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Analysis of Batam District Court Decision Number: 35/Pid.B/2012 compared to the Supreme Court Decision Number: 1691/K/Pid/2012

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Abstract

This study aims to analyze the interpretation of judges through the decision of the Batam District Court Number: 35/Pid.B/2012/PN.BTM which has been reconstructed through the Supreme Court Decision Number: 1691K/Pid/2012 in the murder case on behalf of Defendant MindoTampubolon, S.Ik. The results showed that the Judicial Consideration of the Panel of Judges in Batam District Court Decree Number 35/Pid.B/2012/PN.BTM was the indictment of the Public Prosecutor who stated that the defendant MindoTampubolon, S.Ik did, who ordered and did and participated in the act, intentionally and with prior plans to take the lives of others in their proof related to the elements in Articles 338 and 340 Jo. Article 55 paragraph (1) 1 of the Criminal Code. While the non-judicial consideration of the Panel of Judges in Batam District Court Decree Number 35/Pid.B/2012/PN.BTM is that the evidence of the involvement of the accused is only based on the statement of Tumpal Manik, SH, and always states that the perpetrators of the killings are witnesses GugunGunawan alias Ujang bin Ade. Decision of the Supreme Court Number 1691K/Pid/2012 is in accordance with the sense of justice in accordance with the purpose of criminalization and realized in the form of the application of the principle of Equality Before the Law, the principle of Presumption of Innocence and imprisonment of the defendant MindoTampubolon, S. Ik for a lifetime.

INTRODUCTION

In simple terms, it can be stated that criminal law is the law that regulates acts that are prohibited by the law along with criminal sanctions that can be imposed on the perpetrators.¹ According to BagirManan, to truly guarantee the legal certainty of statutory regulation, besides fulfilling formal requirements, it must also fulfill other requirements, namely clear in its formulation, consistent in its formulation both internally and externally,

¹ Waluyo Bambang. *Pidana dan Pemidanaan*. (Jakarta: Sinar Grafika, 2004) 6.

the use of appropriate language and easy to understand.² Because the law is a universal structure of human society, the fact of which comes from the power of the law itself.³

Indonesia is a state of law. As stipulated in Article 1 paragraph 3 of the 1945 Constitution, which states that “The State of Indonesia is the State of Law”? The inclusion of this provision in the Article of the 1945 Constitution shows the strength of the legal basis and the mandate of the state, that the state of Indonesia is and must be a state of law.⁴ The strategic location of the judge's decision to become an independent law enforcer as mandated by the 1945 Constitution of the State of the Republic of Indonesia without the intimidation of any power, which is then elaborated and outlined in Law Number 48 of 2009, concerning Judicial Power in which Article 1 states " Judicial Power is the power of an independent State to organize the judiciary to uphold law and justice based on the Pancasila, for the sake of the implementation of the Republic of Indonesia Law State. Then in Article 10 of Law Number 48 of 2009 concerning Judicial Power.

"The court is prohibited from refusing to examine, try, and decide on a case filed under the pretext that the law is absent or unclear, but it is obligatory to examine and try it, then from the sound of Article 10 of Law Number 48 of 2009 concerning Judicial Power it is clear that the Court is prohibited reject a case whether because there is no law or because the law is unclear because by Article 5 of Law Number 48 of 2009 concerning Judicial Power stated that "Judges and constitutional judges must explore, follow and understand the legal values and a sense of justice that live in a society ".⁵ The law can be carried out if a case is brought before a judge, but there are no provisions that can be carried out to resolve the case, despite the interpretation of the law. Likewise, after being sought in customary law or customary law, there are no regulations that can bring resolution to the case. In such a case, the judge must re-examine the legal system which is the basis of the legal institution concerned. If there are similarities in some provisions, the judge makes a legal understanding

² Abdul Halim Barkatullah dan Teguh Prasetyo. 2012, *Filsafat Teori dan Ilmu Hukum*. (Jakarta: PT. Raja Grafindo Persada, 2012) 342.

³ Aleardo Zanghellini, “A Conceptual Analysis of Conseptual Analysis in Analytic Jurisprudence”, *Canadian Journal of Law and Jurisprudence*, Can. J.L and Juris, 467, August, (2017). 567. JurnalWestlaw, Thomson Reuters, diakses melalui <https://1.next.westlaw.com/Document/>, pada tanggal 21 Oktober 2019.

⁴ Dessy Artina. “Kedudukan LGBT dalam Hukum Negara Republik Indonesia ditinjau dari Perspektif Pancasila”, *Jurnal Hukum Universitas Semarang* 2, no. 1 (2016) 198.

⁵ Edi Rosadi, “Putusan Hakim Yang Berkeadilan”, *Badamai Law Journal* 1, no. 1, April, (2016) 382.

(rechtsbegrip) following his opinion.⁶ In the murder case on behalf of the defendant Mindo Tampubolon, S.Ik and Mega Putri Umboh victims at the Batam District Court with Case Number: 35/Pid.B/2012/PN.BTM, the Public Prosecutor has charged Defendant Mindo Tampubolon, S.Ik together with Gugun Gunawan Als Ujang Bin Ade and Rosita Als Ros Als Alit Binti Pian (each prosecution was conducted in a separate case file) on Friday, June 24, 2011, around 05.30 or at least at any time in the month June 2011 or at least still in 2011 located at Perum Angrek Mas 3 Blok A 6 No. 02 Batam City or at least in a place that is still within the jurisdiction of the Batam District Court which has the authority to examine and prosecute, who commits, who orders to do and who participates in committing acts.⁷

Deliberately and with a plan in advance took the life of another person namely Putri Mega Umboh, carried out by the Defendant. The Panel of Judges then gave the following verdict: (a) To declare the Defendant Mindo Tampubolon, S.Ik not proven legally and convincingly guilty of committing a crime as charged by the Public Prosecutor in the primary and subsidiary indictments; (b) Release the defendant from all charges (Vrijspraak); (c) Order the Defendant to be released from detention; (d) Restoring the defendant's good name in his position, ability, dignity and dignity as before; and, (e) Assign evidence to be returned to the rightful party.

In Article 244 of Law Number 8 of 1981 concerning Criminal Procedure Code (the Book of Criminal Procedure Law) it is stated that "against the decision of a criminal case given at the last level by a court other than the Supreme Court, the defendant or public prosecutor may submit a request cassation examination to the Supreme Court except for an acquittal". Then the implementation that it turns out that this provision often causes debate related to whether or not the prosecutor may submit an appeal to the Supreme Court for a verdict or a free verdict (vrijspraak). To parse the polemic referred to.⁸ Concerning the acquittal, the question now arises, namely, whether the acquittal can ask for an appeal or an appeal?

In Cassation's memory, the Public Prosecutor refocused on the main points of the

⁶ Hajairin, "Konstruksi Hukum Dalam Pembuktian Unsur Tindak Pidana Pembunuhan Berencana (Prespektif Putusan PN Raba Bima Nomor 341/Pid.B/2014/PN.Rbi, PT Nomor 20/Pid/2015/PT.Mtr Dan Putusan Mahkamah Agung (MA) Nomor 815K/Pid/2015)", *Sangaji: Jurnal Pemikiran Syariah dan Hukum* 1, no. 1, Maret (2017) 59.

⁷ Edi Rosadi, "Putusan Hakim yang Berkeadilan", *Badamai Law Journal* 1, no. 1, April, (2016). 382.

⁸ Janpatar Simamora, "Kepastian Hukum Pengajuan Kasasi Oleh Jaksa Penuntut Umum Terhadap Vonis Bebas : Kajian Putusan Mahkamah Konstitusi Nomor 114/PUU-X/2012", *Jurnal Yudisial* 7, no. 1, April (2014) 3.

indictment as stated in the Batam District Court with Case Number: 35/Pid.B/2012/PN.BTM. The Public Prosecutor, in essence, conveyed the reasons for the panel of judges at the Batam District Court determine the evidence so that it is returned to the rightful party; Charging the cost of the case to the laughter in the amount of Rp. 2,500.

In describing the formulation of offense into its elements, the first thing we must meet is to mention something human action, with that action someone has done something that is prohibited by law. Every criminal offense contained in the Criminal Code (KUHP) in general can be translated into elements consisting of subjective elements and objective elements. A legal expert, Simons, formulates the elements of a crime as follows: (a) Threatened with the crime by law; (b) contrary to law; (c) conducted by a guilty person; and (d) that person is considered responsible for his actions.⁹

A criminal imprisonment is a form of crime in the form of loss of independence. The crime of losing independence is not only in the form of imprisonment but also in the form of exile. Prison sentences vary from a temporary prison of at least 1 day to life imprisonment. Life imprisonment is only listed where there is a death sentence (death sentence or life imprisonment or twenty years in prison).¹⁰

Crime prevention efforts with criminal law are essentially also part of law enforcement efforts (specifically criminal law enforcement). Therefore, it is often said that politics or criminal law policies are also part of law enforcement policies. In the criminal law policy (penal policy) there is a renewal of the criminal law (penal reform). Renewal of criminal law must be carried out with a policy approach because, in reality, it is only part of a step or policy or "policy" (ie part of law politics/law enforcement, criminal law politics, criminal politics, and social politics).¹¹

In every policy (policy) also contained the development of values. Therefore, the renewal of criminal law must also be oriented to the values approach. After observing and studying the decision of the Batam District Court No. 35/Pid.B/2012/PN.BTM dated May 24, 2012, which according to the Researcher prioritizes aspects of legal interpretation by the Panel of Judges, and after being compared with the Supreme Court Decree No. 1691K/Pid/2012 which emphasizes aspects of legal certainty Researchers are interested in raising the title of the Thesis research: "Analysis of Batam District Court Decision Number:

⁹ Andi Hamzah, *Asas-Asas Hukum Pidana*, (Jakarta: PT. Rineka Cipta, 2004) 88.

¹⁰ Barda Nawawi Arief, *Kebijakan Hukum Pidana*, (Jakarta: Media Group, 2010) 8.

¹¹ Adami Chazawi, *Pelajaran Hukum Pidana*, (Jakarta: Raja Grafindo Persada, 2002) 190.

35/Pid.B/2012 compared to the Supreme Court Decision Number: 1691/K/Pid/2012".

This type of research used by researchers is normative legal research. The approach used by researchers is a normative juridical approach. Based on this approach, the main material to be examined is primary legal material, secondary legal material, and tertiary legal material.

BATAM DISTRICT COURT DECISION NUMBER: 35/Pid.B/2012 COMPARED TO THE SUPREME COURT DECISION NUMBER: 1691/K/Pid/2012

Conformity of the Supreme Court's Decision Number: 1691K/Pid/2012 with a Sense of Justice. After explaining the legal considerations of Batam District Court Decree Number 35/Pid.B/2012/PN.BTM above and found the fact that the defendant on behalf of MindoTampubolon, S.Ik was declared free. The Public Prosecutor then appealed to the Supreme Court because following the Decision of the Constitutional Court Number 114/PUU-X/2012, criminal verdicts could not be sought except for cassation.

It is worth noting that based on Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia NRI it is stated that judicial power is an independent power in administering justice to uphold law and justice. To uphold law and justice, it certainly cannot be separated from honesty about the meaning of truth. The right will be declared right and wrong will be declared wrong.

Therefore, even though the appeal for a free sentence (*vrijspraak*) has obtained an adequate room for legitimacy, this does not necessarily mean that the Supreme Court will always declare and decide that a defendant is always guilty and convicted as a public prosecutor. Because after all the protection of the rights of suspects or defendants contained in the criminal justice system is one of the prerequisites for the implementation of a fair legal process.

Every talk about the law will be related to justice. Law without justice will lead to arbitrariness or injustice, while justice without the law will lead to uncertainty. Thus, every talk about the law must be related to justice. Law and justice are like two sides of a coin and are an inseparable unity. SatjiptoRahardjo stated that discussing the law is discussing human relations. Talking about human relationships is about justice. As such, any discussion of the law, clear or vague, is always a discussion of its form as a formal relationship. We also need to see it as an expression of the ideals of justice of the people.

The law must be implemented and enforced. Everyone expects that laws can be established in terms of concrete events. How that law must apply, basically it is not allowed, fiat Justitia et periret mundus (although the sky will collapse, the law must be upheld). That's what legal certainty wants. Law is for humans, so the implementation of law or law enforcement must provide benefits or uses for the community. Do not let precisely because the law is implemented or enforced instead arises unrest in society. The third element is justice. The community is very interested that in the implementation or enforcement of the law, justice is considered. That is, law enforcement must consider the factor of justice.

The founders of the state formulated the ideals of statehood in the preamble to the 1945 Constitution which chose the welfare state concept, as stated in paragraph IV of the 1945 Constitution. "Then, rather than that, to form an Indonesian government that protects all Indonesian people and all Indonesian blood and to promote the welfare of world order based on independence, eternal peace, and social justice."

The welfare state is a state whose main function is to carry out general welfare or welvaarstaats or verzorgingstaats, a conception of a modern legal state that places the state in a strong and large position. The duties and authorities and responsibilities of the government are growing and broadening both requiring that every action of the government must be based on the law and the government is also entrusted with broad, heavy roles, duties and responsibilities.¹² However, due to the breadth and complexity of the community's problems, it turns out that not all actions to be taken by the government are available in the law and therefore there are special consequences where the government requires freedom to act on its initiative, especially in resolving urgent issues appeared suddenly.

This matter called discretionary power or *pouvoir discretionnaire* or *Armenisfreies*. One of the tasks of the state that must be carried out by the government is to realize social justice for all Indonesian people as mandated in paragraph IV of the opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia, but up to now, it is still a hope that must continue to be fought for.

According to Ahmad Ali, the purpose of the law is emphasized in terms of "justice." While Gustav Radbruch conceptualizes one of the objectives of law or the ideals of the law is "justice" in addition to its usefulness and certainty.¹³ Here is *iussuomquiquetribuere*, which

¹² Marbun. *Peradilan Administrasi Negara dan Upaya Administratif*, (Yogyakarta: Liberty, 1997) 166.

¹³ Dudu Duswara Mayhudin. *Pengantar Ilmu Hukum: Sebuah Sketsa*. (Bandung: Refika Aditama, 2000) 23.

means giving everyone what is a part or right. The formulation of justice rests on three sects of natural law which he considers to be the main principles of justice namely *honeste vivere*, *elaterium non laedere*, *suum Quique tribuere*.

In addition to the equality-based justice model, Aristotle also proposed other justice models namely distributive justice and corrective justice. Distributive justice is synonymous with justice based on proportional similarity. Whereas corrective or remedial justice focuses on "rectification of something wrong". If something is violated, or an error is made, corrective justice seeks to provide adequate compensation for the injured party. If a crime is committed then an appropriate punishment must be given to my officer, in short, corrective justice is tasked with rebuilding harmony. Corrective justice is a general standard for correcting the consequences of actions regardless of the perpetrators. The principle is that the penalty must correct the crime, the compensation must fix the loss and recover the illegitimate profits. The Themis concept, the goddess of justice, underlies this type of justice whose task is to balance these principles regardless of who the perpetrators are.

Justice according to Aristotle, as quoted by FransHendraWinata, must be distributed by the state to all people and the law has to protect it so that justice reaches everyone. If two people in dispute come before a judge, they must be treated equally (*Audi et Alteram Partem*). If someone who can afford it can be bought by an advocate of eating poor people must be defended by public defenders on a *pro bono* public basis. This defense is carried out without regard to the background of the individual concerned, such as religion, ancestry, race, ethnicity, political beliefs, socio-economic strata, skin color, and gender. The true nature of truth is justice (justice). Upholding the truth, in other words also upholding justice. Simply stated, the law that is enforced can only be dated "right" or "fair" if law enforcement is done without favoritism.

The presence of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) is expected to bring new ideas in the spirit of humanity and the value of justice that is desired by all parties. The expected value of justice is under Pancasila as the philosophy of the Indonesian people. The value of justice is a very important value of every legislation formed. Existing legal regulations are not only legal but must also contain values of justice.

Based on the Decision of the Supreme Court Number 1691/K/Pid/2012 which has canceled Batam District Court Decision Number 35/Pid.B/2012/PN.BTM and has changed the verdict against the defendant MindoTampubolon, S.Ik from a free sentence to a life

sentence according to the author has fulfilled a sense of justice based on the theory of justice conveyed by Hans Kelsen and John Rawls, that justice has two formal elements, namely elements of rights and elements of benefits. The element of rights, namely justice, is the value that directs each party to protect the rights guaranteed by law and the element of benefits, namely justice, states that in the end, it must provide benefits to each individual.¹⁴

The value of justice is relative, so it is impossible to find an absolute justice (absolute justice). While John Rawls argues that what causes injustice is a social situation, it needs to be reexamined which principles of justice can be used to shape the situation of a good society. Correction of injustice is done by returning (call for redress) the community to the original position (people on original position). In this basic position, an equal agreement between the members of the community is made equally. Based on John Rawls's view, it can be concluded that the values of justice in the Supreme Court's decision No. 1691/K/Pid/2012 are as follows:

1. Implementation of the Equality Principle Before The Law

The concept of the rule of law, of course, provides an affirmation of law enforcement in Indonesia, which has been regulated in the 1945 Constitution, Article 27 paragraph (1) which confirms that "All citizens are at the same position in law and government and must uphold the law and government with there is no exception "and Article 28D paragraph (1) which states that " Every person has the right to recognition, guarantees, protection and certainty of law that is just and equal treatment before the law ". Therefore, judges in upholding justice should not look at the defendant's social stratum, whether it is based on class, position or even position at all. A defendant who is brought before a trial is just an ordinary person who releases all "social attributes" attached to him.

Riau Islands this situation was made worse by the fact that witness TumpalManik, S.H was the defendant's superior. The reverse concept was applied by the Chief Justice who examined the cassation memory in this case. The position of the defendant who is a member of the Indonesian National Police is a burdensome consideration by the Supreme Court of Justice because the defendant is considered a member of the Indonesian National Police who does not set an example and protect the public.

2. The Application of the Principles of Presumption is Innocent

Article 8 paragraph (1) of Law Number 48 the Year 2009 concerning Judicial Power states that everyone who is suspected, arrested, detained, prosecuted, or brought before a

¹⁴ Barda Nawawi Arief. *Kebijakan Hukum Pidana*, (Jakarta: Prenada media Group, 2008) 13.

court must be considered innocent before there is a court ruling stating his guilt and has obtained power law. This provision, known as the presumption of innocence, requires that everyone who goes through the case process is still regarded as innocent until there is a court decision that has permanent legal force stating his mistake.

Judges in the justice system in Indonesia are given authority by law to determine someone guilty or innocent through the process of law enforcement and justice in court. This means that a person's mistakes can only be determined in a decision of a judge who has permanent powers (*inkrecht van gewijsde*), therefore, a person must remain considered right in the sense of never making a mistake so that the person is entitled to legal protection during the judicial process.

In the quo case, the Batam District Court has applied the principle of innocence to Defendant MindoTampubolon, S.Ik. However, this principle would be an attack on witnesses GugunGunawan alias Ujang bin Ade. Where in legal considerations the Panel of Judges tried to direct the perpetrators of the killings to witnesses GugunGunawan alias Ujang bin Ade.

Different legal considerations were taken by the Supreme Court Judge who examined and tried the cassation memory in this case, which focused the evidence to prove the indictment of the defendant MindoTampubolon, S.Ik. The Panel of Supreme Court Judges better understood the position of the accused as defendants and positioned witnesses as witnesses. So that what is protected here is not only the witness himself but also the defendant himself, because the Panel of Judges did not immediately conclude the mistake of the defendant MindoTampubolon, S.Ik, before examining the cassation memory and linking all available evidence. It was finally concluded that the defendant MindoTampubolon legally and convincingly committed the crime of murder as regulated in Article 340 Jo. Article 55 paragraph (1) 1 of the Criminal Code.

3. Verdict of Defendant Mindo Tampubolon, S.Ik

The verdict handed down by the Panel of Judges to Defendant MindoTampubolon, S.Ik, according to the author, has fulfilled the values of justice, both the defendant's self, for the victim and the community. According to Van Hamel, a crime referred to as "straf" in Dutch is a special affliction, imposed by the authorities in charge of the state's *nema* as the person responsible for public law order for a violator, simply because the person has violated a regulation the law that must be enforced by the state. While Simon argues that crime is suffering which by criminal law has been associated with violation of a norm, which by a

judge's decision can be handed down for someone who violates it.¹⁵ According to Muladi, criminalization aims to repair individual and social damage caused by a criminal offense, to repair such crimes there must be a set of criminal objectives. The intended purpose of criminal punishment is: (a) Prevention; (b) Community protection; (c) maintaining community solidarity; and, (d) Rooting.¹⁶

Based on the decision of the Supreme Court the defendant MindoTampubolon, S.Ik was sentenced to life imprisonment. Because in its legal considerations, the Assembly expressed that the act committed by MindoTampubolon was an act of the Accused of crimes committed against his wife in a cruel, planned manner, resulting in a child losing his mother, unsettling the community and against his actions the defendant did not acknowledge his actions, then this decision was a fair decision for his the defendant's self.

The interesting thing is that it turns out that MindoTampubolon has a fugitive status after the decision of the Supreme Court in 2012 until it was finally arrested at the in-law's residence on July 25, 2019, or after 7 years after the verdict was readout. Between, the biological daughter of Putri Mega Umboh admitted that her family was devastated and sad to see Mindo who had to be captured and put in a cell with her grandson, Keysia (son of Mindo Tampubolon) witnessed.

Positive law in Indonesia recognizes the principle of legality in KUHP article 1 paragraph (1), that every act referred to as an act/criminal act must be formulated in a law that is established in advance which stipulates in a clear formulation of the said acts. As a consequence, an act which in the view of the community is considered to be despicable because it violates the legal values that live in the community cannot be convicted because it is not regulated in writing in the law. In other languages, DeniSetyoBagusYuherawan states that it is unreasonable to free people who have committed crimes just because the crime is not prohibited by criminal law. This is because every criminal behavior must have criminal responsibility.

The responsibility is essentially efforts to restore things to normal and bring justice to justice. Therefore the slightest crime must be held responsible. Referring to MohKhasan's opinion above, although the victim's family strongly stated that MindoTampubolon, S.Ik was not the perpetrator of the murder of Putri Mega Umboh, the victim's family could not prove

¹⁵ Lamintang, *Hukum Penitensier Indonesia*, (Jakarta: Sinar Grafika, 2010) 34.

¹⁶ Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, (Bandung: Refika Aditama, 2006) 28.

the truth. So that what is done by the victim's family does not become a fair or unfair benchmark in the perspective of the victim, but as long as no decision invalidates the Supreme Court Decision Number 1691K / Pid / 2012, the decision is binding to become a fair decision for the victim. It even became unfair when the victim's family for 7 years hid MindoTampubolon because his status had been convicted after the Supreme Court's decision.

Still referring to Moh Khasan's opinion that if the only disgrace gets minimal moral sanctions and social sanctions from the community as a form of accountability, especially if what is done is a crime then the act must be justified. Based on this argument, the sentence of life imprisonment handed down to the defendant Mindo Tampubolon, S.Ik because it was proven legally and convincingly to carry out a murder crime based on the Decision of the Supreme Court Number 1691K/Pid/2012 becomes a binding justice and applies automatically to the community.

CONCLUSION

Judicial considerations of the Panel of Judges in the Decision of the Batam District Court Number 35/Pid.B/2012/ PN.BTM is the indictment of the Public Prosecutor who stated that the defendant MindoTampubolon, S.Ik did, who ordered to do and participated in the act, intentionally and with the prior plan to seize the lives of others in their proof is related to the elements in Articles 338 and 340 Jo. Article 55 paragraph (1) 1 of the Criminal Code. While the non-judicial consideration of the Panel of Judges in Batam District Court Decree Number 35/Pid.B/2012/PN.BTM is that the evidence against the involvement of the accused is only based on the testimony of the Witness TumpalManik, S.H., and always stated that the perpetrators of the killings were witnesses GugunGunawan alias Ujang bin Ade.

The decision of the Supreme Court No. 1691K/Pid/2012 is following a sense of justice under the purpose of punishment and is realized in the form of the application of the principle of Equality before the Law, the principle of Presumption of Innocence and imprisonment of the defendant Mindo Tampubolon, S.Ik for life.

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