

# Juridical analysis of the authority of judges to decide sentencing cases in the perspective of proportionality and the principle of justice

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## Abstract

**Purpose:** This research discusses the legal regulation of judges' authority to decide sentencing cases from the perspective of proportionality and the principle of justice, and the implementation, constraining factors, and efforts of judges' authority to decide sentencing cases from the perspective of proportionality and the principle of justice (research study of Batam District Court Class 1A).

**Research methodology:** The research method of this thesis is normative juridical (legal research) through a literature study supported by empirical juridical (sociological juridical) through a field study that aims to empirically obtain legal knowledge.

**Results:** The results showed that the legal regulation of the authority of judges to decide sentencing cases from the perspective of proportionality and the principle of justice is regulated in Law No. 48 of 2009 concerning judicial power. Specifically, the authority of judges to decide punishment cases is regulated in Article 183 of the Criminal Procedure Code. The implementation of judges deciding punishment cases at the Batam District Court Class I A. There are various obstacles, namely witness testimony, the absence of witnesses, and conflicts between the panel of judges. These obstacles affect the judge's decision to punish. However, the efforts of judges to impose punishment are guided by Article 183 of the Criminal Procedure Code. It is recommended that judges or authorities explore the values that live in society in order to realize justice in every decision.

**Keywords:** Judge's Authority, Sentencing, Proportionality, Justice

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## 1. Introduction

In a state based on legal provisions (rechtstaats), judicial power determines the content and strength of rules that apply in the state or positive law. Judicial power is manifested in the act of examining, assessing, and determining the value of certain human behavior and determining the value of concrete situations impartially based on the law as an objective benchmark. Justice in sentencing refers to the principle that punishment must be in accordance with the level of guilt committed by a person. This means that the punishment imposed must be proportional to the level of crime committed by the defendant so that there is no discriminatory action or abuse of authority by the judge. A judge's decision is a product of the trial process in court. While the court is the last place for the escape of justice seekers, the judge's decision should be able to meet their demands of justice seekers. In contrast, the judge in deciding the case must reflect three elements: justice, legal certainty, and expediency (Manan, 2012).

Meanwhile, proportionality in sentencing refers to the principle that the punishment imposed must be balanced with the objectives to be achieved, namely, providing a deterrent effect and educating the

defendant so as not to commit criminal acts in the future. In the practice of deciding sentencing cases from the perspective of proportionality and the principles of justice, judges must have in-depth knowledge of criminal law and policy, be able to make objective decisions and not be influenced by other factors such as public opinion or political pressure, pay attention to the facts and evidence in the case, consider the interests and rights of victims, and provide mitigation and rehabilitation considerations for the defendant. In addition, judges can also pay attention to similar decisions that have been handed down so that, in giving sentences, judges are expected to fulfill their duties as protectors of security and justice for the community. Therefore, an important part of the trial process occurs when the judge examines and attempts a case ([Darusman, 2021](#)).

As a state of law, Indonesia has a judicial system based on principles of fairness and proportionality in sentencing. However, in practice, judges' decisions can be influenced by various factors including external pressures, government policies, and issues of corruption and nepotism. Therefore, it is important for the Indonesian judicial system to continuously improve the quality and independence of judges as well as strengthen oversight and accountability mechanisms within the judicial system.

These facts prove that there are still many judges who use freedom as an excuse to commit less commendable acts. As a result, many decisions lack justice and proportionality and/or are detrimental to society and the justice system as a whole. Some of the consequences that can occur include the following.

- 1) Loss of public trust in the justice system
- 2) Justice was not achieved, however.
- 3) Decrease in the quality of the justice system
- 4) Creation of a corruption culture

Therefore, as a writer interested in researching sentencing based on proportionality and fairness, the differences in judges' decisions relating to the same charges are interesting to analyze. This is because differences in judges' decisions can reveal that there is still uncertainty and proportionality in sentencing, and that there are factors that influence judges' decisions.

### ***1.2. Problem Formulation***

- 1) What is the legal regulation of the authority of judges to decide sentencing cases from the perspective of proportionality and the principle of justice?
- 2) How is the implementation, obstacle factors and efforts of judges' authority to decide punishment cases in the perspective of proportionality and the principle of justice (Research study of Batam District Court Class 1A)?

## **3. Methodology**

This type of research is normative juridical (legal research) through literature studies supported by empirical juridical (sociological juridical) through field studies aimed at empirically obtaining legal knowledge. In this legal study, two types of data were used. The first type of data is referred to as secondary data and the second type is called primary data ([Mukti Fajar & Achmad, 2010](#)).

The approach method used in this research is normative and empirical juridical ([Putri, 2020](#)) and is carried out by studying and examining the applicable legal methods, especially with regard to the authority of judges to decide sentencing cases from the perspective of proportionality and the principles of justice.

### ***3.1. Data Sources and Data Collection Tools***

The data sources used in this research were primary and secondary data. ([Sitanggang & Jihad, 2021](#)) Primary data in this legal research is data obtained from interviews with sources related to the object of this research. The sources are the Judges of the Batam District Court Class 1 A. Secondary data are obtained from the results of a literature review of various literature or library materials related to

research problems or legal materials through library research by reviewing books, journals, research results, conventions, and laws and regulations through the Internet media regarding matters related to research problems.

### **3.2. Data Analysis**

The data that has been obtained, both primary data from field research, as well as secondary data obtained from library research, is used to analyze, study and process certain groups of data, so that a concrete qualitative conclusion can be drawn about the problems studied and discussed ([BIAK, 2020](#))

## **4. Results and Discussion**

### **4.1. Legal arrangements for the authority of judges to decide sentencing cases in the perspective of proportionality and the principle of justice**

To explain how the judge's authority is regulated, the author will first write what is meant by the judge's duty. The judge's duty is to make a decision in every case or conflict that is brought about before him, determining matters such as legal relationships, the legal value of behavior, and the legal position of the parties involved in a case. Thus, so that in order to be able to resolve disputes or conflicts impartially based on applicable law, the judge must always be independent and free from the influence of any party, especially in making a decision ([Mustofa, 2013](#)).

Based on the 1945 Constitution Article 24 paragraph (1) which reads, "Judicial power is an independent power to administer justice in order to uphold law and justice." This article emphasizes the importance of the independence of judicial power in carrying out its duties to ensure the application of law and justice in this country. This principle underscores the importance of a judiciary that is free from the intervention and influence of other parties, including the executive or legislative powers, to maintain justice and legal certainty in Indonesia.

Furthermore, the provisions regarding the authority of judges are also regulated in Article 1, paragraph 1 of Law No. 48 of 2009 concerning judicial power, which is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution. With this understanding, judicial power has the authority to hear cases, make decisions, and ensure the implementation of law in Indonesia. According to the Big Indonesian Dictionary (, ), is the power to make decisions, order, and delegate responsibility to others ([Syafudin, 2000](#)).

In this case, the judge has the responsibility to decide that the sentence imposed is proportional and fair to the wrongdoing committed by the defendant. Referring to Law No. 48 of 2009 concerning Judicial Power, the principle of the exercise of Judicial Power Article 2, is as follows:

- 1) The principle of a court of justice based on divinity emphasizes that the justice sought must be in line with the values of religions and beliefs practiced in Indonesia.
- 2) The judiciary in Indonesia must be based on Pancasila, the basic philosophy and ideology of the Indonesian state.
- 3) All forms of justice throughout Indonesia are a part of the state justice system.
- 4) The judicial process must be conducted in a simple, fast, and affordable manner.

These four points are important principles in the administration of judicial power in Indonesia and guide the judiciary in carrying out its duties of providing justice to the public. Judicial power also regulates the responsibilities that judges must adhere to, among others:

1. Article 4 Paragraph (1) affirms that the Court adjudicates according to the law with no distinction between persons.
2. Article 6 Paragraph (1) No one can be brought before the court unless the law determines otherwise; this is the principle of the legal principle of legality, and this principle is known as (*nullum delictum nullapoena sine praevia lege*) no offense no punishment without prior regulation.

3. Article 5 Paragraph (1) emphasizes that judges and constitutional judges have an obligation to understand and follow the legal values and sense of justice prevailing in society. Thus, they are expected to make fair decisions based on prevailing legal principles.
4. Article 8 Paragraph (2) emphasizes that in deciding on the severity or leniency of the punishment to be given, the judge must consider not only the actions of the defendant, but also the character and good or bad character of the defendant. This is intended to ensure fairness in the determination of punishments.
5. Article 17 Paragraphs (3) and (5) explain that to prevent conflicts of interest or emotional influences that may affect a judge's decision and ensure neutrality in the judicial process. The obligation of a judge is to realize equality before the law for every citizen, which cannot be done if the judge is personally involved in a case.

In exercising its authority, the judge's decision is considered the crown and culmination of a case being examined and tried by the judge. The judge's decision has a binding legal force and affects the fate of the parties involved in the case so that in this case, based on the theory according to Muchsin that the judge's authority is an impartial judge in imposing his decision, the judge must side with the right in accordance with the evidence and the facts of the trial.

Regarding the authority of the judge to decide cases in the perspective of proportionality and the principles of justice, it is also regulated in the Criminal Procedure Code Article 183 which reads "The judge shall not impose a sentence on a person unless with at least two valid pieces of evidence he is convinced that a criminal offense has actually occurred and that the defendant is guilty of committing it." This provision is intended to ensure a person's legal certainty. The valid evidence according to the Criminal Procedure Code (KUHP) is regulated in Article 184 paragraph (1) of the Criminal Procedure Code (KUHP). The following are the types of evidence considered valid according to the Criminal Procedure Code:

- a) Witness testimony;
- b) Expert Testimony;
- c) Letters;
- d) Clues;
- e) Statement of the Defendant.

Thus, to convict a defendant, the judge must rely on at least two pieces of evidence that are valid according to the Criminal Procedure Code (KUHP). However, it is important to note that the court will consider all evidence in the case as a whole to make a fair and objective decision. Montesque said freedom does not exist if the judicial power is not separated from the legislative and executive powers. If judicial power is united with legislative power, power over the lives and liberties of citizens will be exercised arbitrarily, because judges will become lawmakers. If judicial power is united with executive power, judges can become oppressors ([Asrun, 2004](#)).

The provisions of Articles 53(1) and 50(1) of the Judicial Power Act provide guidance on the responsibilities of judges in examining and deciding cases, as well as demands related to the decisions and verdicts made.

Article 53 of the Judicial Power Act emphasizes the responsibility of judges for their judgments and decisions. Judges must ensure that their rulings and decisions are based on proper legal considerations.

#### ***4.2. Implementation, Obstacle Factors, and Efforts of Judges' Authority to Decide Punishment Cases in Perspective of Proportionality and the Principle of Justice (Research Study of Batam District Court Class 1A)***

Judges' considerations in deciding a criminal case are based on various factors that can aggravate or mitigate the punishment to be imposed. Some factors considered by the judge in deciding on a criminal case include the following:

In this context, the severity of the crime will consider the seriousness of the crime committed by the defendant. The more serious and dangerous the crime, the higher is the possibility of a heavier sentence. Accumulation of crimes in this context if the defendant is a recidivist or has committed previous criminal offenses, the Judge can impose a heavier sentence to provide a deterrent effect and protect the community.

Referring to the authority of judges to decide cases of punishment from the perspective of proportionality and principles of justice, criminal cases. The measure of sentencing is contained in the consideration of the judge's decision, a criminal offense charged by the public prosecutor to a person who will look at the facts of the trial. That the person has committed a criminal offense so that, based on that fact, the judge can consider the matter of the severity and leniency of the verdict against the person (defendant). There will be considerations at the time of aggravating and mitigating circumstances that are measures that the judge can consider against the verdict and against a defendant. For example, whether this person is a recidivist and whether the criminal act has been forgiven by the victim will be the measures of consideration in this case the judge by using the perspective of proportionality to impose punishment on someone. When discussing the context of the principle of justice in the imposition of a verdict, the judge as far as possible can see that his decision can accommodate three things that become the purpose of law: legal certainty, legal expediency, and a sense of justice in society.

This legal certainty can be achieved if the decision is sentenced in accordance with applicable laws and regulations, namely, the principle of legality. For example, someone is charged with murder under article 338 "Whoever intentionally takes the life of another person, shall be punished for murder with a maximum imprisonment of 15 years" then he (the defendant) cannot be charged with article 340 "Whoever intentionally and with premeditation takes the life of another person, shall be punished for murder with premeditation, by death penalty or life imprisonment or for a certain period, a maximum of twenty years."

With legal expediency, how can this decision have a deterrent effect so that other people do not do the same thing? Regarding the principle of justice, the judge as a court can make a decision that is truly felt to be fair by the defendant or the perpetrator himself and the victims who are victims of the criminal act. For example, the Act is a criminal offense and is proven because it must be sentenced. In this context, we must see an obligation of the defendant in serving to be responsible for his actions and the rights of the victim so as not to cause harm to the victim. Factors that become obstacles to the authority of judges to decide sentencing cases from the perspective of proportionality and the principles of justice in the Batam District Court Class 1A. In issuing a verdict by prioritizing the perspective of proportionality and the principles of justice, the main factors that become obstacles are as follows:

1. In the trial examination, the defendant based on the testimony of the witnesses had led to the acts committed, but the defendant did not admit his actions and he could not prove his alibi that he was not the perpetrator.
2. The absence of witnesses who came to provide testimony so that the facts obtained were only based on the testimony of witnesses examined at the ink level, or the public prosecutor was unable to present a victim witness or key witness in the case.
3. Disagreement or difference in opinion among the panel of judges
4. The defendant is a repeat offender or a recidivist.
5. In the absence of mediation, the victim's family is not willing to provide an apology because how will a judge give a decision that at least touches the sense of justice because the victim must still be punished; thus, when giving a decision, the judge must pay attention to the victim's family.

These are the factors influencing sentencing from the perspective of proportionality and the principle of justice. To date, Batam District Court Class I A in the imposition of punishment has been guided by the provisions of legislation. Law No. 48 of 2009 on Judicial Power, for example, states that in handing down a verdict on Article 363 of the Criminal Code, it must not exceed the maximum penalty. Judges

in imposing sentences must consider criminal disparity. Criminal disparity (disparity in sentencing) is the application of unequal punishment for the same offense or for offenses of comparable seriousness without clear justification. This disparity is important to determine whether the judge is consistent. The judge's guidelines also refer to the Supreme Court Circular Letter or Supreme Court Regulation, but this is only a technical matter. The perspective of proportionality and the principle of justice are important in the judicial system because, in considering a verdict, the judge considers many aspects. The judge does not become an iron fist, arbitrary judge, and/or uses his/her will alone to impose an arbitrary decision on someone.

That is why a judge must refer to article 183 of the Criminal Procedure Code "The judge shall not impose a sentence on a person unless, if with at least two valid pieces of evidence he is convinced that a criminal offense has actually occurred and that the defendant is guilty of committing it". Some examples of the judge's consideration referring to Article 183 of the Criminal Procedure Code are as follows:

1. The judge believes that this person is guilty of committing a criminal offense, but if there is no evidence to support his belief, then a person cannot be sentenced; the judge's belief must exist because of the existence of 2 (two) evidence.
2. The judge is not convinced, but then the defendant is proven with 2 (two) pieces of evidence, Then, a person is released from all charges (onslag). In addition to evidence, the judge must consider the aggravating and mitigating facts of the trial. What is the impact If the sentence and/or verdict is not proportionality, it will lead to the absence of a sense of justice.
3. That in the decision of a criminal case, for example, member judge 2 (two) said that the The defendant was not proven guilty and was acquitted, then member judge 1 (one) said that the defendant was proven, but this was a civil case, so the defendant would be released from all legal charges (onslag). The presiding judge said he was guilty. The opinions of the three judges are different; thus, a vote is held. In this case, the judge will use the principle that is most favorable to the defendant, namely the principle of in dubio pro reo "if there is doubt about something, things must be decided in favor of the defendant." Automatically he must be acquitted, so pure acquittal

A judge can follow previous decisions, treaties, agreements, doctrine, customs, and jurisprudence. The judge can use them to decide on a case, but for the imposition of punishment, the judge is not obliged to follow the decision. For example, the jurisprudence of the premeditated murder is sentenced to 14 (fourteen) years of imprisonment; however, the judge is not obliged to follow the decision. The maximum punishment for a premeditated murder is the death penalty, if according to the judge he deserves death penalty because it is in accordance with the quality of his actions why not, but according to the judge, this defendant is sufficient to be sentenced to life imprisonment, then it is permissible. Judges can follow jurisprudence in relation to the rule of law; however, in relation to the imposition of punishment, it is the judge's authority and is not obliged to follow.

Judges must consider all relevant factors in the case, including the circumstances of the offender, social background, and the reasons behind their actions; judges as law enforcers can follow jurisprudence or previous legal experience to serve as guidelines for judges in determining proportionality sentences; judges can also look at how similar cases have been handled in previous courts and use that view as a reference in making decisions.

In the context of criminal law, punishment must be in accordance with the level of crime committed, so that there is no punishment that is too severe or too light for the crime, as well as paying attention to the facts of the trial and proof than the elements of the crime have been fulfilled according to the provisions of the legislation in Article 183 of the Criminal Procedure Code.

## 5. Conclusion

Based on the results of the research conducted by the author as described above, the author concludes the following:

1. The legal regulation of the authority of judges to decide sentencing cases in the Indonesian legal system refers to Article 19 of Law No. 48 of 2009, concerning Judicial Power. The Judge's duty to provide decisions in cases, determine legal relationships, the legal value of behavior, the legal position of the parties involved in a case, and the importance of the independence of judicial power in carrying out its duties to ensure the application of law and justice.
2. Implementation, factors that become obstacles in deciding cases of punishment from the perspective of proportionality and the principle of justice (research study at the Batam District Court Class I A) in the trial examination are witness testimony, the public prosecutor cannot present victim witnesses or key witnesses in the case, accumulation of previous crimes of repeat offenders (recidivists), conflicts, or differences in opinion among the panel of judges themselves.

### 5.1. Suggestions

Based on the above conclusions, the following suggestions were made:

1. Judges of the Batam District Court class I A in this case, as an institution responsible for the development of justice, should not only adhere to the laws and regulations but also need to explore the values that live in the community for the realization of justice in every decision.
2. The limitation of victim witnesses or key witnesses who cannot be presented by the public prosecutor, judges can consider other alternatives, such as other evidence, and disagreement in differences of opinion among the panel of judges is a natural thing in the legal system. However, it is important for the panel of judges to conduct in-depth discussions to obtain diverse points of view before making a decision on proportionality and fairness in deciding the case.

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