



In dubio pro reo principle as judges' consideration in criminal case

Chairul Anwar¹, Adwani², Rizanizarli²

¹ Student, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

² Lecturers, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

As stated in Law Number 48 of 2009 concerning Judicial Power, which is an independent power to administer justice in order to uphold law and justice, judges play an important role in law enforcement in court, where they must be able to make various efforts to investigate and discover the law. In order to impose a sentence, the judge must be confident that the defendant is truly guilty of committing a crime. If the judge has any doubts about the defendant's guilt, the judge cannot impose a sentence. The normative juridical approach was utilised in the preparation of this study. This study aims to explain the basis for judges' consideration of the *dubio pro reo* principle and the application of this principle by the panel of judges in criminal cases. According to the results of the research, the judge's consideration of the *in dubio pro reo* principle, based on the two valid pieces of evidence, was sufficient to establish the defendant's guilt. The application of the *in dubio pro reo* principle on the basis of the judge's considerations, if from these considerations the judge doubts the testimony of the witness, then the key witness cannot be presented at trial, per Article 183 of the Criminal Procedure Code.

Keywords: *in dubio pro reo*, consideration of judges, crime

Introduction

Article 24 paragraph 1 of the Constitution of the Republic of Indonesia from 1945 states, "judicial power is an autonomous power to administer justice in order to uphold law and justice." The Judicial Power Act stipulates that judges wield judicial authority. As stated in Law Number 48 of 2009 concerning Judicial Power, which is an autonomous power to administer justice in order to uphold law and justice, judges play a vital role in law enforcement in court, where they must be able to make various efforts to investigate and discover the law. A judge is a state court official who is permitted by law to preside over a trial. The role of judges in establishing order and justice in society is extremely substantial ^[1].

Judges may not be bound solely by the law in the sense of statutory regulations; judges must be given the freedom to carry out their judicial duties so that every case before a judge can be decided based on examining, hearing, and deciding cases fairly and wisely ^[2]. Justice, expediency, and legal certainty constitute the ideal components of a judge's decision. A judge's decision must be just, but it must also be beneficial to the parties involved, the community, and ensure legal certainty. In the event of a conflict between justice and legal certainty, judges are free to choose justice over legal certainty so long as it does not contradict public or state interests. Judges may not violate the law, may not violate the system, and must be system-oriented. However, if there is a conflict between legal certainty and justice in certain circumstances, the interests of the parties must be prioritised based on freedom, and the judge must have the courage to decide fairly even if it is contrary to legal certainty or the system ^[3].

In 1566, Egidio Bossi introduced the concept of *in dubio pro reo* to the Roman legal system. The presumption of innocence is the basis for the use of the phrase; if there are many legal interpretations, the one that favours the accused is chosen. The idea of *in dubio pro reo* is related to the principle of no crime without fault since, in order to penalise an act, every crime requires an element of error. In criminal law, the concept of criminal culpability is referred to as the doctrine of error, or *mens rea* in Latin. The doctrine of *mens rea* is founded on the maxim *actus non facit reum nisi mens sat rea*, which states that an act does not result in a person's guilt unless it is accompanied with ill intent. Based on this theory, in order to convict a person, two conditions must be met: a banned outward act (*actus reus*) and a bad or dishonourable mental attitude (*mens rea*) ^[4].

The panel of judges also mentioned the "*In Dubio Pro Reo*" principle, which applies to criminal law. This principle is not written in the Criminal Code, but its relation cannot be eliminated from the principle of "No Criminal Without Guilt" ("*Geen Straf Zonder Schuld*") or "*Anwijzigheid van alle Schuld*", which has become established jurisprudence and can be derived from Article 182 paragraph (6) of the Criminal Procedure Code, while the contents of Article 182 paragraph (6) are "in principle, the decision in the deliberation of the assembly is the result of The judge cannot impose a sentence if he or she has doubts about the defendant's guilt; the judge must be certain that the defendant is guilty of committing the crime.

Research Method

This research was prepared using the Normative Juridical technique, which is a legal procedure involving the examination of relevant literature or secondary data ^[5] legal concepts, legal systematics, legal synchronization, legal

history, and comparative law research^[6]. Library materials are fundamental materials classified as secondary data that exist in any state ready to be published, whose form and content have been compiled by previous researchers and can be obtained without time constraints along with place^[7].

Results and Discussions

As implied in Article 24 paragraph 1 of the 1945 Constitution, one of the essential components of a rule of law state is the existence of an independent judicial power to administer justice in order to realize legal certainty and justice. One of the five categories or characteristics of a country deemed to have implemented the fundamental principles of the state is an independent and impartial judiciary state.^[8] Purwoto Gandasoebrota, the former Chief Justice of the 8th Supreme Court, 1992-1994, argued that the existence of judicial power in a rule-of-law state is a condition sine qua non. He stated that the existence of a judicial power or a judiciary body that is independent and capable of upholding the authority of the law in the event of a violation or legal dispute is a necessary consequence of a rule-of-law state and society^[9].

Judges are officials who exercise judicial authority by examining, decoding and adjudicating criminal and civil cases at the initial level. Article 1 paragraph 5 of Law Number 48 of 2009 on Judicial Power defines judges as "judges at the Supreme Court and judges at judicial bodies under them in the general court environment, religious court environment, military court environment, environmental state administrative courts, and judges in special courts within the court environment." According to Oemar Seno Adji and Indriyanto, the strengthening of the term freedom of judges (independence of the judiciary) has become a national discourse, indicating extra-judicial interference. Such indicators are typical of nations that accept the concept of the rule of law, regardless of whether they adhere to liberal, neoliberal, or socialist political systems. The concept and idea of impartial judicial freedom have become a reference for countries with multiple system patterns; therefore, an independent and impartial judiciary is a characteristic of a democratic nation that recognizes and upholds the principle of the rule of law. To actualize the desire for a free and impartial court, it is necessary to examine the internal conditions of the judiciary, such as the existence of judges' appearances^[10].

In the Indonesian judicial power system, the term freedom refers to both judicial institutions (independent judicial power) and judges (judge independence) as the central instrument of judicial authority. As a principle enshrined in the constitution, the concept of judicial independence has been subject to a variety of interpretations at the level of personal and social application. When the term "freedom of judges" is formed by combining the words freedom and judge, various meanings are possible. There are those who believe that the freedom of judges is not absolute because a judge's duty is to uphold law and justice, which must be based on (bound to) the Pancasila^[11]. Long ago, the independence of judges in Indonesia when resolving a matter adhered to Rudolph von Jhering's philosophical foundation, known as "The Common Law Teachings."^[12] A judge does not speak on behalf of laws or positive law in general. The judge speaks for decency, justice, the public interest, and public order. If the application of the rule of law conflicts with decency, justice, the public interest, or

public order, a judge must choose decency, justice, the public interest, or public order. However, as long as the provisions of the law are clear and unambiguous, they must be implemented. If the rule of law is ambiguous or nonexistent, the judge must seek, investigate, and apply legal values and a sense of justice that exists within society. Even if this does not exist, the judge will discover or create the applicable law. The meaning of "no rule of law" in this context can also be interpreted as meaning that the rule of law is inappropriate or against justice and decency in the society^[13].

In dubio pro reo is a legal principle that states if there are doubts, mitigating measures must be taken; however, the best law is one in which there are no doubts. If there is uncertainty in a criminal matter, a decision will be made in favour of the defendant^[14]. In the Indonesian judicial system, the in dubio pro reo principle has been utilised by judges on multiple occasions when making decisions, such as in Supreme Court Decision Number 2175/K/Pid/2007, which rejected the cassation of defendants Abdul Muin bin Mallangka and Herman bin Abdul Rahman, in a case involving the death penalty. In consideration, the judge is of the opinion that: "The proof system in our country uses a *wettelijk* negative system, namely conviction accompanied by the use of legal evidence according to law. This can be seen in Article 183 of the Criminal Procedure Code, which states that a judge may not impose a criminal decision on someone unless he obtains confidence with at least two valid pieces of evidence that a crime has actually occurred and that the defendant is guilty.

The judge's considerations are the judge's thoughts or opinions in making a decision by looking at things that can lighten or burden the defendant. A judge's decision must pay attention to everything to be considered, it requires care and caution, and it avoids everything that is not careful, both formal and material in nature. ultimately have demonstrated decision-making competence. Consideration of the facts and circumstances obtained from the examination in court is the basis for determining the defendant's guilt in the commission of a crime; the judge then considers mitigating and aggravating factors. According to Article 197 Paragraph (1) letter f of the Criminal Procedure Code, sentencing decisions contain aggravating and mitigating circumstances for the defendant. This is determined by the fact that sentencing decisions contain aggravating and mitigating circumstances for the defendant.

Philosophically, the imposition of a sentence is not solely to punish retaliatory defendants; rather, the punishment must be used by the defendant to educate and make the accused aware of the mistakes that have been made so that they are not repeated in the future, because a fair sentence is a sanction that does not exceed what the defendant should be held accountable for. Sociologically, the imposition of a sentence can teach society as a whole not to commit illegal acts and foster a sense of peace in the community. Two valid pieces of evidence have been able to prove the actions of the defendant if there is doubt about the evidence in a narcotics crime if only from police witnesses who provide information that the defendant is guilty of committing a crime while the defendant has not acknowledged his actions and the evidence is not clear who owns it so there is doubt, the minimum evidence required to prove guilt.

In examining criminal cases in court, all parties must assume the innocence of the defendant. This principle is

known as the presumption of innocence, and it applies to all levels of examination. This means that everyone who is suspected, arrested, detained, prosecuted, and brought before a court must be presumed innocent until a court decision establishes his guilt and acquires permanent legal force. In criminal investigations, the discovery of material truth is emphasised more than other types of truth. However, material truth is a reality-based truth. Even if the defendant has confessed to his guilt, this is not sufficient evidence to reach a verdict; additional evidence is required to support the confession. In the judicial process, confession is only a hint and not a correct thing.^[15] To seek the truth of an event in a legal context that has causes and effects, establishing proof in court is crucial, as this is the heart of the trial under procedural law. In determining a person's guilt so that he can be sentenced by the criminal justice system, proof plays an important role from the perspective of the criminal justice system of judges^[16].

In practice, the birth of a judge's belief cannot be divorced from the process of proof, while the judge's interpretation and judgement that gave rise to that belief do not depend on the process of proof but rather on the circumstances that affect him. Confidence in anything formal is founded on evidential facts at trial; evidentiary facts can be observed in the evidence produced by the public prosecutor and the judge, who is confident enough to decide whether the defendant is guilty or not of committing a crime. The use of the judges' belief in conjunction with admissible evidence has a legal basis, which means that in a formal legal sense, the element of the judge's belief has acknowledgement and a place in Indonesian criminal procedure legislation. The significance of the judge's belief in proving a crime, to the point where the adage "it is better to acquit one hundred guilty people than to convict one innocent person" emerges, means that the judge's belief in the evidence presented at trial is an inseparable component of a decision.

Article 183 of the Criminal Procedure Code states that evidence must be based on a minimum of two legitimate pieces of evidence and accompanied by the judge's conviction based on the evidence; therefore, a minimum of two pieces of evidence are not sufficient to condemn the defendant. The provisions of Article 183 of the Criminal Procedure Code are nearly identical to the provisions of Article 6 Paragraph (2) of Law Number 48 of 2009 Concerning the Power of the Judiciary, namely "no one may be convicted of a crime unless the court, based on valid means of proof according to the law, is convinced that a person deemed responsible has committed the act charged against him." In the event that two pieces of evidence are valid, but the judge using the conviction of the judge has doubts as to whether the defendant is guilty or not of committing a crime, then a mitigating measure must be taken in accordance with the *in dubio pro reo* principle.

Article 183 of the Criminal Procedure Code prohibits a judge from imposing a sentence if, based on at least two valid pieces of evidence, he lacks confidence that a crime has occurred and that the defendant is guilty of committing it. If the judge has doubts about the defendant, the case must be decided on favourable grounds (*in dubio pro reo*).

Conclusion

To sum up, two valid pieces of evidence have been able to prove the actions of the defendant if there is doubt about the evidence in a narcotics crime if only from police witnesses

who provide information that the defendant is guilty of committing a crime while the defendant has not acknowledged his actions and the evidence is not clear who owns it so there is doubt, the minimum evidence required to prove guilt (principle *in dubio pro reo*).

The application of *in dubio pro reo* by the court is already codified in the Criminal Procedure Code. Indonesia adheres to the Negative Wettelijke proof procedure, which requires two pieces of evidence and a judge's conviction if there is any question among the panel of judges during the deliberation process.

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