



Independence of Judges in Deciding Criminal Cases Perspective on the Principle of Legality

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Abstract. Judges' independence in resolving criminal cases ensures justice and legal certainty inside the legal system from the standpoint of the legality principle. Independence from unlawful interference, autonomy in interpreting the law, and independence from internal and external pressure are all included. Judges must be strengthened to enhance the concept of judges' independence as much as possible. The legality concept can be seen in judges' suitable and effective resolution of criminal cases, which results in justice and legal certainty. To gain a complete picture of judges' independence in making decisions about criminal cases from the standpoint of legality principles, this study employed a normative juridical approach method, utilizing secondary data gathered through literature research with primary, secondary, and tertiary legal materials. The data was then analyzed using qualitative juridical methods. As a foundation for guaranteeing justice in the legal system, the study's findings indicated that judges' independence in resolving criminal cases from a legal standpoint is crucial. The legality principle, which highlights the idea that there can be no crime without law, must serve as the foundation for judges' independence in making decisions on criminal matters. In order to protect the defendant and uphold justice and legal certainty, the judge is not allowed to overstep or break any of the legal restrictions placed to stop abuse of authority. Beyond imposing penalties that fall short of the legal minimum, judges are also constrained by the idea of legality. Researchers contend that material legality, which emphasizes community-felt justice through ideas like restorative justice, should be added to the definition of legality. More research is still needed on this transition.

Keywords: Criminal Proceedings, Independence of judges, Principles of legality

INTRODUCTION

In order to carry out the criminal justice system, the court is a crucial component—judges who have the legal authority to make decisions oversee the court. The Code of Criminal Procedure (KUHAP), Article 1, point 8, states that a judge is a state judicial official with the power to prosecute. Judges should enforce the law and justice instead of advocating for pragmatic or economic ideals that can disregard legal texts, moral and ethical standards, and the pursuit of truth and reason based on formal legality principles when judges have complete discretion to choose all outcomes without departing from the standards of logic and truth. That being said, judges are generally free to decide without outside influence. In performing judicial tasks, they have to be unbiased when making decisions about matters in court.

As per Law Number 48 of 2009 concerning Judicial Power (Law on Judicial Power), a judge's primary responsibility is to review, consider, and decide on every matter. It is the judge's responsibility to render a decision, and the persons involved will undoubtedly face legal ramifications. According to Code of Criminal Procedure Articles 191 and 193, judges can determine the type of offense (transport) that criminal offenders face. Criminal penalties are imposed under Indonesian criminal law using a different mechanism.

Judges' decision-making authority is significantly influenced by their degree of independence. Judges must maintain objectivity When interpreting legal provisions concerning facts or occurrences in society. However, as nearly all legal writings are abstract, the law's wording cannot just be applied to a particular situation. Thus, to satisfy the requirements of justice and legal clarity, it must be consistently construed before the judge can utilize it as a foundation for his decision. To be usable in real-world situations and prevent contradictions, the interpreted text's content should adhere as closely as possible to the original text, adding new elements only when necessary.

The book applies the law to particular situations and offers accurate interpretations to ensure that such legal events are settled correctly. Language must be impartial, straightforward, succinct, and devoid of bias or passion. When introducing technical jargon, it is essential to provide an explanation and use appropriate word choice. Condensed words, colloquial phrases, casual idioms, and needless jargon should all be avoided in formal language. Grammar, spelling, and punctuation must all be used correctly throughout the content.

The goal is to guarantee that judges can freely render decisions and interpretations in light of current legal developments. Judges have more latitude in enforcing laws when a minimum general criminal system, a general maximum, and a particular maximum are adopted (for each offense). The existing Criminal Code's lack of stringent criminal guidelines also provides legal justification for making decisions at will.

The provisions found in the Law on Judicial Power, which defines judicial power as an independent state's ability to administer justice and uphold the rule of law based on Pancasila and the Republic of Indonesia's 1945 Constitution, for the implementation of the Hukurn State of the Republic of Indonesia, reflect the independence (freedom) or independent or free power that judges possess when making decisions in court.

Judges considering criminal cases are limited to basing their rulings on the evidence presented in court and relevant statutes and rules. Events that are not governed by law or legislation frequently occur in practice, and even when they are, the laws may need to be more

specific or sufficient. By regulating human behavior, the law safeguards human interests. Furthermore, as time goes on, human interests will advance.

This means that the judge must still investigate, prosecute, and decide by conducting legal discovery through legal interpretation or by making law by looking into unwritten legal rules. Article 10, paragraph (1) of the Law on Judicial Power states that the judge can only accept a case if, after reviewing it, it becomes apparent that the rules are accurate or nonexistent. It is anticipated that the judge will apply the law and base his findings on his assessment of the case throughout the trial, as well as legal reasoning and critical thinking.

METHOD

Identifying legal doctrines, norms, and principles in order to provide answers to legal questions is known as legal research. Normative legal research views law as standards or norms that serve as a standard for acceptable human behavior or as what is contained in laws and regulations (law in a book). In order to investigate the independence of judges in resolving criminal cases from the standpoint of the legality principle, this essay employs the normative juridical approach method. This legal research strategy examines library resources, including books, periodicals, and laws and regulations. The primary, secondary, and tertiary legal resources currently available are the only sources of information on which this work is based.

DISCUSSION

Independent Judicial Power

The Republic of Indonesia was established in 1945, and its constitution upholds its legal status. One of the fundamental tenets of the rule of law is the assurance that judges may exercise their authority independently, unaffected by other powers, to administer justice and preserve the rule of law. The judicial power is recognized as an autonomous authority tasked with enforcing the law and upholding justice in Article 24 paragraph (1) of the Republic of Indonesia Year 1945 (UUD) Constitution. Judges should not be allowed to use their broad discretion to assess the truth value of a legal event for transactional purposes, even when criminal law enforcement suggests that they do. The role of judges is to protect the law and justice system; they are not there to further pragmatic or economic goals capable of undermining legal texts, moral standards, truth values, or the application of reasoned, formal legality-based reasoning to morality.

When a judge can make decisions without outside influence, that judge is said to be independent. Maintaining impartiality is crucial for a judge performing his judicial obligations, such as rendering a decision in a case. As a law enforcer, the judge's primary responsibility is to

accept, review, determine, and settle each case, as stated in Article 1 Point 1 of the Law on Judicial Power. Chief implementers of judicial power in practice are judges. According to Article 18 of the Law on Judicial Power, a Constitutional Court, the Supreme Court, and its subordinate judicial bodies are responsible for this. In exercising its judicial authority, the Supreme Court is the highest state court in Indonesia, supervising all Indonesian courts, including the General Court, Religious Court, Military Court, and State Administrative Court, as stated in Article 20, paragraph (1) of the Law on Judicial Power.

In order to implement the legal state of the Republic of Indonesia, Barda Nawawi explained the idea of judicial authority as the ability of an autonomous state to administer justice to uphold the law and justice. This indicates that in addition to the authority to make decisions, the judicial power also entails the authority to uphold the law at all stages of the criminal justice system. Realizing independent and autonomous judicial power is crucial for the criminal justice system's execution of the law, as Barda emphasized. The independence and freedom of the investigative, prosecutorial, and criminal execution powers must be guaranteed and preserved against external influence and interference from the executive branch and the government. In addition to applying legal texts to specific instances, judges have the immense power to provide appropriate legal interpretations to settle specific legal occurrences. This gives judges a considerable deal of autonomy.

Free from any influence from other state entities is necessary for the Supreme Court and the judiciary beneath it to exercise their judicial function. The significance and immediacy of this institution's duty to maintain justice are being considered. Ten This is by the goal of the judicial power, which is to promote the independence of judges or judges' administrators to realize an honest and high-quality judiciary. Decision makers' heightened integrity, expertise, and skill contribute to the judicial administrators' increasing autonomy. Good judicial administrators provide a high-quality judiciary.

Independence of Judicial Power

Judges' freedom, defined by constitutional requirements and subsequently specified in organic legislation, is called judicial freedom by Oemar Seno Adji. This freedom is considered one of the most essential parts of the regulation, even a fundamental element and a condition *qua non*. According to Bambang Sutioso, the judiciary's independence or freedom thus means that no external party may interfere with its operations. To enable judges to perform their judicial functions, such as hearing, deciding, and assessing disputes that the parties submit, favorable

circumstances must be created. One such necessity is the independence of the judiciary. Furthermore, the formation of high-quality court rulings with fairness, legal certainty, and expediency is anticipated to be made possible by this need.

However, several internal and external circumstances might impact the independence of the judiciary. 16. Human resources, morality, honesty, and even the judiciary's power can all impact internal issues, as highlighted above. Should the administration of justice be considered an external influence? Judges' education and experience have a direct bearing on this. Accordingly, it is unavoidable that these outside variables will impact the independence of judicial power (judges) if judges lack the necessary expertise and training.

How not? We already know that society is developing extraordinarily uniquely and that many laws are in place. Suppose judges continue to base their decisions solely on formal or formal legality. In that case, they will be blind to how the community is developing—that is, on living law—and our sense of justice will suffer. Paul Scholten argues that legal discovery (*rechtsvinding*) is different from simply applying the law when there is a legal vacuum and requires interpretation, smoothing, and contemplation. As a result, the judge must handle one of the external variables on this side by conducting legal discovery.

Considering the elements that influence judicial independence and the significance of that independence for judges in performing their duties in the legal system, it is essential to note that independence should be accompanied by moral rectitude, nobility, and respect for judges' dignity. If not, the judiciary's manipulation and mafia may find sanctuary in its independence, making judges who abuse their positions immune to the law.

Principles of Legality in Criminal Law

German lawyer Paul Johan Anselm von Feuerbach (1775–1833) initially originated and refined the legality concept. Feuerbach posited that there can be no crime sine lege (*nulla poena sine lege*), no crime sine crimine (*nulla poena sine crimine*), and no crime sine poena legali (*nullum crimen sine poena legali*). Feuerbach refined these three expressions into adagio *Nullum depiction and nulla poena sine praevia lege penal*.¹⁷ An act cannot be deemed illegal if the laws and regulations before it do not contain any criminal provisions. Notably, these assertions are devoid of subjective assessment and are, therefore, objective.

It is challenging to maintain that the goal of the legality concept is to safeguard individual interests when considering the conditions and environment in which it originated. This

constitutes traditional criminal law's primary goal. Eddy O.S. Hiariej¹⁹ adds that this school of traditional criminal law thinking is founded on three fundamental ideas, namely:

- a) The principle of legality states that there can be no crime, criminal offence, or prosecution in the absence of law.
- b) The principle of guilt states that a person can only be punished for a criminal act committed intentionally or by mere misconduct.
- c) The principle of retribution is secular (retribution), meaning that punishment is not imposed with the intention of achieving a useful result, but is proportional to the severity or lightness of the act committed.

According to Feuerbach's teachings, the objective of the criminal justice system is to have a deterrent impact. Hence, a law's criminal threat must be carefully and distinctly contained. "psychologische zwang" refers to Feuerbach's fundamental notion of legality. This implies that, in addition to the activities that the criminal law must expressly mention, one must also consider the kinds of offenses that the criminal law threatens to identify the conduct that the law forbids. The purpose is to raise awareness among those who may commit crimes of the potential criminal threats that can be placed on them so that those who do so will know the consequences of their actions and how they will be held accountable. For this reason, he will consciously perceive his inner peace as a declaration that he will neither commit nor condone criminal activity. If he does, the repercussions of his actions will be subject to criminal penalties.

The concept of legality is outlined in Article 1, paragraph (1) of the Criminal Code (KUHP) of Law No. 1 of 2023 in Indonesia. It is also referred to as *Nullum crimen sine lege stricta*, and it states that no one can be punished for an act that was not prohibited by law at the time the act was committed. As a result, the definition of a criminal offense must be explicit and unambiguous (*lex certa*) and not analogous (*lex stricta*). As stated by R. Soesilo, the principle of legality is contained in Article 1 Paragraph 1 of the Criminal Code. This means an act cannot be classified as criminal if the law does not reference it. In compliance with the legality principle, an individual's conduct or occurrence must be specified in documented criminal law rules before any criminal charges are brought against them. Put differently, before the conduct or event, there needs to be a criminal law rule (*strafrechtsnorm*) and a criminal regulation (*storiform*).

A court may only hear a case if it is authorized by law, according to Article 6 paragraph (1) of the Law on Judicial Power, which also regulates the principle of legality. The legality concept in criminal law is affirmed in writing by this provision. A human right that cannot be restricted in

any way is the right to life, as well as the right not to be charged with a crime based on legislation passed in the past. This is also stated in Article 28I, paragraph (1) of the Second Amendment to the 1945 Constitution. "To uphold and protect human rights by the principle of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and outlined in legislation" is the Fourth Amendment of the 1945 Constitution; it restates this. While judges have discretion in investigating, trying, and rendering judgments, the laws that have been outlined clarify and strengthen the application of the legality concept in Indonesian criminal justice processes. That being said, judges should not act as the law's spokesperson while performing their duties, which include handling criminal cases, because they are still responsible for considering and applying the legality principle.

In order to ensure legal clarity and protect individual rights, the principle of legality requires judges to consider specific aspects of previously regulated laws when determining guilt or penalizing someone. That being stated, judges cannot penalize offenders unless the crime they commit and the penalty they receive are expressly stipulated in the law.

Independence of judges in deciding Criminal Cases: The Principle of Legality

Carrying out his judicial activity, rather than merely using a syllogism, is the primary responsibility of a judge in a criminal case. By applying abstract legal texts to specific events, judges contribute to creating laws—not objectively, as legislators do. Reading and translating broad and abstract legal materials into concrete events is how general and abstract legal texts are applied to concrete events in criminal proceedings. As a written legal document is the foundation of the legal system, legal interpretation is an open process, so the adage "to read the law is to interpret the law" applies.

Muhammad Asrun states two ways to assess a judge's independence or freedom: separating them from political influences (political insularity) and impartiality (neutrality). This opinion may lead one to argue that the judge's principle of impartiality will be demonstrated by the way he presents neutral legal arguments (based on the evidence presented at trial and not manipulative) and included in the evaluation of his decision. This can be observed or indicated by the existence or absence of a conflict of interest with the case being handled, and the judge's principle of distancing himself or herself from political factors will be demonstrated by the conductability of decisions that the community as a whole will find acceptable and feel fair.

Within Indonesia's criminal justice system, judges' independence (or freedom) in making decisions intersects with their adherence to norms, emphasizing the aspects of freedom that are

morally or truthfully valuable rather than merely impeding it. Freedom in the consciousness contains a value that requires responsibility when connected to values.

Legal science uses principles as a foundation for applying the law, making them crucial in the field. One area of law centered on a single idea is criminal law, which is the legality concept. According to the legality principle, often known as *nullum delictum nulla poena sine praevia lege poenali*, no act is threatened or considered criminal until it has been defined explicitly by law. Legality is currently regarded as a fundamental component in the execution of criminal law in Indonesia, as stated in Law Number 1 of 2023 concerning the Criminal Code (KUHP) Article 1 paragraph (1).

Formal legality is the currently applicable legality principle, as stated in Article 1 of the Criminal Code. One step toward giving Indonesians legal certainty is including the legality principle in positive law. Including legality in criminal law is another step toward safeguarding the public from arbitrary judicial decisions. It follows that there is a connection between judges' freedom and the legality principle. This means that judges will always consider and follow the legality principle, also known as *nulla poena sine lege* (no crime without law), which Feuerbach developed and states that a judge may not impose a crime other than what is specified in the law. Schaaffmeister and colleagues emphasize that the purpose of the Legality Principle is to guarantee that criminal law shields the public from the unbridled use of government power. Consequently, the function of the Legality Principle prompts worry.

Judges, therefore, are limited in their ability to impose crimes to the extent that they are governed by law. A judge who does this could be deemed to have acted arbitrarily and violated the defendant's human rights. In addition, a judge cannot impose a less severe crime than the minimum criminal threat limit specified by law because doing so would go against the legal certainty embedded in the law.

Judges' freedom to try criminal cases to reach a just and acceptable conclusion must be safeguarded to ensure that interests and power do not interfere. It is not only the justice-seeking community that can hold the judge accountable for his or her decision but also God Almighty, who is the head of the judgment that contains the *Irah-irah* 'Demi Justice based on the One and Only Godhead,' for the facts of the trial supported by evidence based on rationality and taking into account the principle of legality to obtain objective and law-based legal arguments and to contain moral-ethical solid content (conscience). We must acknowledge that the Constitution, the Law on Judicial Power, and international conventions all govern and define the legal guarantee

of judges' freedom to perform their obligations as judges (when exercising their judicial function).

The principles of justice—Ius Curia Novit, which holds that judges are presumed to be knowledgeable about the law, and Res Judicata Pro Veritate Habetur, which holds that judges' decisions are deemed correct—provide legal safeguards for judges' judgment freedom. Judges are released from all lawsuits if it is determined that they made a legal mistake rather than a moral one. The 1945 Constitution's (UUD) and other laws' guarantees of judges' freedom should be used proportionately rather than in opposition to being granted freedom then arbitrarily (arrogance of authority) or, to use a more colloquial phrase, "principally," which could lead to arbitrary decision-making.

To prevent this, it can use the first reference to apply the law derived from laws and regulations appropriately and correctly in light of the trial's facts because the law's provisions must be favored (status law must prevail), and it must adhere to or follow the principles that are both formal and material. The second reference is to interpret the law precisely and correctly using methods that are justified (e.g., systematic, sociological, grammatical, restrictive, and hierarchical interpretation) in order to uphold legal ethics (logic or a logic) by proportionately taking into account the goals of the law and law enforcement itself. However, justice must come first because equity must come before all other considerations. Third, judges can use unwritten legal norms (customary law) or "realism," seeking and discovering laws based on societally accepted legal values. The latter two approaches allow judges to make decisions even in cases where there is no rule of law, as stated in Article 10, paragraph (1) of the Law on Judicial Power. The results of these searches and discoveries can be applied as new legal rules through jurisprudence.

It does not contradict the principle of legality (*nulla poena sine lege*) because judges are not the mouthpieces of the law. This reference applies not only to judges who will be punished by the laws in place, such as when someone is found guilty of theft (Article 362 of the Criminal Code / Article 476 of Law No. 1 of 2023) and receives a sentence of five years or the maximum fine.

Stated differently, a judge's decision not to convict a criminal because of a criminal removal's justifications—forgiving or otherwise—does not violate the norm of legality. Article 44 of the Criminal Code governs the criminal abolition for forgiving reasons, while Articles 48, 49, 50, and 51 of the Criminal Code govern the criminal abolition for justifying grounds.

CONCLUSION

The principle of legality, *nulla poena sine lege* (no crime without law), which stipulates that a judge may not impose a crime other than what has been specified in the provisions of the law, must still be considered and directed by an independent judiciary when making decisions in criminal cases. Because the judge cannot impose punishments exceeding the legal maximum for a specific criminal act, his discretion is restricted. This could be construed as arbitrary behavior by the judge, who might also be accused of violating the accused person's human rights. Henceforth, the decision no longer serves the goals of law enforcement, namely, access to justice, clarity, and security. If a judge does this, it goes against the legal certainty in the law itself because multiple law provisions have established the minimum limit of criminal threat. This limits judges from imposing crimes below the minimum limit of criminal threats. This is consistent with Schaaffmeister's assertion that enacting or using the legality principle aims to shield the populace from the government's unrestricted use of power.

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