis for the decision, must also contain certain articles of the relevant laws and regulations or an unwritten source of law which is used as the legal basis for adjudicating . According to the Criminal Procedure Code, there are 3 (three) forms of decisions handed down by judges in trials, namely:

1. Acquittal Verdict (vrijspraak) is a decision handed down by a judge if based on an examination before the trial the actions charged against the defendant are not legally proven to have committed a crime, then the defendant is acquitted. It is regulated in Article 191 paragraph (1) of the Criminal Procedure Code. .
2. Release of All Charges (ontslag van alle rechtvervolging) is a decision made by a judge if the court is of the opinion that the act charged against the defendant is proven but the act does not constitute a crime. Stipulated in Article 191 paragraph (2) of the Criminal Procedure Code.
3. Punishment Verdict (verodeling) is a decision made by a panel of judges if the court is of the opinion that the defendant is guilty of committing the crime for which he has been charged, then the court issues a criminal verdict. Stipulated in Article 193 paragraph (1) of the Criminal Procedure Code.

An acquittal was given to the perpetrator of a crime because there was no evidence of subjective or objective elements being charged against him. M. Yahya Harahap gives the view that someone who sentenced acquittal will be determined based on the facts obtained in court. This means that the acquittal will be reviewed from a juridical perspective based on an assessment made by the panel of judges concerned.²The juridical aspect referred to first, does not fulfill the principle of proof according to law in a negative way. Second, it does not meet the minimum limit of evidence. Guided by Article 183 of the Criminal Procedure Code which states "A

¹ Dahlan Sinaga, Independence and Freedom of Judges to Decide Criminal Cases in a Pancasila Law Country, Nusamedia, Jakarta, 2015, p. 218.

² Ibid.

Basic Considerations of Judges in Determining the Criminal Action of Fraud or Embracement (Case Study of Decision of Sukoharjo State Court Number:194/Pid.B/2021/Pn.Skh.)

judge may not impose a sentence on a person, unless with at least two valid pieces of evidence he obtains confidence that a crime has actually occurred and it is the defendant who is guilty of committing it." So it can be said in a In criminal cases, judges must rely on evidence, because this evidence can foster the judge's confidence and trust in making decisions. If it does not foster a belief and creates a feeling of doubt in the case it is handling, then the judge should acquit the defendant.³

Based on this background, the formulation of the problem to be discussed is how to consider assembly the judge acquitted (vrijspraak) the perpetrators of the crime of fraud or embezzlement based on the Decision of the Sukoharjo District Court Number: 194/Pid.B/2021/PN.Skh.

METHOD

Legal research conducted by the author uses normative juridical research methods. StudyLaw Normative studies are based on rules or norms which are benchmarks for behavior according to the rules that apply in society that are considered appropriate and appropriate in the national legal system. While the research approach is carried out using a statutory approach (statute approach), and a case approach (case approach).⁴ And this approach is also carried out by examining the cases to be discussed, where in this case a court decision has been taken which has gone through the judge's considerations in examining and adjudicating this case.

The sources of legal materials used by the authors come from secondary data consisting of primary, secondary and tertiary legal materials.⁵ Primary legal materials consist of statutory regulations, official records or treatises in making statutory regulations, or court decisions⁶, namely, the 1945 Constitution of the Republic of Indonesia, Invite-Law number 48 of 2009 concerning Judicial Power, the Criminal Code, and the Criminal Procedure Code. Secondary legal materials are obtained from literature that is still related to the topic of the problem taken, in the form of books, papers, journals, articles, research reports, and so on.⁷ Tertiary legal materials obtained by the authors used by researchers in this study were obtained from legal dictionaries, encyclopedias and so on.⁸

DISCUSSION

Judge's decision theory teaches about how when the perpetrators of criminal acts are tried, using process presents truth and justice in a court decision as a series of law enforcement processes.

Therefore, the theories must be included in the court decision:⁹

1. Theory of Coherence or Consistency

This theory proves that there is a connection between one piece of evidence and another

2. Utility Theory

This theory is also widely known as pragmatic, the usefulness of which depends on the benefits that may be obtained done (work ability), have satisfactory results (satisfactory result). The teachings on the theory of court decisions are certainly related to how the perpetrator or victim can fulfill justice. The relationship between justice and a judge's decision has a combination very tightly, Aristoteles in the book *nicomachean ethics*, it is based on Aristotle's general philosophy devoted entirely to justice and is considered to be the essence of the philosophy of law "for law can only be established in relation to justice".¹⁰ The justice that Aristotle meant was divided into two:

1. Distributive justice focuses on distribution, honor, wealth and other goods that can be obtained in society. A fair distribution is a distribution that is in accordance with its good value, namely its value for society.¹¹
2. Corrective justice focuses on correcting something that went wrong. If a violation or mistake occurs, then corrective justice can provide adequate compensation for the injured party, if a crime has been committed, then what punishment is appropriate for the perpetrator.

In the case under discussion, before the judge concluded the case, based on the Indictment Number PDM-70/SUKOH/Eoh.2/09/2021, the Public Prosecutor prepared an alternative form of indictment, firstly Article 378 or secondly Article 372 of the Criminal Code. At first, this case started in August 2020 The Defendant participated in a social gathering organized by a witness named Diyana Novita Rahmawati as many as five types of online social gathering, the conditions that must be followed by online social gathering participants were accommodated directly by the victim witness Diyana Novita Rahmawati, including the

³ Leden Marpaung, *Problem-Free Decisions and Solutions*, Sinar Graphic, Jakarta, 1995, p. 50.

⁴ *Ibid.* p. 29.

⁵ Amirudin and H. Zainal Asidikin, *Introduction to Legal Research Methods*, PT Raja Grafindo Persada, Jakarta, 2006, p. 118.

⁶ Peter Mahmud Marzuki, 2010, *Legal Research*, Jakarta: Kencana Prenada Media, p. 181.

⁷ Amiruddin and H. Zainal Asikin, *Introduction to Legal Research Methods*, Rajawali Press, Jakarta, 2010, p. 168.

⁸ Jhony Ibrahim, *Normative Research Theory and Methodology*, Banyumedia, Surabaya, 2006, p. 162.

⁹ Lilik Mulyadi, *Compilation of Laws in Theoretical Perspectives and Practice of Justice*, Bandung: Mandar Maju, 2007, p. 47.

¹⁰ Carl Joachim Friedrich, 2004, *Legal Philosophy of Historical Perspective*, Bandung: Nuances and Nusamedia, p. 25. ¹¹ *Ibid.*, p. 25.

Basic Considerations of Judges in Determining the Criminal Action of Fraud or Embracement (Case Study of Decision of Sukoharjo State Court Number:194/Pid.B/2021/Pn.Skh.)

Defendant and other participants must be obliged to provide a photocopy of their KTP, then the arisan participants must be willing to follow all the daily payment procedures and sign an agreement made by the victim-witness. In addition, if online arisan participants experience delays in daily payment, they will be subject to a late fee of Rp.

30,000.00- (thirty thousand rupiah) per day. These conditions have been met,

At the prosecution hearing, based on the Public Prosecutor's Charge Letter Case Register Number: PDM-94/SUKOH/Eoh.2/10/2021 dated December 22, 2022, legally and convincingly demanded that the Defendant be guilty of committing a crime as in the first charge of violating Article 378 of the Criminal Code, with imprisonment for 10 (ten) years. Then, after through the process of examining evidence at trial at the trial of the decision of the Panel of Judges who examined and tried case number 194/Pid.B/2021/PN.Skh., decided with the verdict:

1. Declare the Defendant (Tiren Handayani) not legally and convincingly proven guilty of committing the crime as charged against him both in the first alternative indictment violating Article 378 of the Criminal Code and in the second indictment violating Article 372 of the Criminal Code.
2. Therefore, acquitting the Defendant from all charges of the Public Prosecutor;
3. Order that the Defendant be released from detention immediately after this decision is pronounced.
4. Restore the rights of the Defendant in terms of ability, position and dignity; 5. Provide evidence in the form of:
 - a. Cash in the amount of IDR 2,000,000 (two million rupiahs);
 - b. The Tahapan Xpresi BCA account is in the name of Diyana Novita Rahmawati;
 - c. Record book for obtaining arisan in the name of Tiren Handayani; returned to the defendant.
6. Burden case costs to the State.

After knowing the contents of the decision above, the Panel of Judges considered the elements of Article 378 of the Book Invite-Criminal law law in the first indictment containing delict elements:

1. Whoever.
2. With the intention of unlawfully benefiting oneself or others;
3. By using a fake name/false dignity, by deception or a series of lies to move someone else to give something to him or to give debt or cancel debt.

The Panel of Judges' consideration of the element of fraud in Article 378 of the Criminal Code states that the Defendant as an online arisan participant has fulfilled the administrative requirements as an arisan participant provided by the witness Diyana Novita. The conditions met by the Defendant were, of course, the name which valid and not a pseudonym or a name that is not as issued by a government agency that is mandated to do so. According to the judge, the delict in this element must first be proven whether someone is using a fake name or fake identity. Then the money in the amount of Rp. 29,000,000.00 (twenty nine million) received was not using a false name/false dignity, by means of deception or a series of lies, inducing other people to hand over things to him or to give debts or write off debts, but the right of the Defendant when he attends the social gathering. So the elements of Article 378 of the Criminal Code are not fulfilled.

Henceforth, the consideration of the Panel of Judges regarding the elements of Article 372 of the Criminal Code in the second indictment contain *delict* element:

1. Whoever.
2. Purposely.
3. Against the law.
4. owning something.
5. Which is wholly or partly owned by another person.
6. Who is in his power not because of crime.

The Panel of Judges considered that the element of "whoever" in the embezzlement article had been fulfilled in the Defendant. Then, the next element regarding the element "intentionally", in this element the panel of judges considered based on the theory of intent, whether the loss caused to witness Diyana Novita Rahmawati was the goal desired by the Defendant. Whereas based on the facts examined by the Panel of Judges, the Defendant had participated in a social gathering and repeatedly received Harisan from August to January, then on February 21, 2021, the Defendant was no longer able to pay because he was in a state of typhus as evidenced by the testimony of witnesses Diyana Novita Rahmawati and also proven by a medical certificate.

As for the new facts obtained by the Panel of Judges during the examination at trial, it was found that evidence in the form of money in the amount of Rp. 2,000,000. - (two million rupiahs) was money belonging to the defendant which was intended to be used to repay the daily shortfall of Rp. 10,800,000. - (ten million eight hundred thousand rupiah) which was confiscated by the police during mediation because the witness victim refused mediation. In accordance with the provisions of the Criminal Procedure Code, the confiscation of evidence in the form of money has been contrary according to law, because a person cannot be criminally charged unless he has at least two valid pieces of evidence along with the judge's conviction that the perpetrator is innocent.¹²Furthermore,

Basic Considerations of Judges in Determining the Criminal Action of Fraud or Embracement (Case Study of Decision of Sukoharjo State Court Number:194/Pid.B/2021/Pn.Skh.)

the existence of a statement made by the parties before starting the social gathering is an agreement that is civil in nature. The consideration of the Panel of Judges was also obtained which held that contractual acts were civil acts which are agreements in nature regulated in Book III of the Civil Code starting from Article 1233 of the Civil Code to Article 1864 of the Civil Code, which further defines the contract by Article 1313 of the Civil Code defines a contract as "an agreement which includes an act by which one or more parties bind themselves against one or more people.

From the considerations decided by the Panel of Judges Sukoharjo District Court Number: 194/Pid.B/2021/PN.Skh, of course the consideration made by the judge was obtained through proving the facts obtained from the trial. The prosecutor who wrongly indicted Article 378 or 372 of the Criminal Code because it did not meet the subjective and objective requirements, and the process of confiscating conflicting evidence was carried out by the police. Of course the Panel of Judges succeeded in properly digging up evidence, inseparable from the nature of the judges who are active in criminal cases, the considerations in the a quo case have created a just decision.¹³ Given the consideration of the judge who stated that there was a civil relationship that had been made between the Defendant and the witness-victim, it was a civil act that was forced into a crime. Based on Supreme Court Regulation Number 1 of 1956, the criminal case handling process against Defendant Tiren Handayani should have been suspended first, and civil cases should take precedence.

CONCLUSION

That the basis for the judge's considerations acquits the perpetrators of the crime of fraud or embezzlement (Case Study Decision Sukoharjo District Court Number: 194/Pid.B/2021/PN.Skh) is

See the Provisions of Article 183, Law Number 8 of 1981 concerning Criminal Procedure Code.

See Article 50, Article 53 paragraph (1 and 2) of Law Number 48 of 2009 concerning Judicial Power.

based on the provisions of Porigin 191 paragraph 1 which reads "If the court is of the opinion that from the results of the examination at the trial court the guilt of the actions charged against him has not been legally and convincingly proven, then he is acquitted". Where the subjective and objective elements in the Prosecutor's Indictment in Articles 378 or 372 are not legally and convincingly proven. Based on the provisions of Supreme Court Regulation No. 1, the case against the perpetrator should have been suspended, given the fact that there was an agreement that became the realm of civil law.

REFERENCES

- 1) Dahlan, Sinaga. (2015). *Kemandirian dan Kebebasan Hakim Memutus Perkara Pidana dalam Negara Hukum Pancasila*. Jakarta: Nusamedia.
- 2) Leden, Marpaung. (1995) *Putusan Bebas Masalah Dan Pemecahannya*. Jakarta: Sinar Grafika.
- 3) Amirudin dan H. Zainal Asidikin. (2006). *Pengantar Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada.
- 4) Peter Mahmud Marzuki. (2010). *Penelitian Hukum*. Jakarta: Kencana Prenada Media.
- 5) Amiruddin dan H. Zainal Asikin. (2010). *Pengantar Metode Penelian Hukum*. Jakarta: Rajawali Pers.
- 6) Jhony Ibrahim. (2006). *Teori dan Metodologi Penelitian Normatif*. Surabaya: Banyumedia.
- 7) Lilik Mulyadi. (2007). *Kompilasi Hukum Dalam Perspektif Teoritis Dan Praktek Pradilan*. Bandung: Mandar Maju.
- 8) Carl Joachim Friedrich. (2004). *Filsafat Hukum Perspektif Historis*. Bandung: Nuansa dan Nusamedia.
- 9) Pasal 183 Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.
- 10) Pasal 50, Pasal 53 ayat (1 dan 2) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.
- 11) Chapter 183 Law Number 8 of 1981 concerning Criminal Procedure Code.
- 12) Chapter 50, Article 53 paragraph (1 and 2) of Law Number 48 of 2009 concerning Judicial Power.



There is an Open Access article, distributed under the term of the Creative Commons Attribution–Non Commercial 4.0 International (CC BY-NC 4.0)

(<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.