

## JUDICIAL DISCRETION IN THE CRIMINAL JUSTICE PROCESS IN INDONESIA (A Study at the Cianjur District Court)

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### Abstract

The influence of public attention on the criminal trial process is currently affecting the judiciary under the Supreme Court of the Republic of Indonesia, where all layers of society consistently follow the development of news related to ongoing trials in specific legal jurisdictions. This article focuses on discussing the nature of public attention, emphasizing that it should not affect the judges' rulings in criminal cases, as well as the discretion of judges in formulating legal considerations in cases that attract public attention during the decision-making process. Our findings indicate that in making legal considerations for criminal case rulings, the panel of judges must always adhere to the formal procedural law established in the criminal trial process, reinforced by the application of the Indonesian Criminal Procedure Code, relevant criminal laws in the trial, and the Supreme Court regulations. The primary guidance for judges in formulating legal considerations for legal decisions must be based on at least two pieces of evidence proven during the trial, coupled with the conviction of the presiding judge, and supplemented by the judge's authority to exercise discretion in order to ensure clear and just resolution of the criminal case. In conclusion, we recommend that judges must continue to uphold their independence in making legal considerations and delivering sound legal judgments.

**Keywords:** *Criminal Case; Judicial Discretion; Legal Considerations; Public Attention*

### INTRODUCTION

In an effort to realize a clean judiciary in Indonesia, there are numerous challenges and obstacles that must be addressed, requiring the involvement of all relevant stakeholders, including the community and other related groups. The criminal justice system in Indonesia was established due to dissatisfaction with the performance of law enforcement officials and institutions that relied solely on legal approaches and order, focusing on achieving success in crime prevention through the performance and productivity of organizations as part of law enforcement implementation.

The criminal justice system serves as the primary tool for crime prevention. The approach to crime is carried out through the integration of various subsystems that mutually influence and connect with one another. In the book *The Contemporary Criminal Justice System*, Romli Atmasasmita asserts that the system as a whole requires proper and efficient interaction to achieve certain outcomes, even when faced with various challenges. Therefore, according to Romli Atmasasmita, the criminal justice system is a societal system aimed at combating crime.

In principle, sentencing is the culmination of the criminal justice system, determined by the decision of the judge. Based on theory, in the context of the legal frameworks of both common law and civil law systems, criminal justice is considered a relative system that is occasionally subject to scrutiny.

According to Satjipto Rahardjo, when there is control within the law, there will be detailed explanations that lead to judicial discretion as a complement to the regulatory system. Based on Article 10, paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, every judge, in carrying out their duties to adjudicate, decide, and provide legal reasoning for a judgment, must adhere to the principle of *ius curia novit*, which means that every judge is presumed to know the law and is not allowed to refuse a case on the grounds that the relevant law is non-existent or unclear.

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In making legal considerations for a judgment, a judge not only discovers the law for a specific case but also develops written rules, as there are often legal events that lack a clear legal basis. Therefore, a judge does not only find the law but also creates the law. In creating the law, a judge may exercise discretion regarding written rules in the process of making a decision. This judicial discretion is carried out in three stages for rendering a criminal judgment, namely: first, *konstatir*, where the judge observes, acknowledges, and affirms the existence of a criminal act that has occurred based on the evidence presented during the trial. Second, *kualifisir*, where the judge evaluates the proven or unproven criminal act based on the applicable legal rules for appropriate application. Third, *konstituir*, where the judge establishes the law with the intention and purpose of providing justice to all seekers of justice.

The trial process for criminal cases in a District Court, in the context of sociology, refers to the presence of society or social groups in society who observe, respond to, or form opinions on certain issues that are socially, politically, and culturally relevant. This process reflects the utility of norms, values, and media that can influence the emergence of perceptions and attitudes within the community regarding issues that exist in their environment and are currently undergoing trial proceedings.

For instance, in the Cianjur District Court, a case involving a religious teacher named CECEP MUHAMMAD RIZIK Bin H. MIFTAH (deceased), who worked as a Quran instructor at a pesantren (Islamic boarding school) within the jurisdiction of the Cianjur District Court, was charged with acts of placing, allowing, and committing violence against a child, as outlined in the first indictment by the Public Prosecutor. He was charged under Article 80, paragraph (1) of Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016, which amends Law Number 23 of 2002 concerning Child Protection. CECEP MUHAMMAD RIZIK Bin H. MIFTAH (deceased) committed violence against his former pesantren student without first inquiring about his wife's missing mobile phone, instead immediately accusing the former student of stealing the phone. The community, pesantren members, students, and teachers from the pesantren attended the trial to witness the proceedings firsthand. They did not side with the former student but instead supported CECEP MUHAMMAD RIZIK Bin H. MIFTAH (deceased), as he was a religious teacher (ustad), and they believed that he was not guilty of the assault he had committed against the former student.

Based on the above explanation, this research aims to analyze whether public opinion plays a role as a factor influencing criminal judgments in the Cianjur District Court and how judges maintain the balance between judicial discretion and public pressure in considering the law from the perspective of legal sociology.

## LITERATURE REVIEW

The literature review generally pertains to the examination of previous research or scientific literature. Based on the literature search, the author has identified several works discussing judicial discretion. However, there is still a lack of scholarly works that specifically examine the criminal justice process in Indonesia. From the review of literature and scholarly sources, the author has not found any academic work that addresses the influence of public attention on judicial discretion in criminal proceedings in Indonesia, specifically in the Cianjur District Court.

Upon reviewing various previous studies, it is evident that research on the criminal justice process has primarily focused on the considerations involved in the final judgment of the panel of judges. Therefore, there has been no specific research concentrating on the influence of public attention on judicial discretion in criminal trials in Indonesia as an effort to ensure the independence of judges in making legal considerations for criminal verdicts. This gap in research makes the issue a novel and worthy subject for further study by the author.

## METHOD

The research approach employed in this study utilizes legal research methodology, grounded in the characteristics of legal science and the relationship between the core issues or legal problems being examined. Therefore, the approach used is appropriate to address the research problems at hand.

Furthermore, the study adopts a qualitative approach with data collection methods involving interviews and observations conducted with judges and prosecutors in the jurisdiction of the Cianjur District Court, focusing on criminal cases that have attracted public attention. Additionally, observational techniques will be employed to study the trial process in order to understand the influence of public pressure or public opinion in judicial decision-making. Moreover, data will be gathered from news articles and media coverage related to the cases that have garnered significant public interest.

## RESULTS AND DISCUSSION

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## **Public opinion acts as a factor that may influence the verdicts in criminal cases at the Cianjur District Court.**

In Indonesia, criminal law does not regulate the specific conditions that would categorize a criminal case as one that attracts public attention. The nature of public interest in a criminal case during trial often generates public opinion regarding the defendant and the victim, which is disseminated through social media, thus providing a significant opportunity for the public to actively engage in the legal process. Through digital platforms such as social media, individuals, commonly referred to as netizens, can rapidly and easily spread information, thereby involving the public—who were initially uninvolved in the case—in discussions about ongoing legal matters in a court hearing within the jurisdiction where the case is being tried.

Furthermore, this involvement transforms the public from passive spectators into active participants, which can influence the course of legal proceedings. Such public engagement is frequently associated with external pressure, which can significantly impact law enforcement authorities, including the police, the prosecution, and the judiciary in criminal cases. When a criminal case becomes viral or gains widespread attention, it inevitably attracts scrutiny on social media, compelling law enforcement to act swiftly and transparently in resolving the case.

The public's control through social media presents a substantial potential to achieve substantive justice, as public discourse can play a pivotal role in ensuring the fair and non-discriminatory enforcement of the law, as well as advocating for systemic reforms (Kuncoro, et al, 2023). This is particularly evident in criminal cases that receive extensive public and media attention, often necessitating accelerated handling, as law enforcement feels pressured to respond appropriately and in alignment with the ongoing legal proceedings. Speedy resolution of criminal cases can be seen as contributing to the enforcement of justice based on substantive fairness.

There is a correlation between judicial ethics and a judge's discretion in actions taken both within and outside the courtroom, especially when making legal decisions during ongoing proceedings. Every individual is bound by ethical standards, which unconsciously shape the values that distinguish permissible from impermissible actions. In the context of applying justice, particularly by judges, the notion of fairness is subjective, as what may be perceived as just by one person might not align with the views of another. As such, justice is often seen from varying perspectives depending on one's viewpoint.

The legal principle that all individuals are equal before the law aims to serve as a guiding standard for judges to ensure fairness in the trial process, maintaining equal treatment for both parties involved. The primary responsibility of a judge is to uphold justice and ensure equality before the law, as demonstrated from the commencement of trial proceedings, where the judge must address the defendant appropriately. Judicial authority begins with the referral of the case to court, continuing until the matter is resolved in accordance with established procedures followed by judges across Indonesia.

In criminal cases, judges offer broad opportunities for the public prosecutor compared to the defendant and their legal counsel. For instance, during the preparation of the upcoming trial, all parties—prosecutors, defendants, and their lawyers—are granted equal rights and opportunities.

Thus, in criminal cases, judges must meticulously assess every detail of the ongoing trial, carefully considering the interests at stake. If delays or prolonged adjournments occur, judges are obligated to take prompt action in accordance with the procedural guidelines to avoid violations of the defendant's human rights, ensuring that the trial is conducted expeditiously and simply as per the established principles of trial procedure.

The enforcement of law is intrinsically linked to ethics and morality among law enforcement officials. To ensure progressive law enforcement that respects ethical and moral values, a joint regulation was established between the Supreme Court and the Judicial Commission. This resulted in the Joint Regulation on the Enforcement of Judicial Code of Ethics and Behavior, outlined in Joint Regulation No. 02/PB/MA/IX/2012 and 02/PB/PKY/09/2012 dated September 27, 2012. This regulation describes ten ethical principles for judges, including: fairness, honesty, wisdom, independence, integrity, responsibility, respect for dignity, discipline, humility, and professionalism.

In the process of proving criminal cases, the principle of material truth applies, where the scope involves a minimum of two pieces of evidence and the judge's conviction in accordance with Article 183 of the Criminal Procedure Code (KUHAP). Furthermore, judges must not rely solely on the evidence presented during the trial but are required to carefully examine and assess the validity of the testimony from witnesses, ensuring consistency among witnesses and between witness testimonies and other pieces of evidence. The credibility of the witnesses must be substantiated, particularly considering their moral conduct and the reliability of their statements as per Article 185(6) of KUHAP.

Moreover, legal considerations in a judicial decision must also include expert testimony, which is evaluated based on its relevance and clarity in explaining the issue at hand. If the expert testimony is deemed relevant and helps clarify the matter, the judge may rely on it in their legal deliberations (M. Yahya Harahap, 2003). However, if

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the expert testimony is considered irrelevant or dubious, the judge is justified in disregarding it, provided that the reasoning is justifiable.

Additionally, legal considerations in criminal decisions must account for documentary evidence, such as autopsy or medical examination reports, which are prepared by forensic experts or medical professionals to verify the facts surrounding the criminal event. The relevance of circumstantial evidence is also critical, as it must be carefully scrutinized in relation to three main factors: actions, events, and conditions. Circumstantial evidence often plays a dominant role, especially in cases with limited direct evidence.

Judges cannot be compelled to simply accept the evidence presented in court; their conviction must be based on valid, admissible evidence presented during the trial. The judge's confidence in the case's outcome emerges only after careful examination of the evidence and may be characterized by caution, precision, and deliberation (Oemar Seno Adji, 1981). If there is uncertainty, as captured by the Latin phrase "in dubio pro reo" (when in doubt, the benefit of the doubt should go to the defendant), the judge should opt for the decision most favorable to the defendant, erring on the side of acquittal rather than condemning an innocent person.

Finally, a judge must consider the defendant's testimony in the trial process, which is provided without the necessity of an oath. The testimony must be voluntary and free from coercion. The testimony is then compared with the statements of witnesses and other evidence, and if discrepancies are found, it may be considered as an aggravating factor. The substance of the testimony may include confessions, statements, clarifications, and explanations. A judge can withdraw a defendant's testimony during the investigation if there is a valid and logical reason; however, if the withdrawal is unsupported, the judge may reject it, following the precedent set by the Supreme Court's decision No. 225/K/Kr/1960 on February 25, 1960, which ruled that confessions outside of court cannot be retracted without a solid basis.

Therefore, criminal cases that attract public attention do not influence the judicial decisions made by the court, as all legal considerations are grounded in valid evidence presented during the trial, as stipulated in Article 184 of KUHAP, alongside other provisions related to the evidentiary process and the judge's conviction in accordance with Article 183 of KUHAP.

## **The mechanism by which judges maintain a balance between judicial discretion and public pressure in their legal reasoning from the perspective of legal sociology.**

A discretionary power is created to achieve a specific purpose as expected by a state apparatus in accordance with the mandates of the law. In the implementation of governmental authority within the framework of a modern legal state, discretion is embraced as a freedom that includes the freedom of interpretation, the freedom of consideration, and the freedom to make decisions. Discretion arises when the law grants the judge the authority to make choices as determined by the law.

In the context of the authority of judges when adjudicating a case, discretion represents a form of freedom to determine an attitude and policy, a freedom of thought in deciding actions regarding issues under trial. The law provides judges with the flexibility to exercise judicial independence when adjudicating a case. Judges must be free from any interference and influence from extra-judicial powers, government authorities, or any other powers.

Discretion is closely related to legal principles, which state that a judge cannot reject a case on the grounds of a lack or vagueness of the law. Indirectly, this grants the judge the authority to independently determine the law by digging and seeking the most appropriate law for each issue raised before them. Although not always related to the specific issue at trial, it involves reasoning and examination. Therefore, each judge must not be bound by the provisions of the prevailing law, where, in certain cases, substantial justice should be achieved effectively.

The selection between two alternatives, based on a standard of conviction, cannot be faulted for the outcome of any given choice. A judge may be unconvinced by certain evidence and conclude that the act alleged against the defendant is unproven, or conversely, may be convinced by the evidence presented. The reasons for a judge's selection of belief fall within the realm of discretion, which ultimately relates to the judge's personal sense of justice. Furthermore, when a judge must form a conviction based on two equally strong or weak pieces of evidence, the judge must make a choice that results in a decision either confirming the defendant's guilt based on the public prosecutor's evidence or acquitting the defendant based on the defense's evidence. This must all be elaborated in detail and rationally, according to the elements of the criminal offense.

In the adjudication process, a judge faces a decision-making stage, determining whether the defendant has committed the alleged criminal act as charged by the public prosecutor or whether the act is proven but does not constitute a criminal offense, or if the act is not proven based on the entire series of evidence as stipulated in the

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Criminal Procedure Code (KUHAP). Articles 183, 191, and 191(2) of KUHAP clearly state that if the defendant is proven guilty beyond reasonable doubt, the judge will impose a penalty, either criminal or otherwise. However, if the defendant is acquitted, the judge must acquit them, and if the defendant's act is proven but does not constitute a criminal offense, the judge must issue a verdict of release from all legal claims.

In determining the severity of a criminal sentence, a judge is usually faced with a decision to select an appropriate and just punishment based on minimum to maximum limits. As such, subjective judgment may occur among several judges on a panel, each with their own legal considerations.

According to M. Syamsudin, judges are normatively granted the freedom by law to adjudicate a case in accordance with their own conviction without any interference from external parties. Judges are free to decide based on their own thoughts and conscience without outside interference, except in matters expressly permitted by law (M. Syamsudin, 2013).

Thus, when making decisions, a judge's approach can be categorized into two main schools of thought (M. Syamsudin, 2013): 1. The **Positivistic View**, where the law is regarded as the sole source of truth in handling a case, with judicial discretion to discover the law being limited. In this view, the judge acts as a mere mouthpiece for the law, focusing on procedural justice with an emphasis on legal certainty and applying deductive reasoning to uncover the truth. 2. The **Non-Positivistic View**, where the law is not the sole source of truth in handling a case, and judicial discretion to find the law is afforded significant weight. In this approach, the judge is seen as a law creator, focusing on substantive justice and applying inductive reasoning to uncover legal truths.

Forms of discretion in judicial authority, which are within the judge's power to resolve cases, include (M. Syamsudin, 2013):

1. **Discretion related to coercive measures**

Such as detention and postponement orders based on Article 20(3) KUHAP, where the judge has the authority to issue detention orders at the trial stage but is not obligated to detain every defendant. Article 21(4) KUHAP further specifies the conditions under which detention is allowed, including the likelihood of flight, destruction of evidence, or repetition of the crime.

2. **Discretion related to the process of evidence**

The process of evidence is crucial in criminal trials in Indonesia. The judge has the authority to assess the evidence presented in court, including determining whether to accept or disregard evidence and select witnesses and experts based on their relevance and reliability.

3. **Discretion related to sentencing**

Sentencing involves determining the severity of the penalty and the type of punishment. The judge's considerations include the impact of the crime, the method of its commission, the defendant's behavior in court, reconciliation between the defendant and the victim, and personal judgment. The type of penalty is governed by Article 10 of the Penal Code (KUHP).

4. **Discretion related to the status of evidence**

Although the law does not explicitly define evidence, it is implied in the Criminal Procedure Code. Judges determine the status of evidence, such as returning it to the owner, confiscating it for the state, destroying it, or utilizing it for other legal purposes.

5. **Discretion to circumvent the rigidity of the law**

Judges may exercise discretion to bypass mandatory minimum penalties or limitations, thereby allowing them full independence in their verdicts based on the presented evidence. This discretion enables judges to interpret laws with a deep understanding, incorporating sociological, philosophical, and historical approaches (Pontang Moerad, 2005).

M. Yahya Harahap states that facts and circumstances must be clearly articulated in accordance with what is found during the court examination. Furthermore, any facts or circumstances that are considered "aggravating" or "mitigating" for the defendant must be explicitly disclosed in the reasoning of the judgment. This is crucial as it forms the foundation for determining the severity or leniency of the criminal sentence to be imposed on the defendant, which is inherently tied to the facts and circumstances that either aggravate or mitigate the case. In every sentencing, the judge is also faced with several options regarding the type and severity of the punishment to be imposed on the defendant. The type and limits of the punishment are what constrain the judge's discretion in rendering a sentence for the defendant (M. Yahya Harahap, 2005).

## CONCLUSION

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First, the nature of public attention cannot influence a judge's ruling in criminal cases, as the legal considerations for making judicial decisions must be based on valid evidence presented during the trial and the judge's conviction at all stages of the evidentiary process. According to Article 184 of the Indonesian Criminal Procedure Code (KUHP), the legal evidence that must be considered in criminal cases includes at least two (2) witnesses whose testimonies are consistent with each other, expert testimony relevant to the criminal event, written evidence such as autopsy reports and/or medical examination reports, circumstantial evidence derived from actions, events, and conditions surrounding the criminal incident as established during the trial, and the defendant's statements, which may include confessions, clarifications, and explanations related to the criminal act committed.

Second, judicial discretion in considering cases that attract public attention during the decision-making process involves the authority of judges to resolve cases, which can include discretion related to coercive measures, discretion related to the evidentiary process, discretion regarding sentencing, discretion related to the status of evidence, and discretion concerning the judge's stance to navigate legal rigidity. Discretion is closely tied to the legal principle that trials must not reject cases based on the absence or ambiguity of the law, thereby indirectly granting judges the authority to determine the appropriate legal framework by exploring and finding the law applicable to each issue presented. While not always directly related to the facts of the case, discretion involves various forms of reasoning and analysis. Therefore, judges must not be constrained by existing legislative provisions, and in certain cases, substantive justice must be achieved effectively.

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