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THE PROBLEM OF GREAT PRECISION JURIDICAL AND SOCIOLOGICAL IN CORRUPTION CASE

(RESEARCH OF VERDICT JUDGE NUMBER: 56 / PID / 2010 / PT.SBY)¹

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ABSTRACT

The problem of juridical the award judge number: 56 / Pid / 2010 / PT.SBY, has not followed the legal formal in KUHP as article; 183, 184, 185, 186, 187, 191, 192, 194, 195, 196, 197, 199, 200, 202. The award the judge also could not prove a whole elements of a mistake. Judge only prove a small portion of element of the mistakes made by the defendant. The problem of sociological the award judge number: 56 / Pid / 2010 / PT.SBY, not capable of being description assurance of fairness and expediency. The award judge only description a form of unprofessional judge cutting off. The award judge only prove mistrust construction think of judge in understanding the iniquity of the defendant, therefore the award the judge was not salutary.

Keyword : precision, verdict judge, justice

CHAPTER I

INTRODUCTION

Satjipto Raharjo³ argues that modern law we wear actually experiencing a specific growth or socially, politically and culturally is unique. The law was not the result of natural growth in Indonesia, but rather as something that “imposed from outside”. Even Satjipto said, :” after follow my lecturer, the doctoral candidates take on the wall words “*LAW AS A GREAT ANTRHROPOLOGICAL DOCUMENT*”.

Opinion of the highly relevant to Satjipto conditions empirical laws that existed in Indonesia whether normative juridical and sociological basis. Resistance and disobedience to the law society's formal and Country award judges, is a form of

¹ This article is excerpted from the author's research about the ruling of the judges

² The authors are lecturer in Law Faculty of Muhammadiyah Malang University

³ Satjipto Raharjo. Finding Regularity teach disorder (Teaching order finding disorder, Thirty Years of Intellectual Journey From Bojong to Pleburan. Speech Ending Tenure As Professors of the Faculty of Law, University of Diponegoro At December 15, 2000.



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alienation of real values of justice contained therein. The complexity of the problems of law enforcement is not real appropriate form values the justice that is in formal legal State and the ruling of the judge with justice values of existing and needed by society. Regularity and order in the state and formal law judge's ruling is only seen in the perspective of national interest formalized and procedural compliance in court (judge's decision). Regularity and order are not seen from the perspective of the needs of existing values and develop in society. Ambiguity regularity and order that frames the values of justice so that the cause of the problem is inherent in managing the actual state law. Order and regularity can only be seen and measured substance of formal legal State. State laws often are not able to accommodate the value of alternative justice and righteousness are thus alive and thriving in the community. An alternative understanding of the law and justice are disputed between the formal legal State with law and justice that exist and flourish in the community. A formal State law regarding criminal acts of corruption is one of the empirical justification of legal irregularity exists in Indonesia. The ruling of the judge who made the only formal legal State is based on a historical treatise of legal irregularity legitimized itself. Justification and legitimacy of legal irregularity on the criminal acts of corruption in Indonesia, to be historical evidence that the State order irregularity also happen is inherently of legal irregularity on the criminal acts of corruption referred to.

CHAPTER II

LEGAL MATERIAL AND METHODS

The major sources used juridicals award judge number: 56 / pid / 2010 / PT.SBY. This research find out the problem of juridical and sociological in incredible detail in ruling of the judges case number: 56/Pid/2010/PT.SBY in the perspective of Criminal Law Corruption, that do by public servant. This research try to find out justice, utility, legal certainty, and judges professionalism in the award judge number: 56 / pid / 2010 / PT.SBY.



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CHAPTER III

PROBLEMS OF JURIDICAL AND SOCIOLOGICAL IN INCREDIBLE DETAIL THE RULING OF THE JUDGES

1. The intricate problems of Juridical and sociological in his Verdict the judge Case number: 56/Pid/2010/PT.SBY in the perspective of Criminal Law Procedure.

In an academical manner, the law (read--judge's verdict) can be said to have fulfilled and reflect justice, when the law contains the meaning of substantial justice (materially) and procedural justice (formal). The law cannot be called if it does not contain these two dimensions. However, there are opinions that doubt that the law is the law. This view would rather say that the law was the applicable norms and values in society and not in a systematic statement sentence article and paragraph of the law. In the system of society which still holds fast to the communal nature of the cultural in Indonesia. Behold views better believes in the law in reality (*das sein*) than the law in a book (the watershed *sollen*), it has been a nation character and Indonesians. The same with the view that way is what was said by Stallybrass⁴, “*show me the law in action, show offer the prison*”. In the context of the award judge so then it becomes law which was for direct can be perceived by the public. So, if the award judge unjustly and immediately her community will also feel the injustice, so also the contrary. However the aspect of legal certainty that can ensure justice also becomes very important moreover, in the condition of the indonesian people who are in the transitional justice today, the dynamics of value. The award corruption in this matter also should have seen the aspect of certainty and justice, by means of at least mention basic legal (*formale*) his ruling in a complete manner. The views suggest that the principle of certainty is important, started from Cessare Beccaria 1764⁵, in

⁴ Stallybrass: A Comparison of General Principles of Criminal Law in England, in Andi Hamzah: *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, 2005, p.41, King Grafindo Persada, Jakarta

⁵ E.Fernando M. Manullan.: *Menggapai Hukum Berkeadilan*, 2007.Kompas, page. 93.



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the year for him a person may be punished if the act of it has been decided by the legislature earlier, and because of that executives can measure and punish if there is a person who breaks what had been decided by the legislature. Formally and literally verdict judge study into this, have met the provision of article 197 KUHAP. But substantially actually not meet. It can be seen the provision of article 197 paragraph (1) (d), namely: a letter verdict punishment loading, consideration arranged basically about the facts and circumstances and instrument of evidence obtained from examination in court on which to base determination fault the defendant. In consideration the law judge looked not rested on all the facts law being revealed at the trial. In the court of first instance revealed the fact that the defendant did not knowingly commit the obligations as stipulated in Article 8 of Presidential Decree No. 55 Year 1993 on Land Procurement for the Development of general interest Jo Regent Decree No. 20 dated 188/45/Kep/439.012/2002 March 2002. The obligation in question is:

1. Conduct research and inventory of land, buildings, plant as well as the existing above ground to be removed or turned over.
2. Conduct research on the legal status of the land to be released or transferred and the document that supports it.
3. Assess and propose the magnitude of damages on the ground that their rights will be released or turned over.
4. give an explanation/extension to the holders of land rights regarding land procurement plans and goals.
5. hold a discussion with the holders of land rights and Government agencies that require ttanah in order to set the shape and magnitude of change/loss.
6. watch the execution of the delivery of money to indemnify holders of land rights and other objects that are above it.
7. create a News Release or Event submission of land rights.



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Law fact stating that the defendant proved not to perform its obligation as members of land procurement, seen by judge not the facts and circumstances obtained from examination in court the first degree as consideration main being ground determination fault the defendant. Judge only stated that deeds the defendant wrong but no affirmation wrong done in qualifying deeds corruption how according to elements article used as the charges and the award judge and facts law in the trial first rate. In the provision of article 197 subsection (2), declared: not filling provision contained in paragraph (1) a letter, b,c, d,e, f,h, j,k, and l article is leading to the award void for the sake of law. Meaning the provision in paragraph (2) is also must be read substantially is not a mere literally course. However, the award the judge was when viewed from the provision of article KUHAP, 199 they meet. Great precision judge is needed in understand and interpret the significance of substantial of synthesis articles which are used as the basis consideration in his ruling. Great precision judge to be covering of great precision juridical namely great precision relating to the spirit and the philosophical of the legislation. Conscientiousness while the other is great precision sociological, namely great precision associated with at the time when, in condition and situations how, events what drive, needs the social values what becomes landing, of a legislative regulations had been built. In corruption study into this, judge visible not doing great precision juridical and great precision sociological. For judge incapable of being read a whole substance the provision of article 197 KUHAP intact and comprehensive. The judge careless in unsearchable legal basis event criminal in this matter vulnerable and can be one the entrance of corruption judicial (judicial corruption). Because of the way it can be called as an effort to ease mafia judicial find its shape and organized. Purposefully or negligent no complete all basic law into his ruling, then a judge can be said to have doing corruption judicial. Seen from the nature and value evil deeds judge who deliberately or negligent furnish legal basis in his ruling, of enfranchised same contemptible with the work done by the defendant. Writer agreed with Wasingatu Zakiyah, Danang



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Widoyoko, Iva Kusuma and Ragil Yogi Edi any mode of corruption judicial is by means pseudo litigated. Mode of is done with manner of making resumes that have a deal with parties litigant. Can also by the removal of data. In practice the phenomenon has been trend new judicial modern from side lifestyle his law enforcement is especially the judges and the judicial. Omission of a judge who is next unexamined understand the provision of article 185 subsection (6) (d). In fact in the trial, the judges should be aware of and understand that the majority of witnesses in this matter is witness by category of the crown, a witness because your colleagues the defendant, a superior the defendant and equally become a defendant in matter of corruption. With the scores level so, already goods of witnesses going to give contemptible information because it can drag away the witnesses was as the party also to be responsible. The witnesses also factually does an action which equal to the defendant. With the way of life and the state of decency the witnesses said judges should be digging instrument other evidence that could have substance derived from a witness. For example, an instrument of evidence of directions and a letter. A system of proof that which is embraced good according to the legislation, according to the doctrine or the science of law not be used as a base by judges in deeds and in proving element of the element of the mistakes the defendant well and properly. In fact the system of verifiable are so closely associated with a system of the discovery of the law. A system of the discovery of the law substantially is a system the discovery of justice substantial. If this is not the also became the basis of the skeleton think judge cutting off the matter already goods of substance justice that exists in the ruling should also doubtful. The award the judge was not in accordance with the corroboration KUHAP, according to especially the provision of article 188 subsection (3), which are: assessment on force corroboration of an instructions in any state of certain done by judges with wise after he shall make examination with full great precision based on his conscience. Next was the provision of article KUHAP, 183 which are: judge shall not criminal dropped to a unless with no less than two evidence legitimate it acquires



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belief that a criminal act really happen. The provisions were as the basis of systems substantiation conventional active professed KUHAP. In criminal justice systems adopted in KUHAP, though judge limited to evidence filed by prosecutor and defendant, and judge not free to find evidence another outside filed by The Prosecutor and the accused, but the judges must actively explore and assess all of the evidence submitted by the Prosecutor and the defendant in advance of the trial. Liveliness judge for digging and judge all evidence put forward prosecutor and defendant, its nature is obliged to prove attitude wise judge and to acquire belief judge that crimes being examined at the trial really done by the defendant. But judge in this matter not run obligation to new system substantiation conventional professed KUHAP. For looked judge only passive judging of evidence put forward prosecutor and defendant then take so in no closely. Likewise in his ruling judge was not using doctrine and jurisprudence in s proving of case. Kind of case is not accordance with law, unsuitable and not using doctrine, and kind of case neither the basic using jurisprudence. the judge unfair in analyze all the facts law and an instrument of evidence revealed at the trial this is actually who became one source of problems less precisely the substance of the award this when viewed in the standpoint of the law the event of a criminal who applies namely KUHAP. The doctrine and theories about the system of proof can be the anglo-saxons to lead the judge in analyzing argumentation appeals prosecutor, a witness, a letter, the defendant, information a statement of an expert, and memory appeal legal advisor to objectively. In the description judicial consideration and facts revealed at the trial, the award judge has yet to analyze proportionally argumentation appeals prosecutor and memory appeal the defendant through legal advisor to particular. Judges are still many neglect argumentation prosecutor that good deeds the defendant in an indictment based on revelation primary and secondary, and the fact that unfolds in the trial. The other fact that the judges are not based on arguments analyzing.



2. The sociological observation and juridical award number: 56 pid / 2010 / materially pt.sby in perspective criminal law.

Incorrectness judge in choosing his ruling also impact on basic law to the defendant criminal very light. But all evidence revealed law and facts trial very corresponding to defendant in a deed as description primary prosecutors indictment. Academically, indictment alternative must be made from the provisions of article that the threat of punishment is most severe. The provisions of article 2 paragraph (1) no 31/ 1999 by the prosecutors placed into indictments primary. Since early prosecutors believe that indictments primary most likely be proven. If indeed since the prosecutor not convinced that indictments primary can be supposed prosecutor change the primary indictment. It is stipulated in article 144 subsection (1), prosecutors can change indictment before a court hearing, set day either in purpose or for not continuing to refine prosecutions. And thus, prosecutor since the law should be realized if uncertain consequences indictment not proved. Better prosecutor cautious and patient, to indictment could prove in court. Non-belief prosecutor in the case have effect systemic injustice in law enforcement corruption done to the defendant and corruption cases another. Non-belief prosecutor as law enforcement image can undermine law enforcement and hindering the enforcement of justice. But judge seems not interested to disconnect equitably indictment against a defendant for sure primary prosecutor not proved. The judges thought so, showed the judge had an orientation thought that prioritizes form of formality and negate the content of morality and justice should be the core of duty according to law. The views of judges by Satjipto Raharjo⁶, referred to by the law that give priority to the shape of the contents, he does not care about the moral content of humanity which should be contained in them. The judge in this case mechanical minded at all. The author, says that ...There have been promiscuous the values of Justice and forms of intervention powers as well as commercial intervention. The size of the profitable or unprofitable

⁶ Satjipto Raharjos.: *Negara Hukum yang Membahagiakan Rakyatnya*, 2008, p. 12, Lengge Printika.



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a matter is seen only from a political and economicals. ... the fraudulent practices and koruptif made in sistemtis by legal apparatus called the judicial mafia. Furthermore, the author⁷ of the difficulty of finding justice in the verdict, also due to the judge in an award not trying to refer to the jurisprudence related to the corruption case made the defendant. But in substance, element works and the defendants committed fault element is pretty much the same happens in the case of corruption in various regions in Indonesia. As expressly stated here that the ruling of the judge in the case did not use the jurisprudence, but using only the illusion of judges.

Then to see whether the judge's verdict in a comprehensive manner is correct in proving fault and not the criminal defendant, can also be seen whether judges are already using doctrine in consideration of an award. Reference was made to the important doctrine of the judge who ruled the case. Because of the doctrine of non importance and is usually an objective. The doctrine is impartial, therefore deserves to be considered the judge in legal reasoning in argumentation enrichment award. Judge tried to use concept deterrence (prevention) when understand said “*can*” draft in article 2 paragraph (1) and article 3 act no 31 / 1999 (see the award judge page 23 lines from up 3). Nevertheless concept deterrence is then not be the passion and directive basic in a verdict criminal inflicted very light when things should really who proven is arraignment primary prosecutor who menaces his sentence criminal a lifetime or 20 years in prison. But judge not using doctrine *stilwigjen* (ignored). Understanding judge concept *stilwigjen* only used as a base to relieve and justifies deeds defendant, deeds that the defendant is already known superiors. Should the doctrine of deterrence and the silence was used by judges to strengthen basic argumentation and consideration of an award that the Act of the accused should be punished heavily. In that sense, the Act of the defendant conducted respectively in fiscal year 2002, very contrary to the prevention of the eradication of criminal acts of

⁷ Sidik Sunaryo, , *Kapita Selektta Sistem Peradilan Pidana*, 2004 p. 151, UMM Press.



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corruption and therefore should be punished heavily, as the provisions of article 2 paragraph (1) of article 18 of law No. juncto 31 1999 juncto article 55, paragraph (1) to 1 of the CRIMINAL CODE. While the concept of silenced, should be the basis for the consideration of the judge that the defendant's silence works supervisor as the support and approval of superiors accused of corruption acts of the defendant, therefore, that the defendants not only punished but tops the defendant should also be punished more severely. So impressed judges do not understand the doctrine of deterrence and the *stilwigjen*. The judge merely cited the doctrine but do not understand how to apply the doctrine.

According to Ali Syafa'at and Jimly Asshidiqy⁸, and statement that the rule of law is a human behavior does not mean that the law only related to human behavior, but also with certain conditions associated with human behavior.

Judges decide on the case more show itself as bureaucrats rather than as law enforcement of justice. When the judge ' s bureaucracy, being virus infected so difficult to judge can independent in administer justice through a verdict against it. Very dangerous if judges we have formally mind bureaucracy.

According to F.Budi Hardiman⁹, bureaucracy tried to weave together, interactions tissue but those networks acted more than cultural, structural less formal than substantive.

Supposed to be the case, the judges cutting off more weave a network of the interaction of the value of justice in society, and in bureaucracy framed by values and rule attracts about the fair which lives in communities. So that by the judgment of any judge the results will be easily understood and perceived as justice for the parties and the public. A matter of justice it is not just covering the aspect of legal certainty but also includes a variant and various kinds of sanctions and punishment inflicted judge in the matter of certain. In the sense of free and its independence judge is guaranteed

⁸ Ali Syafa'at dan Jimly Asshidiqy: *Teori Hans Kelsen Tentang Hukum*, 2006,p. 12, Konstitusi Press.

⁹ Budi Hardiman: *Melampaui Positivisme dan Modernitas, Dikursus Filosofis tentang Metode Ilmiah dan Problem Modernitas*, 2003,sp. 102, Kanisius



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by the constitution. Judges are free and independent determines the types and handy it was to heavy punishment for someone. But is free and pendency judge bounded by a sense of justice society. In the case of the judges of corruption took a very different attitude to the facts of the law and the evidence revealed at the trial of first instance, which in anyway the defendant should be punished for committing corruption indictment as primary secondary and prosecutors. But it looks like the judge argued that the defendant was not proven to perform deeds of corruption charges as prosecutors primary. The judge did not try to dig and find the truth in the process of proof in judicial review proceedings. Judge pasip just by charging only proof on prosecutors. Whereas the task of the judge is examining the subject, try and break things. Basic tasks of judges should be carried out actively in the proceeding. But the judge in this matter look of abandonment and passive by charging prosecutors to prove the claim. The judge did not have the mental attitude and social behaviour or attitude of mind that better. The judge sees only the inner attitude of the defendant and do not understand the attitude of the society and the inner attitude of the law about corruption. As the opinion of Peter Mahmud Z¹⁰, sometimes also enters the legal inner person ... even in the trial the defendant's attitude often into consideration the judge in meting out sanctions as a factor aggravating the overthrow or lighten the sanctions

The judge did not use the other sources of law, i.e. legal values that live in the community i.e. customary law and custom. But the judge in the decision to use an illusion based on the inability of judges in understanding the value of existing justice in society, the public perception will be associated with the nature of men and the nature of evil deeds done corruption defendants. But with legal facts which came to light in the trial, the defendant is legally and convincingly proven either according to law by a positive article in the blurb Claims is well Primary Secondary Charges and prosecutors, but with the position and the position of socially and economically, as

¹⁰ Peter Mahmud Marzuki: *Pengantar Ilmu Hukum*, 2008, p. 87, Kencana Prenada Media Group



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well as the culture of the people of Banyuwangi, that the public employees and officials must become an example of goodness in thought patterns ---not able to shown by the defendant. In general the ruling of the judge that the defendant, yet light penalize reflects the attitude of actually judge in the exercise of their professional attitude. A professional attitude is very necessary for the judges so that they are able to maintain the authority of the professionalism. Professional authority, measured from the dignity of professional honorary dignity, which can be realized in a judge who ruled that keeping the glory of the inner attitude and their social attitudes. The judge seemed to be unaware of the impact that the excessive nature of corruption, not just legally but socially and economically. The author¹¹, argued that criminal acts of corruption that occur widely, not only hurt the finances of the State, but has also been a violation of the rights to social and economic society widely.

The judge in the case in proving element crime and elements error defendant, besides reference to the provision of article charged prosecutor, must also use understanding law corruption comprehensively. For partial view the judge in decide the matter of corruption, like humans cave as described by Shidarta¹².

Judge only know shadow value in regulation but in front in hearts he saw clearly then the danel value, a norm and righteousness and justice to be arrested. Partial mind judge in proving element crime and elements fault the defendant as arraignment prosecutor, prefixed misguidance way of thinking judge, with the law is laws. Whereas judge compulsory digging value justice existing in society. Trustful judge compulsory digging value existing in the society is provisions act no 4 / 2004 on judicial power; especially articles 25, which says: judgment of a court shall contain: (a).reason and basis verdict. (b). sentence certain of relevant legislation, or (c). source law not written used as the basis adjudicating. Article 28: judge compulsory exhume; following and understand values law and the sense of justice living in

¹¹ Sidik Sunaryo: *Tipe Hukum Tindak Pidana Korupsi di Indonesia*, 2008, p. 12, UMM Press.

¹² Shidarta, *Karakteristik Penalaran Hukum Salam Konteks Keindonesiaan*, 2006, CV Utomo.



society. Statement: to the award judge conformity with law and reflecting the justice living in society. Article 32: the judge must have integrity and despicable personality, honest, fair, professional and experienced in the field of law. Thus it can be concluded that the judge who ruled the case had run his profession in accordance with the mandate of article 25, 28 and 32 Act No. 4 of 2004 concerning the powers of the Judiciary. Therefore the judge failed to prove the elements of the elements of criminal acts and misconduct in the matter.

3. The intricate problems of Legal Reasoning That Logical Decision number: 56/PID/2010/PT.SBY.

The righteousness of the law is not the same with the goodness of the law. Legal issues are not bad either but actually wrong. So understand the judge's ruling may not be bad either but are actually wrong. Likewise the judge in making the decision to depart from the paradigm fault not from good to bad. Because no one has bad intentions corruptor of the family and its relatives. But whatever the intention (*mens rea*) corruptor must not influence the judge in making an award. Understand the law correctly should also use logic correctly. Logic use will cause inaccuracy error logical systematically. Logic error in a systematic, result in error in understanding the law and justice.

In the judge's verdict (number: 56/PID/2010/PT.SBY) do not reflect the legal reasoning was logical, and not very coherently and not systematic. It can be seen from the judge's conclusion that the accused stated that the jump was only proven to perform criminal acts as in the Indictment the Prosecutor Secondary. But in the trial of first instance revealed the facts of the law and the evidence to be relied upon for the judge that the defendant is legally and convincingly proven by law doing the deed as in Secondary and the Primary Prosecutor Indictment. Judges do not do analysis thoroughly against the meaning of each element of the provisions of the articles contained in the Indictment and Arraignment Primary Secondary Prosecutor. The fact



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of law expressed in this ruling are not organized in a systematic order/and it is hard to understand. The judge suddenly declaring that the defendants did not act lawfully and convincingly proven under the law have met the elements of criminal acts and errors as in the formulation of the Primary Prosecutor Indictment. When all the facts are revealed in legal proceedings is very clear Assertion Primary Secondary Prosecutor Indictments and proven legally and convincingly according to law. The judge did not order the syllogism thought process, so that all elements which are not related to the alleged facts and the conclusion is made. During the trial all the legal facts revealed and proven at the trial of first instance. But the judge then don't use it for basic consideration in making an award, so the accused must be proven otherwise lawfully and convincingly have been doing criminal acts as in the Indictment and Arraignment Primary Secondary Prosecutor.

But in jumping judges stated that the Act of the accused is not proven to perform a criminal act in Indictments Primary prosecutor simultaneously also proved legally and convincingly had committed criminal acts as in the assertion Secondary Prosecutor. Should the judge stated firmly and clearly in an award that the defendant has been proven legally and convincingly according to law perform criminal acts as in the Indictment and Arraignment Primary Secondary Prosecutor.

Herman J. Pietersen, suggested¹³: ... formalism or conceptualism, the law treats like math or science. Formalism believe that a judge identifies the relevant legal principles, applies them to the facts of a case, and logically deduces a rule that will governs the learning outcomes of the dispute.

Herman believes that in dealing with cases of judges will identify the relevant legal principles, and apply it as a deductive so that such laws be guiding in making an award. The construction of such thinking is indeed supposed to be the basis for the judge's direction in the disconnected and adjudicate a matter. Because without

¹³ At FX Adji Samekto. *Justice Not For All, Kritik terhadap Hukum Modern dalam Perspektif Studi Hukum Kritis*, 2008, p. 19, Genta Press.



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departing from the law as such construction shall award judges will never make it in the spirit of justice law. The judge's capability in conducting an analysis of the legal considerations in drawing up the award is very closely related to the construction of the thinking of the judge concerned. In this case, the verdict of the legal considerations obviously do not judge proved all the elements of the crime in the indictment, and the Primary Secondary made Prosecutor.

The judge only prove one up to two items of works, and the rest said there is no longer attested. Thus the analysis of judge not complete in every element of the provision to interpret the law is used. In some opinions the judge revealed law drawn up in consideration, it appears that the judge is giving priority to the stability of the relationship between the defendant's collegial with her colleagues, who indeed was substantially responsible should have anyway. But the judge did not try out of his view that stability limitations should be viewed in the perspective of the community.

Construction of law judge can be explained as follows: analysis judge has containing construction of law, but not had been completed. For with just prove fraction element deeds and error defendant, the judge could not elaborate on fact law and elements deeds the defendant as in arraignment primary and secondary prosecutors. Thus construction of law built by judge is summary condemnation. Judge impressed "feverishly" in make inferences against fact of law and elements error deeds the defendant. Ought judge make an affirmation of evidence against all the elements deeds and error defendant in arraignment primary and secondary. Then make inferences against facts of law being revealed on the trial first rate. Then the connect with the deed specified in clauses became base to judge and decide deeds the defendant.

The judges not sequence minds and legal considerations in formulating conclusions deeds accused, also result in the false verdict the judge. In fact, the verdict was clear legal facts anywhere and tools what evidence has been revealed. Judges are supposed to live coherently and systematically be formulated, namely:



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based on legal facts which came to light at the trial of first instance to give the affirmation action defendant in proven his market timing charges primary and secondary. See and hear the judge's verdict carefully, it is clear that the conclusion of the judge stated that the accused was only proven to perform criminal acts as in the Indictment, was the conclusion of Secondary Prosecutor imposed and misleading.

4. Problems value justice and utility and philosophy punishment verdict number: 56 / Pid / 2010 / PT.SBY.

Legal right is law to be found in values that exists and develops in society. For what defines law is justice, expedience and certainty. In justice already goods sure there are value certainty and inside certainty must exist value expedience. This is what defines law the truth. A law is actually not located in a row of sentence article and paragraph law formal state, but must “down to earth” according to grades justice, expedience and reassurance that is in society thoroughly. The verdict of the judges can be said as the correct decision when in it is contained the meaning that the judge's ruling has a value of fairness, certainty and utility. An award has a value of Justice, if the verdict is contained in the value of Justice according to the meaning of the community and the value of formal justice according to law. The value of Justice according to the community, meaning that the judge's ruling does not conflict with the value and sense of Justice that in society. The size of the verdict that the judge does not conflict with the value of the justice society is the absence of resistance and rejection of the verdict of the judges by the public. While the judge's ruling has fulfilled formal legal justice, when in the judge's ruling, incorporates philosophical grounding, juridical, and sociological justify the law thoroughly. The ruling of the judge is said to have been in accordance with formal legal justice, when the judge was right in making the construction law in a systematic and logical. While the judge's decision can be said to have fulfilled the basic utility, if the substance of the judge's verdict can be used as a basis to bring perpetrators of the criminal act, may be used as the basis for



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the prevention of criminal acts, and can be used as a basis for making punishment policy. If the judge's ruling was in accordance with justice and the utility, of course, the judge's verdict is the basic guarantee of certainty. Certainty to get justice and utility through the ruling of the judges. Here we will see whether the verdict of the judge in the case already meets the principle of Justice, utility and legal certainty.

Any of the sides we are difficult to find in the judge's verdict which reflects the values of Justice and the value of the utility in the form of the verdict of the judge's partiality in the perspective of civil society. The sentence the judge's verdict in consideration, not only does not reflect the judges verdict alignments in the perspective of civil society, but the judge's ruling is extremely hurt the feelings of the community justice Banyuwangi in the real and complete. Basic characteristics of civil society because it is the guarantee of access to justice is constitutionally guaranteed through fair law enforcement Awards empirically. The judge also did not strive seriously to find the source of any writings or opinions, the opinions of the community leaders, non-profit, community custom, widely spread in mass media, as a reference in consideration of his law.

The implications of the sanctions meted out justice to the defendant does not support positively empowering civil society. In addition to very light also does not correspond to the facts of the law and the evidence revealed at the trial of first instance. To establish the length of criminal (*straftoemeting*) in the ruling of the Judge, nor does identification consideration of the factors of non-judicial (psychological, social, economic, educational, environmental, religious). This consideration is also just visible from the things that relieve the defendant that the defendant during a civil servants had never done a deplorable act and have not been punished. Although the consideration of these factors is misleading and contradictory with the fact of social communities other countries in particular. In the judge's verdict as already outlined in the previous explanation, unidentified retributive punishment philosophy.



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In the judge's verdict is precisely the very contrary to the philosophy of coaching. Because in addition to the criminal sanctions imposed very light also does not comply with the legal facts which came to light in the trial of first instance. As a result of the judge's error in making the construction law with concluded the defendant was only proven legally and convincingly do criminal acts as in the assertion Secondary prosecutor. The judge in the reasoning nor put forward reasons for the defendant did what he had done, but just the judge stated that the defendant's actions are contrary to the spirit of the Government of Indonesia and countries in eradicating corruption.

The judge's ruling is very far from the reflection of the values that live in the community and very far in meeting the needs of the community, especially adult Banyuwangi riel in corruption eradication. Because in the eyes of society Act of corruption moreover done by civil servants, has the nature of evil and the nature of men. Because the defendant's CIVIL SERVANTS in the Banyuwangi District, the are supposed to be role models for the community in upholding moral and social and mental integrity.

According to the opinion Mrs. Komariah¹⁴, consideration a judge on which to base, a judgment of a court moreover, which has been confirmed as jurisprudence fixed, is the answer to the success lawmakers provide clarity in a manuscript of laws, does that mean moreover, associated with the demands of justice that should be reflected in a manuscript laws.

The aspect of justice according to the according to Sabini that quoted by Yusti Probowati Rahayu in his book that read¹⁵: behind the award judge (study law in the matter of psychology, criminal) the application of justice covering two things that is, justice substantial and procedural justice.

¹⁴ Komariah Emong Sapardjaya. *Ajaran Sifat Melawan Hukum Materil dalam Hukum Pidana Indonesia, Studi Kasus tentang Penerapan dan Perkembangannya dalam Yurisprudensi*, 2002.p.61, Alumni.

¹⁵ Yusti Probowati Rahayu, dalam bukunya "*Dibalik Putusan Hakim(Kajian Psikologi Hukum Dalam Perkara Pidana)*", Penerbit Srikandi, p. 13-154.



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In this case according to Satjipto Rahardjo¹⁶, the judge is not apply the law properly or unlawful, which one of the mistakes or blunders apply the law, with form that is, first premeditation as a way hide partisanship, both neglect or less careful is the judge no good. Casually if the award judge is premeditation judge or omission judge in applying law, then judge so may categorized dishonest. Legal behold the interests of protecting someone - no rights only protected by law, but also the recognition on it - by means allocated a power to him to act in order of importance the be powerless. Judge has broken their obligations, because if he violated their obligations, he raped the privilege of someone, because it entitles containing protection of interests and whim.

Further Salmond said¹⁷ rights have containing habitude independence, power and immunity. According to Fitzgerald, habitude attached to law one is of existing rights on someone this obliges other people to perform (commission) or not do (omission) something deeds called to the content of rights.

The judge in his ruling also can not guarantee aspect certainty for people to get justice. Now that can be of things as follows:

- by verdict light namely imprisonment five years a fine 200 million secondary 1 year confinement, inflicted judge against the defendant, not proved do of corruption as in arraignment primary pjus, then it obviously verdict the judge was not meet the principle of legal certainty. For legal certainty is not merely understood as a verdict in accordance with article the act, but legal certainty is a verdict according to guarantee certainty society justice.
- When substantially the legal certainty cannot be found in the decision of the judge in the case, then the certainty of Justice also could not be found.
- That though in Indonesia does not recognize the system jurisprudence where judges do not necessarily have to be the judge's decision earlier celebrates, but the judge's ruling as a precedent in establishing legal certainty in Indonesia, which does not cover the possibility of judges who then decided the punishment similar to the

¹⁶ Raharjo, S..*Hukum Dalam Perubahan Sosial. Suatu Tinjauan Teoritis serta Pengalaman-Pengalaman.* 1989. Bandung: Penerbit Alumni.

¹⁷ Huijbers, T. *Filsafat Hukum*, Yogyakarta: Penerbit Kanisius. Dalam Rahayu, 1995, ibid. p.10-154



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judge concerned or very diverse with the other judges in the same case, as such would cause confusion from the community about legal certainty in Indonesia.

5. Problems of the Professionalism of Judges of the award number: 56/Pid/2010/PT.SBY.

Based on the results of the analysis of judge verdict number: 56/PID/2010/PT.SBY, the judge in the case did not understand and did not run the code of ethics and code of conduct of judge correctly, therefore the judge does not exercise its duties in a professional manner. In language that is plain and clear, the judge who ruled the case does not mandate (treasonous) against his professional privileges as human beings and as the representative of God in the world in upholding justice in “*kaffah*” (faultless-perfect). According to researchers there are many provisions of the legislation which can be relied upon by the judge in the case ruled professionally, but not above begging by the judge in the case. Legal basis for the judge's guidance in order to perform his duties in a professional manner is as follows :

- a. Act No. 4 of 2004 concerning the powers of the Judiciary, in particular article 25, which reads: the verdict of the Court must contain: a. the reason and basis of the verdict. b. specific Article of the legislation concerned, or c. the unwritten law Sources basis to judge.
- b. Article 28: the judge is obliged to dig, abreast of and understand the legal values and sense of Justice that lives within the community. Explanation: in order for the ruling of the judge in accordance with the law and reflect the sense of Justice that lives within the community.
- c. Article 32: judges must have integrity and despicable personality, honest, fair, professional and experienced in the field of law.

From the provisions of article 25, 28 and 32 of the manifest that the judge who ruled on this matter, integrity, personality, honesty, justice, flawless, professional and



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experience in the field of law, has to be measured from the capabilities and competence of judges in the basic reason, argued, and legal sources are not written in any of their verdict. Likewise the ability and skills to explore, follow, understand the legal values and a sense of Justice in society. The fact that it confirms the suspicions of the public that Judges Award and became one of the factors of criminal of the judicial mafia organized. Decision of the Judges is very mechanical and procedural. The law by the judge only understood as a series of words that exist in article of regulation legislation. The judge was not able to understand that the law is the crystallization of fair values that exist in the community who assembled in the formulation of the articles of the legal regulations.

Likewise, the verdict of the Judges should be seen and become one of law and justice a fair form of behavior shown by the rulers of the State against its people. In fact the actual law is the decision of the judge. Since the formulation of the article the legislation does not mean anything without the interpretation of judges as in the award. And thus when the verdict of the judges no longer contains the spirit of fair use as there is in society, the law judge's ruling is also manifesting in a losing spirit as law.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. The award judge in matters number: 56 / pid / 2010 / pt.sby, has not followed legal procedures event as set up in KUHAP, the provisions of the act of no.8 1981 on laws event criminal, especially the provision of article 183, 184, 185,186, 187, 191, 192, 194, 195, 196, 197, 199, 200, 202.
2. The award judge in matters number: 56 / pid / 2010 / pt.sby, has not been proved element errors and element criminal act the full. Judge just prove portion element



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errors and criminal act element existing in arraignment secondary prosecutor and neglecting offhand arraignment primary prosecutor.

3. The award judge in matters number: 56 / pid / 2010 / pt.sby, not reflect and being collateral certainty justice and therefore also has no utility whatever. Because the award the judge was new stage describe inability the judge in understand the facts law, construction element deeds defendant who in The indictment prosecutor, so that the ruling redundant.
4. The award judge number: 56 / pid / 2010 / pt.sby, also give assurance certainty not professional judge in their duty as lord assignee in the world in administer justice.

Recommendations

1. Judges break the case number: 56/Pid/2010/PT.SBY, deserves to live a moral integrity, establishment of educational integrity and intellectual, social integrity on an ongoing basis was specifically reserved for judges. When the judge deems necessary the Assembly periodically obliged to follow a short course about legal discovery method and method of legal reasoning is correct and systematic.
2. Whatever the ruling of the judge who is represented as above, the judicial Commission should RI and RI Supreme Court in particular, are pro active to do a routine review that must be followed by judges who have the ability with the Tribunal judges who break the case number: 56/Pid/2010/PT.SBY. Because there is a trend in all Indonesia, that the judge specifically addressing criminal acts of corruption, it judges the moral integrity, social integrity, and his intellectual integrity. It's dangerous for law enforcement and justice in the field of criminal acts of corruption.
3. Then the judicial Commission together with Indonesian Supreme Court, a special program designed to build confidence, to realize the independence of judges and the independence of judges in safeguarding the authority and glory, honor, and Excellency his dignity.



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