

# Legal Psychology of Judges to Determine the Defendant's Ability to Commit a Crime

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**ABSTRACT --** *In criminal proceedings, law enforcers are required to be as fair as possible. They are not allowed to discriminate, and everyone is entitled to legal protection. Likewise, the judge is required to make a profile analysis of the defendant, related to evidence and witnesses to explain this case thoroughly. Judges need to apply legal psychology in the process of analyzing cases so that they can run effectively and efficiently. Judges are human beings who are the main actors and the spearhead of the defendant's future, because he decides the severity of the sentence to be obtained by the defendant. So it's important to understand the mental processes contained in it. The purpose of this study was to determine the role of legal psychology to determine the defendant's ability to commit a crime. The formulation of the problem in this research is How consideration of the judge in giving judgment in the court? and How can legal psychology help to determine the defendant's ability to commit a crime?. This research method has applied normative juridical conducted by examining the sources of literature. The results of this study are, that an understanding of the legal psychology is needed, especially about human personality and non-verbal behavior to understand and analyze a legal case. Legal psychology is used to determine the defendant's ability to commit a crime. Such an understanding can create a fair and comprehensive legal process.*

**Keywords:** *legal psychology, judge's decision, defendant*

## I. INTRODUCTION

Judges who are personified in the chosen human figure called kadi, in Ancient Greek mythology are depicted as the Goddess of Themis with eyes closed as symbols of neutrality and impartiality. Such depiction is meant not to look right or left or support with one of the parties in the case. In the teachings of classical legal philosophy, Judges must be straight to follow unconditional obligations without any intention to have a cunning mind. Montesquie argues that the judge only acts as la bouche qui prononce les paroles des lois (He is considered as a funnel that sounds the words of the law only). [1]

Judges as one of the elements in the Criminal Justice System which have several roles, including enforcing justice and truth. In a broad sense, to be able to actualize justice, then a judge needs a conducive situation, both external and internal. An external situation that can influence judges in upholding justice is the guarantee of judicial freedom (independence of judiciary). Freedom of justice is a necessity for the rule of law (rechtstaat).

Guarantees for judicial freedom in Indonesia are regulated in Article 24 paragraph (1) of the 1945 Constitution which states that:

“Judicial power is an independent power to administer justice to uphold law and justice”.

The internal situation of judges who can influence the upholding of justice is the judge himself. Judges are human servants in the cultural circle and social changes that occur in social structures, therefore the judge's decision can be a study for legal psychology. The judge's decision is a statement which the Judge holds as an official of the state authorized for this purpose. Judge decision was stated at the hearing and aimed at ending or resolving a case or dispute between the parties

Judge's decision can be seen from the perspective of legal psychology. Judges in terms of psychological conditions mean mental or mental conditions that affect the judge in making decisions (decision making). Legal psychology is a new field of science that emerged around the 1960s.

The issues raised by the researchers in this study are: 1) what are the judges' considerations in giving a court decision? and 2) how does the science of legal psychology know the defendant's ability to commit a crime?

## II. RESEARCH METHODS

### A. *Research Specifications*

This research was conducted analytically descriptive, which provides a description as accurately as possible about the facts, both in the form of secondary data on primary legal materials such as secondary data on secondary material. in the form of expert opinions, research results, work from the legal community and tertiary legal materials in the form of data obtained from the internet relating to research. This research is expected to provide a clear and comprehensive picture of matters relating to the psychology of the judge's law to determine the defendant's ability to commit a crime.

### B. *Method of Approach*

The method used is juridical normative approach, which is a method in which the law is conceptualized as a norm, principle, principle or dogma. The method of approach in this study uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials relating to the psychology of

judges to determine the ability of defendants to commit crimes.

### C. *Research Stages*

This research was conducted in two stages, namely:

1. Library Research
2. Field Research

### D. *Data Collection Technique*

Data collection techniques in research carried out in two ways, namely:

#### 1. Document Study

Data collection through document study is used to collect secondary data. This method is a consequence of normative research / literature based on secondary data..

##### a. Primary Legal Materials

Namely binding legal materials, consisting of.

- 1) Basic Regulations, namely the Body of the 1945 Constitution, namely Article 24 paragraph (1) of the 1945 Constitution the Third Amendment.
- 2) Criminal Procedure Code.

##### b. Secondary Legal Material

Namely materials that are closely related to primary legal material and provide an explanation of primary law.

##### c. Tertiary Legal Material

Namely materials that provide instructions and explanations for primary and secondary legal materials, for example websites.

#### 2. Interview

Interview is a technique of collecting data directly from the field to get primary data as supporting data.

### E. *Data Analysis Method*

Data analysis was performed using qualitative juridical analysis methods, which are research methods that start with norms, principles and existing legislation as positive legal norms which are then analyzed qualitatively.

## III. FINDINGS AND DISCUSSION

### A. *The judges' considerations in giving a court decision*

Decision means the final result or conclusion of a case examination. Decisions with the intention of a court decision in Dutch are known as uitspraak van der rechter and in English are called verdict. Understanding verdict is the same as understanding civil procedure. Court decisions in the common law system are called case law:

"In common law system, a procedure or authority is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues of facts. The general principle in common law legal system is that similar cases should be decided so as to give similar and predictable outcomes, and the principle of precedent is the mechanism by which that goal is attained. Black's law dictionary defines 'precedent' as a 'rule of law established for the first time by a court for a

particular type of a case and thereafter referred to deciding similar cases.

Decisions in the legal context in Indonesia are more intended as court decisions. The court's decisions is something that is highly awaited by the parties that litigate to resolve the dispute as well as possible. The litigant, with the decision, expects legal certainty and justice in the case being faced. In order to be able to give a ruling that can truly create certainty and reflect justice, the judge as the state apparatus and God's representative who conducts the judiciary must know the actual case and legal regulations to be applied, both written legal provisions in the laws and regulations and regulations unwritten law or customary law.[2]

There is a difference between decisions in civil law and in criminal law. According to Sudikno, a decision in civil law is interpreted as a statement by a judge as an authorized state official. Therefore the verdict is pronounced at the hearing and aims to end a case or dispute between the parties. After the process of examining the case which includes the process of filing a claim for the plaintiff, the defendant's response, the plaintiff's replica, the duplicate of the defendant, the evidence, and the conclusions submitted both by the plaintiff and the defendant are finished and the parties to the litigation have nothing else to say. Then the judge will pass the verdict on the case.[3]

Decision in criminal law according to Lilik Mulyadi is a decision pronounced by a judge because his position in a criminal case trial is open to the public after carrying out the proceedings and procedural procedures for criminal law in general, containing criminal punishment or free or release from all legal claims, made in written form with the aim of settling the case.[4]

Article 1 number 11 of the Criminal Procedure Code (KUHAP) provides the following definitions for decisions:

"A judge's statement which is uttered in an open court hearing, which can be in the form of conviction or be free or free from all lawsuits in the case immediately follows the way provided for in this law".

The judge is the last bastion in the Criminal Justice System, the judge's decision determines one's fate. Some things in the judge that really influence the Judge in giving decisions in the trial, viz [5]:

#### 1. Logical Thinking Ability

The ability to think logically is a cognitive ability possessed by a Judge that will give birth to a perception or statement in the form of considerations stated in the decision.

#### 2. Personality

Personality is a dynamic organization of psychophysical systems in individuals who help determine the ways that are unique or unique in adjusting to their environment.

#### 3. Gender

Gender or gender differences are seen in studies placing men with a high level of aggression when compared to women. The tenderness inherent in women

and violence in men will influence decision making and Judges are inseparable from this factor.

4. Age

Developmental psychology views that the older a person is, the more wise he will be in dealing with various problems.

5. Experience

Judges consistency in carrying out the rules can not only be seen from the courtroom but also from the speech, attitude, association and behavior as well as experience.

*B. Legal Psychology Can Know the Ability of the Defendant to Commit Crimes*

Legal psychology consists of 2 (two) words, namely psychology and law. The etymological understanding of bresaal psychology from Greek, which is derived from the word psyche which means soul and logos which means knowledge. Psychology literally means the science of the soul [6]. Psychology can also be interpreted as science that investigates the symptoms of the soul.

According to Yusti Probowati, psychology is the study of the soul / psyche of human so that in every human life, psychology always tries to explain the various problems that occur. In Indonesia, psychology is divided into several fields, namely clinical psychology, development of general and experimental psychology, social psychology, educational psychology, industrial and organizational psychology and legal psychology.

Legal Psychology is a field of science that was introduced around the 1960 as one of the empirical studies that view law in its form as human behavior in the field of law when humans behave, whether the behavior is right or wrong according to legal standards. Legal psychology in this case wants to clarify between individual behavior and group behavior, between normal behavior and abnormal behavior and various other typical classification of legal psychology.

According to Soerjono Soekanto, legal psychology on the one hand discusses psychological factors that encourage people to obey the law but on the other hand also examine factors that might encourage people to break the law. [7]

Sofia S and Anna Gandra mentioned that [8]:  
 “Legal psychology describes empirical, psychological research of the law, legal institution, and the person who are in contact with the law. This field encompasses contributions made in teaching/training, developmental, cognitive, clinical practice, social, public policy and clinical psychology”.

Legal psychology has been understood as the implementation of the science of psychology to law and laws, although, as Arce points out it can develop theories and methodologies that not only affect the proceedings of the law, but goes beyond that by addressing aspects of human behaviour related to criminal act. According to Acre, the relationship between psychology and law would give rise to a great variety within legal psychologym although it is the one related to the scope and forensic antisocial and criminal behaviour which enjoys greater recognition. [9]

Legal psychology includes a variety of empirical studies, namely psychological research on law, about legal institutions and about people related to law. Legal psychology is typically a study that refers to social fundamentals and theories and principles that are cognitive, to be applied to various issues in the legal system, such as eyewitness memory, jury decision making, investigations, interviews and others. other.

Based on the guidelines for implementing the Criminal Procedure Code, the Judge's decision in a Criminal Procedure Case can be classified into 3 (three), namely:

1. The defendant is acquitted
2. The defendant was acquitted of all lawsuits
3. The defendant was sentenced to a criminal sentence

The judge will issue a verdict stating that the defendant was sentenced to criminal if he believes that the defendant is guilty of committing the criminal act charged with him. To obtain such a decision, the Judge will prove the criminal act on the defendant, that is, by finding out whether the defendant has committed the act which was indicted or not. The search for the judge's conviction was to evaluate the defendant's behavior.

Legal psychology knows the theory of attribution to evaluate the behavior of the accused. Attribution theory was first put forward by Heider who saw that behavior is caused by 2 (two) things, namely external strength (external) and the personal power of the actor (internal). If the judge assumes that the accused committed a crime due to internal factors, the judge will give a heavier sentence than if the defendant committed a crime due to external factors.

#### IV. CONCLUSION

*1. Judge's Considerations in Providing Court Decisions*

The judge is the last bastion in the Criminal Justice System, the judge's decision determines one's fate. Some characteristics in the judge that greatly affect the Judge in giving decisions in the trial, namely a) the ability to think logically; b) personality; c) gender; d) age; and e) experience.

*2. Legal Psychology can Know the Ability of the Defendant to Commit Crimes*

Legal psychology recognizes the theory of attribution to evaluate the behavior of the accused. Attribution theory was first introduced by Heider who saw that behavior is caused by 2 (two) things, namely external strength (external) and the personal power of the actor (internal). If the judge assumes that the accused committed a crime due to internal factors, the judge will give a heavier sentence than if the defendant committed a crime due to external factors.

*3. Suggestion*

Judges as the main pillar in the Criminal Justice System must master the psychology of law as a tool for the science of law. This is because legal psychology can assist judges in giving decisions that truly reflect justice.

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