



## Basis for Judges' Considerations in Decisions on Persecution Cases

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**Abstract:** This study aims to determine the basis of the judge's decision in the case of persecution. The research method used by the author in this study is normative research. The research approach uses analytical descriptive and uses qualitative analysis techniques. The results of this study indicate that the basis for the judge's consideration is three things, namely legal facts, evidence and the judge's belief. These three things will make the judge in terms of giving decisions to the perpetrators of criminal acts or in this case the defendants. These three points have been contained in the indictment of the public prosecutor which will then be concluded and analyzed by the judge to convince his heart in terms of imposing sanctions in accordance with what the defendants did. What should be mitigating for the Defendant in the form of the Defendant promising not to repeat his actions should not be used as consideration for the Judge in deciding a case. This could have been a pretense to gain sympathy from the Judge. So the consideration must be focused on the actions committed by the defendants.

**Keywords:** Consideration; Decision; Persecution

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## 1. Introduction

The 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) in the provisions of Article 1 Paragraph (3) explains that: "The Unitary State of the Republic of Indonesia as a State of Law (*rechtstaat*)".<sup>1</sup> In accordance with what Novendri M. Nggilu said that Indonesia is the highest agreement of the state-formers, even though it has experienced a constitutional test when the 1945 Constitution was changed to the Constitution of the United States of Indonesia in 1949, despite this recognition of the areas that are under the auspices of the Republic of Indonesia. Indonesia is still recognized.<sup>2</sup>

With the help of this legal framework, we can understand that Indonesia is a state of law that protects equality before the law and human rights. Based on these provisions, it is necessary to believe that the law functions as a tool to provide a sense of justice, benefits, and certainty for all Indonesian citizens in their daily lives in order to fulfill the objectives of the Unitary State of the Republic of Indonesia, namely development. a just and prosperous society based on Pancasila and the Indonesian Constitution. The Criminal Code (KUHP), which regulates acts that are prohibited by law and criminal penalties that can be imposed on perpetrators to enforce a just law, contains another important component of the legal ideas outlined above in an effort to combat violations of legal norms.

A criminal act is an act which by a rule of law is prohibited and is punishable by a criminal offense, provided that at the same time it is remembered that the prohibition is shown to an act, (i.e. a situation and event caused by the behavior of a person), while the criminal threat is shown to the person who caused the incident.<sup>3</sup> The degree of legal compliance depends on the law-making process.<sup>4</sup> In our daily life, even in society, to meet the needs of life there are often crimes and violations committed by certain people and people who threaten some members of the community, which in the science of law are known as criminal acts.<sup>5</sup> One form of crime that often occurs around us is crime in the form of violence such as persecution. The rampant acts of persecution that we see from various sources are a sign that it cannot be separated from the behavior of the people who are not well controlled either due to the low level of education and the influence of an unfavorable social environment. Disputes either personally or

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<sup>1</sup> Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

<sup>2</sup> Novendri M. Nggilu. (2020). Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo. *Lambung Mangkurat Law Journal*. 5 (2), 110

<sup>3</sup> Aniza Lakoro, Lisnawaty W. Badu, Nuvazria Achir. (2020). Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online". *Jurnal Legalitas*. 13 (1), 36

<sup>4</sup> Faisal Santiago. (2017). Penegakan Hukum Tindak Pidana Korupsi Oleh Penegak Hukum Untuk Terciptanya Ketertiban Hukum. *Pagaruyung Law Journal*. 1 (1), 23

<sup>5</sup> Dian Ekawaty Ismail, Mohamad Taufiq Zulfikar Sarson. (2021). Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes. *Jurnal Law Review*. 3 (3), 58

in groups can be a factor that can invite acts of violence that lead to persecution. Crime is an act that is contrary to the habits or norms that have long lived in society, where in life that society has several norms / rules that regulate its members in detail because crime is very detrimental and must be minimized, but unfortunately that crime is very difficult to be eradicated, therefore crime is categorized as a major problem in people's lives.<sup>6</sup>

Persecution is a crime that often occurs every day adorning the print media or electronic media in Indonesia, persecution is the result of deviant human interactions because humans are social creatures and will interact with each other in this interaction which will lead to positive interactions and negative interactions. Persecution often starts with trivial problems, for example just because you bump into other people on the highway or just because you are offended by someone's words and behavior. It is also often reasoned because of an old grudge carried out by the victim which gives impetus to the perpetrator to carry out mistreatment of the victim.<sup>7</sup>

Various acts of abuse that often occur such as beatings and physical violence often result in injuries to the victim's body or limbs and not infrequently victims experience physical disabilities for life and even take their lives or death. In addition, acts of persecution also often cause psychological effects or impacts on victims such as trauma, fear, threats and sometimes even victims of persecution who experience mental and mental disorders.

Articles 351 to 358 of the Criminal Code regulate the perpetrators who intentionally cause pain or injury to the victim. It is explained that there is chapter XX of the Criminal Code which divides the criminal act of persecution into 6, namely Article 351 of the Criminal Code on ordinary persecution, Article 352 of the Criminal Code on minor abuse, Article 353 of the Criminal Code on premeditated persecution, Article 354 of the Criminal Code on severe persecution, Article 355 of the Criminal Code. regarding severe and premeditated persecution, article 358 of the Criminal Code concerning persecution by several people. Sanctions for criminal acts of persecution in the Criminal Code are in the form of imprisonment and fines. The severity of the punishment given depends on what the perpetrator did. So indirectly the perpetrator must and must be processed legally.<sup>8</sup> Law enforcement carried out by law enforcement agencies is only to protect the right to life of the community. The point is that if traffic is not regulated in such a way, accidents will occur everywhere, citing what Lisnawaty Badu said where it is said that the right to life

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<sup>6</sup> A.S. Alam dan Amir Ilyas. *Kriminologi Suatu Pengantar*. (Jakarta: Prenadamedia Group, 2018), 29

<sup>7</sup> Abdul Jabar Rahim. (2019). *Tinjauan Hukum Terhadap Penyelesaian Pidana Menurut Adat Tolaki Dalam Perkara Tindak Pidana Penganiayaan Di Desa Tirawuta Kecamatan Pondiha Kabupaten Konawe*. *Jurnal Hukum Responsif*. 7 (2), 93

<sup>8</sup> Fence M. Wantu. *Hukum Acara Pidana*. (Yogyakarta: Reviva Cendekia, 2011), 13

must also be protected by the state, especially the rule of law.<sup>9</sup> The benefit is that it does not become a clash in the life of society and the state.<sup>10</sup>

The prohibition against the collective use of violence can be found in Article 170 of the Criminal Code, which stipulates that:<sup>11</sup>

- 1) Anyone who openly and with collective force uses violence against people or goods, is threatened with a maximum imprisonment of five years and six months.
- 2) The guilty are threatened with:
  1. By a maximum imprisonment of seven years, if he intentionally destroys property or if the force used causes injury;
  2. With a maximum imprisonment of nine years, if violence results in serious injury;
  3. With a maximum imprisonment of twelve years, if violence results in death.

This article threatens punishment for acts that are "blatant" and "with collective force using violence", against people or goods. In this article there is also a criminal weighting based on the consequences of the act of violence, namely the consequences in the form of injuries, serious injuries and death (death). A person who commits a crime will be held accountable for the actions committed. Criminal law was formed to regulate the community so as not to commit acts that violate the law, which means it is used when various other regulations cannot bring order to the community.<sup>12</sup>

Observing the phenomenon of acts of persecution that occur, it seems that it is not something that just happens but there are factors that encourage someone to commit persecution such as the influence of negative relationships that lead to delinquency, thuggery, social jealousy, pressure and economic inequality, disharmony in family relationships or with other people, competition, conflicts of interest and others. In many cases, not a few people or groups of people deliberately plan to mistreat others due to several factors such as revenge, defamation, feeling betrayed or harmed, feeling their self-esteem and dignity are lowered and other motives. In addition, not a few perpetrators of criminal acts of persecution are also involved in disagreements, grudges, fights or fights that encourage them to commit mistreatment unintentionally.<sup>13</sup> State involvement

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<sup>9</sup>Lisnawaty Badu. (2012). Euthanasia Dan Hak Asasi Manusia. *Jurnal Legalitas*. 5 (1), 1

<sup>10</sup>Tijow, Lusiana. Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas*. 3 (2), 80

<sup>11</sup> Article 170 of the Criminal Code

<sup>12</sup>Agus Marta Wijaksono. (2018). Kajian yuridis penjatuan pidana terhadap tindak pidana bersama-sama melakukan kekerasan terhadap orang lain (putusan pengadilan negeri Banyuwangi nomor: 703/PID/2015/PN. BWI). *Skripsi*. Jember: Universitas Jember, 2

<sup>13</sup> Fikri. (2013). Analisis Yuridis Terhadap Delik Penganiayaan Berencana. *Jurnal Ilmu Hukum Legal Opinion*. 1 (2), 1

which is also one of the characters of the conflict phenomenon.<sup>14</sup> Therefore, being aware of the laws that apply in our environment, namely in the community, will have an impact and effect so that the state can provide protection for every human being. Because awareness of the law means awareness that the law is the protection of the interests of the community.<sup>15</sup> Therefore, being aware of the laws that apply in our environment, namely in the community, will have an impact and effect so that the state can provide protection for every human being. Because awareness of the law means awareness that the law is the protection of the interests of the community.<sup>16</sup>

## 2. Research Method

The research method used by the author in this study is normative research based on the opinion of Mukti Fajar and Yulianto Ahmad where it is said that normative research basically examines norms, legal rules, legal principles and legislation. The research approach uses analytical descriptive and uses qualitative analysis techniques.

## 3. Basic Normative Review of Judges' Decisions in Persecution Cases

Court decisions are the estuary of handling criminal cases. In criminal cases, court decisions are judges' statements spoken in an open trial which can be in the form of sentencing decisions, acquittals, or acquittal decisions. This is as stipulated in Article 1 Number 11 of the Criminal Procedure Code. This court decision is pronounced by the judge in a criminal case in a trial that is open to the public after the process and procedural law of criminal procedure are carried out with the aim of resolving the criminal case he is handling. Roeslan Saleh stated that, "Whether or not a person is convicted of a criminal act depends on whether when committing a criminal act he did have a mistake then of course he can be subject to criminal sanctions, but if he has committed a prohibited and despicable act but has no fault then he certainly not punished".<sup>17</sup> Criminal liability requires those who act to be able to take responsibility, this is regulated in Article 44 of the Criminal Code. Also, the act was done on purpose.

According to Article 182 paragraph (3) of the Criminal Procedure Code, "after that, the judge holds a final deliberation to make a decision and if necessary, the deliberation is held after the defendant, witness, legal advisor, public prosecutor

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<sup>14</sup> Yudha Chandra Arwana. (2019). Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia. *Jurnal Law Review*. 1 (2), 216

<sup>15</sup> Dwi Oktafia Ariyanti, etc. (2020). Penegakan Hukum Pidana Terhadap Pelaku Penambangan Pasir Secara Ilegal. *Jurnal Law Review*. 2 (1), 40

<sup>16</sup> Jufryanto Puluhulawa, Mellisa Towadi, dan Vifi Swarianata. (2020). Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck. *Jurnal Reformasi Hukum*, 24 (2), 197

<sup>17</sup> Roeslan Saleh. *Perbuatan Pidana dan Pertanggungjawaban Pidana Dua Pengertian Dasar Dalam Hukum Pidana*. (Jakarta: Aksara Baru, 1983), 75

and the audience leave the courtroom". Furthermore, according to the provisions of the Criminal Procedure Code Article 182 paragraph (4), "the consultation as referred to in paragraph (3) must be based on an indictment and everything that is proven in an examination at trial". According to the provisions of the article, the deliberation conducted by the Panel of Judges must be carried out because the deliberation is related to the decision to be handed down.

The basis for the judge's decision if observing the provisions of Article 183 of the Criminal Procedure Code, it can be understood that in proving a criminal case to determine whether or not the defendant is guilty of the act he is accused of, it is emphasized that juridical requirements must be met in the form of at least two pieces of evidence recognized as evidence. valid plus the judge's conviction. Regarding the function or duty and authority of the judge in the case examination stage, the issue of the judge's conviction is mostly applied at the evidentiary stage. This stage is the basis for the birth of the qualifications or types of judge's decisions (*vonnis*) which will determine the fate of the defendant for the next, in the sense, whether the defendant will be released from all charges (*vrijspraak*), free from all legal charges, or sentenced to death.<sup>18</sup>

Dasar putusan hakim pada dasarnya harus memberikan titik terang yang dapat memberikan keadilan bagi para terdakwa. Adapun dasar putusan hakim yaitu:

1. Legal Facts

Legal facts are facts that are revealed in court. These facts are the testimony of witnesses under oath, testimony of the defendant and evidence.<sup>19</sup>

2. Evidence

Evidence is everything that has to do with an act, where the evidence can be used as evidence in order to raise the judge's belief in the truth of the existence of a crime that has been committed by the defendant.<sup>20</sup>

3. Judge's Confidence

The judge's confidence is a very large capital and the main supporting factor that makes an ideal and professional judge. Because it is the judge's belief that he can uphold truth and justice in accordance with the goals of an ideal and professional judge. In addition, the judge's belief is a result of the judge's attitude and appreciation of various factors and the overall situation he faces when examining and deciding a case.<sup>21</sup>

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<sup>18</sup> Ni Nengah Adiyaryani. (2019). *Keyakinan Hakim Dalam Peradilan Pidana Indonesia. Laporan Penelitian Mandiri*, 2

<sup>19</sup> <http://repository.unpas.ac.id/14852/3/BAB%20II>. Accessed at June, 20 2022, At 20:59 Wita

<sup>20</sup> Hari Sasangka dan Lily Rosita. *Hukum Pembuktian Dalam Perkara Pidana*. (Mandar Maju, 2003), 11

<sup>21</sup> Jajang Cardidi. (2014). Kajian Hermeneutis Terhadap Makna Keyakinan Hakim Dan Peranannya Untuk Putusan (Vonis) Pidana. *E-Journal Graduate Unpar*. 1 (2), 29



The various considerations above constitute a single unit that will be used by the judge as the basis for his decision, apart from the above, there are still some things that are the object of consideration, namely the indictment of the public prosecutor, but will still produce some of the points that the author has mentioned above. To review again, the author will look at the judge's considerations in the decision of the Persecution Case Number: 67/Pid/2021/Pt Gto.

Decision on Persecution Case Number: 67/Pid/2021/Pt Gto tried the case of beating a member of the TNI by civil society totaling 7 people, where in the judge's decision Defendant I was decided by a judge with a prison sentence of 6 years and defendants II to VII in sentenced to prison for 4 years. Therefore, there are several things that are considered by the judges which of course serve as the basis for the decision to impose sanctions on the defendants. The author's analysis shows that in the indictment of the public prosecutor the defendants are sanctioned with the same article, namely Article 170 Paragraph (2) 2 which says "with imprisonment for a maximum of nine years, if the violence causes serious bodily injury". However, based on the conviction of the judge, Defendant I was decided with a different number of sentences from the other defendants. Where defendant I was sentenced to 6 years in prison and the others only 4 years.

Based on the judge's consideration in imposing sanctions on the defendants, of course there will be evidence that will incriminate the defendants and on the basis of the judge's belief in the legal facts in the trial. The evidence referred to by the author is as stated in Article 184 Paragraph (1) where it is said that the valid evidence is:

1. Witness testimony
2. Expert Description
3. Letters
4. Hint
5. Defendant's statement

The evidence as mentioned above will be used as the basis by the judge to impose a criminal sanction on the defendant, not to mention if from the existing evidence the judge will also see the evidence used by the defendants to increase the judge's confidence to impose a severe sanction. or light. The following is the basis for the judge's consideration in the decision of the Persecution case Number: 67/Pid/2021/Pt Gto.

1. Defendant I
  - That the Defendant I did the beating
  - Whereas Defendant I threw bricks at the back of the head of the witness
  - That due to the beating of the defendants, the witness was unconscious

- That based on the CCTV video evidence, Defendant I threw bricks 3 times
- That the impact of the bricks caused the witness to experience swelling of the skin tissue on the back of the head
- Whereas based on the testimony of expert witness, dr. Rizky Eko Saptyanry Asri, SpB that throwing bricks can cause death
- Whereas the results of the visum et repertum are the results of the examination of witnesses issued by dr. Amelia Secil from Aloe Saboe Hospital

Considering that based on the judge's consideration through the existing legal facts, the judge stated that the defendants had been legally proven to have committed a criminal act, with the threat of Article 170 Paragraph (2) of the 2nd Criminal Code.

## 2. Defendant II to VII

### a. Defendant II

- Whereas Defendant II used a fishing rod to beat the witness repeatedly
- That the impact of the fishing stick resulted in abrasions on the right upper back of the abdomen and bruises on the back of the waist due to the force of a blunt object.
- Whereas the results of the visum et repertum are the results of the examination of witnesses issued by dr. Amelia Secil from Aloe Saboe Hospital

Considering that based on the judge's consideration through the existing legal facts, the judge stated that the defendants had been legally proven to have committed a criminal act, with the threat of Article 170 Paragraph (2) of the 2nd Criminal Code.

### b. Defendant III to VII

- Defendant III kicked the victim
- Defendant IV holds and pulls the victim's jacket
- Defendant IV and V stepped on the victim's stomach
- Defendant VI and VII hit the victim.

Both Defendant II and Defendant VII were prosecuted by the judge with a sentence of 4 years in prison with each of the available evidence and legal facts.

From the explanation of the judge's considerations above, first for Defendant I, the writer thinks that the sentence given is in accordance with what he has done and is based on the three pieces of evidence revealed in the trial. Not to mention that which can incriminate the sanction of Defendant I, namely using evidence that can cause death based on expert testimony in the trial.

Furthermore, for Defendant II, there are only two pieces of evidence that can be seen from the judicial considerations above, namely only evidence of a visum et repertum and expert testimony from a doctor. However, the problem with the



author is that the evidence used by Defendant II was not assessed to incriminate the sanctions given by the panel of judges in the ongoing trial process. In the author's opinion, the blunt instrument must be evidence that will incriminate the perpetrator because based on the legal facts that exist as a result of the blow of the evidence used causing the victim to suffer abrasions. The consideration is that if the evidence is used on vital parts, it will indirectly endanger the lives of the victims themselves.

Seeing also the judge's considerations on defendants III to VII based on events and legal facts revealed in the trial as stated in the Persecution case decision Number: 67/Pid/2021/Pt Gto, that it can be said that the sentence sentenced by the judge was in accordance with what was stated by the judge. This is the act where the sanctions given are lighter than those of Defendant I, which is a legal fact and the available evidence is lighter than that used by Defendants III to VII. Furthermore, if the judge's decision is related to the disparity theory, referring to the opinion of Muladi and Barda N, it is said that disparity is the freedom given by law to judges to decide cases in accordance with the provisions even though the decisions can differ from one case to another. Freedom is given to judges because the facts of the trial of one case are different from other cases. Looking at the decision of the Persecution Case Number: 67/Pid/2021/Pt Gto as the researcher's analysis above, that the judge's decision did not take into account the facts of the legal events that were revealed by Defendant II in the trial, so the researcher was of the opinion that the freedom of judges in making decisions based on the disparity theory was not in accordance with what are the provisions of the theory where in this freedom the judge must look at the legal facts that can be burdensome that are revealed in the trial.

Therefore, the judge evaluates the evidence presented in the trial more because in assessing the evidence in a case, the judge should always be able to stand as an interpreter who sees the requirements in a statutory regulation as something that must be adapted to each case at hand. Especially in a case that expects a more in-depth study, the judge can assess the evidence as a whole, but also specifically on a case-by-case basis. If you refer to Mukti Arto's opinion<sup>22</sup> where in his writings that the judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, well, and carefully. If the judge's consideration is not thorough, good, and careful, then the judge's decision that comes from the judge's consideration will be canceled by the High Court of the Supreme Court. Bearing in mind that the judiciary is part of the institution as law enforcement in terms of providing justice for those who have litigation, both criminal and civil. Therefore, all

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<sup>22</sup> Mukti Arto. *Praktek Perkara Perdata pada Pengadilan Agama*. (Yogyakarta: Pustaka Pelajar, 2004), 140

violators must be punished in accordance with applicable laws and regulations.<sup>23</sup> So that society and every other person, including the government must heed it, by making laws on the basis of natural rights themselves.<sup>24</sup> Even considering that Indonesia is also one of the countries that puts forward the constitution in every aspect of the life of the nation and state.<sup>25</sup> As said by Prof. Fenty Puluhulawa in her writings also stated that the Government through the law has provided a starting point for the judiciary, which is carried out for the sake of justice based on the One Godhead.<sup>26</sup>

What's more important is that currently law enforcement has become one of the most efficient steps in doing business.<sup>27</sup> Quoting as said by Fence M. Wantu in his Journal that the essence of justice is something that is an assessment from one person to another, which is generally seen from the party receiving the treatment only.<sup>28</sup> Quoting as said by Suwitno Yutye Imran that Justice serves as a guide to distinguish between fair and unfair actions, elements of the aspect of justice can be contained in the substance.<sup>29</sup>

The application and enforcement of the law are elements of the legal system that must be continuously addressed in order to realize a legal position in a legal state that is beneficial to the interests of the community, nation and state.<sup>30</sup> Furthermore, the form of the legal system also requires people to have a sense of love and affection, mutual respect, mutual help, loyalty, honesty, and adequate physical and spiritual support, so that the implementation of the legal system can run in accordance with people's lives in general.<sup>31</sup>

The law must be applied in accordance with the existing facts, so that judges can always interpret the meaning of laws and other regulations that form the basis for decisions. The law must be applied in accordance with the facts of the case so that the judge can wisely and objectively construct the case being tried as a whole.

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<sup>23</sup> Ramdhan Kasim. (2020). Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (overspanning van het strafrecht). *Jurnal Law Review*. 2 (1), 5

<sup>24</sup>Bakung, Dolot Alhasni. (2020). Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right. *Jurnal Law Review*. 2 (1), 67

<sup>25</sup>Fakhris Lutfianto Hapsoro. (2020). Interpretasi Konstitusi Dalam Pengujian Konstitusionalitas Untuk Mewujudkan The Living Constitution. *Jurnal Law Review*. 2 (2), 145

<sup>26</sup> Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (2020). Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim. *Jurnal Gorontalo Law Riview*. 3, (2), 184

<sup>27</sup>Mohamad Rivaldi Moha. (2020). Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. *Jurnal Law Review*. 2 (2), 115

<sup>28</sup>Fence M. Wantu. (2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. *Jurnal Mimbar Hukum*, 25 (2), 206

<sup>29</sup> Suwitno Y. Imran. (2021). The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments. *Jurnal Law Review*. 3 (2), 398

<sup>30</sup> Soerjono Soekanto. Pengantar Penelitian Hukum. (Jakarta: UI- Press, 2010), 11

<sup>31</sup> Dedi Sumanto, Titin Samsudin, Fikri Asnawi Amiruddin. (2021). The Existence Of The Religious Court In Handling Divorce Cases On The Reason Of Domestic Violence. *Jurnal Law Review*. 3(2), 228

The judge's decision which contains elements of legal certainty will help the progress of legal science. This is because the judge's decision which has permanent legal force is no longer the opinion of the judge, but the opinion of the court institution that will become the reference for the community. So that when this does not cause problems and if the policy is not in accordance with the behavior pattern of the community, then the government must resolve a problem with the community itself.<sup>32</sup> Furthermore, the important point in the preparation of every policy issued by the Government comes solely from the wishes of the community.<sup>33</sup> The reason is that government policies as outlined in laws and regulations are always followed by criminal sanctions.<sup>34</sup>

#### **4. Conclusion**

The basis for the judge's consideration is three things, namely legal facts, evidence and the judge's belief. These three things will make the judge in terms of giving decisions to the perpetrators of criminal acts or in this case the defendants. These three points have been contained in the indictment of the public prosecutor which will then be concluded and analyzed by the judge to convince his heart in terms of imposing sanctions in accordance with what the defendants did.

What should be mitigating for the Defendant in the form of the Defendant promising not to repeat his actions should not be used as consideration for the Judge in deciding a case. This could have been a pretense to gain sympathy from the Judge. So the consideration must be focused on the actions committed by the defendants.

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<sup>32</sup>Fitriyadi, Ahmad Adi. (2020). Diferensiasi Pengungsi Dan Pencari Suaka Dalam Hukum Pengungsi Internasional Dan Hubungannya Dengan Prinsip Non-Refoulement. *Jurnal Law Review*. 2 (2), 127

<sup>33</sup> Nurdin, Putri Handayani. (2019). Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik. *Jurnal Law Review*. 1 (2), 146

<sup>34</sup> Hwian Christianto, Michelle Kristina. (2022). Fulfilling the Right of Education during Covid-19 Pandemic Period: A Comparative Study. *Jurnal Law Review*. 4 (1), 1

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