




Implications of Correspondence Inference Attribution Theory & Behavioral Jurisprudence Theory: Judges' Considerations on Conscience

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Article Info	Abstract
<p>Keywords: Judge's Consideration; Conscience; Mitigating Circumstances; Aggravating Circumstances; Justice.</p>	<p>Introduction: This article analyzes the implications of the attribution correspondence inference theory and whether the urge of conscience as affect in the Defendant is the reason for the abolition of the sentence? also behavioral jurisprudence theory on judges' considerations, where it's often a discourse in Indonesia. It is necessary to explore the human values contained in Defendant.</p> <p>Purposes of the Research: The objectives of the research are: First, to provide an analysis of how the theory of attribution correspondence inference to the judge's considerations in determining the circumstances that form the basis of sentencing and knowing whether the urge of conscience as affect in the Defendant is the reason for the abolition of the crime? Second, providing an analysis related to the urgency of behavioral jurisprudence theory in creating fair decisions based on the conscience of the judge.</p> <p>Methods of the Research: The normative legal research method uses a statutory approach, a conceptual approach, and comparisons with different legal system which are based on library research in collecting research legal materials.</p> <p>Results of the Research: The results are: First, the attribution correspondence inference theory can be used as consideration for judges' considerations in determining to mitigate and aggravating circumstances in Indonesia and with a study of criminal law and the theory that the urge of conscience as affect the defendant can be used as a consideration of mitigating circumstances for the defendant, as well as conditional punishment. Second, the behavioral jurisprudence theory approach has urgency in understanding the behavior of a person doing an act or the judge in making a fair decision.</p>

1. INTRODUCTION

Just and civilized humanity and social justice for the entire Indonesian nation, according to the second and fifth precepts of Pancasila as also contained in the constitution as the ideology and philosophy of the Indonesian nation. This basis becomes the justification that justice is an essential element and especially in the goals achieved by law.

There are a number of rules that must be adhered to in social life, one of which is the moral norm that obliges the inner self of each individual. In carrying out their duties, judges also have moral norms as regulated in the Joint Decree of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number. 047/KMA/SKB/IV/2019 and Number 02/SKB/P-KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges. Moral norms give rise to morality that

incarnates in the heart to the whispers of the heart in the conscience which is manifested through individual behavior and actions.¹ Because conscience is influenced by awareness of moral norms.² Thus justice in legal considerations of the decision was born. If the formation and settlement of legal cases ignore the moral, then a pseudo justice is obtained.³ Because law and justice cannot be separated because it involves achieving peace and order in society.

Based on the results of the search conducted by the author, related to the title and scope of the discussion raised by the author, there is literature that discusses the behavioral jurisprudence theory, published by Antonius Sudirman in his book entitled "*Hati Nurani Hakim dan Putusannya: Suatu Pendekatan dari Perspektif Ilmu Hukum Perilaku (Behavioral Jurisprudence) Kasus Hakim Bismar Siregar*", published in Bandung: PT Citra Aditya Bakti in 2007. In essence, this paper generally discusses how judges in making their decisions are influenced by the personality of the judges themselves. While in this paper, the author will discuss not only the internal behavior of the judge himself but also how the judge can see the impulse of conscience in the defendant which is used as consideration for determining the condition of the defendant as the basis for imposing a crime. A comparative study will also be carried out on how judges' considerations in countries that adhere to the common law system are different from Indonesia, namely the civil law system in making decisions that apply considerations to conscience, both the judge's conscience and the conscience contained in the defendant.

The approach to the attribution theory of correspondence inference is a theory introduced by Edward E. Jones and Keith Davis in 1965. He is a social psychologist. This theory was developed from the attribution theory by Fritz Heider, a psychology figure at attribution. That the basis for seeking an explanation of one's behavior is common sense, which is divided into internal attributions and external attributions. Therefore, the attribution theory of correspondence inference has the same use in terms of knowing the reasons for someone doing an action. That "the defendant's actions carried out for internal reasons will be subject to a heavier sentence than the defendant's actions committed for external reasons."⁴ Meanwhile, behavioral jurisprudence or also known as behavioral law is one of the scientific approaches that study the actual behavior of judges in interpreting the law and implementing legal settlements based on the principles of justice in the judicial process.⁵

Therefore, whether a person's behavior is good or bad is influenced by what is interpreted through the judge's thoughts. Normatively, it has been stated that "*judges in considering the severity or lightness of the sentence imposed, must pay attention to both the good and the evil nature of the defendant*" as stated in Article 8 Paragraph (2) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. However, normative regulation is not sufficient to accommodate this, if in its implementation it is not carried out as effectively as it should be. This is because some grounds/reasons encourage someone to

¹ Agus Santoso, *Hukum, Moral & Keadilan: Sebuah Kajian Filsafat Hukum* (Jakarta: Prenadamedia Group, 2015), p. 89-90.

² Marijana Vujošević, "The Judge in the Mirror: Kant on Conscience," *Kantian Review* 19, no. 3 (2014): 461, <https://doi.org/10.1017/S1369415414000181>.

³ *Op.Cit.*, p. 90.

⁴ M. Syamsudin and Salman Luthan, *Mahir Menulis Studi Kasus Hukum* (Jakarta: Prenadamedia Group, 2018), p. 107.

⁵ Benjamin Van Rooij, "Behavioral Jurisprudence: The Quest for Knowledge About the Ex-ante Function of Law and Behavior," *Jerusalem Review of Legal Studies* 22, no. 1 (2020): 70-71, <https://doi.org/10.1093/jrls/jlz016>.

commit a criminal act. Furthermore, according to Moeljatno and Roeslan Saleh in their view there is a theory of legal dualism, he separates between criminal acts and criminal liability. That someone who does not commit a crime certainly cannot be punished, but if someone commits a crime, that person is not necessarily punished.⁶

If we compare the considerations in imposing criminal penalties between countries that adhere to the civil law system and the common law system, in countries that adhere to the civil law system, the law is the main source of law, while in the common law system, jurisprudence is the main one. So it is not surprising that in a country that adheres to a civil law system such as Indonesia, the relationship between justice and legal certainty is often problematic when faced with a case, namely whether to prioritize the principle of justice or legal certainty in the settlement of a case or legal problem. For example, judges in countries that adhere to the civil law system are the mouthpiece of the law, while in countries that adhere to the common law system it is more of judge-made law. With this difference, it cannot be denied that it certainly has implications because judges in countries that adhere to the common law system are more flexible in using their independence, which does not always and must dwell on the law.

As a new perspective on how judges make decisions by taking their conscience into account, here the author adopts the attribution theory approach of correspondence inference, which is a theory in social psychology, also combined with an analysis it related to the urge of conscience as *affect* contained in the defendant in Determining the reasons for the imposition of a crime and the behavioral jurisprudence theory approach is a science of behavioral law. As a new perspective in the academic world that will be appointed, how the judge will see the consideration of conscience in the defendant is of course different case by case and cannot be equated.

So it needs to be a concern and has benefits later not only in the academic world but also practically, how justice in society can be created by examining conscience not only on one side because justice is not a matter of personal conscience but also shared conscience. So it becomes very urgent for the existence of consideration of conscience in every sentencing decision. Therefore, the author tries to study and analyze with 2 (two) points of discussion which will be described further, namely, first, how is the role of the correspondence inference attribution theory in determining the circumstances of the defendant's conviction which is manifested in the conscience of the judge. Second, it relates to the urgency of behavioral jurisprudence theory in creating fair decisions based on the judge's conscience.

2. METHOD

The type of research used by the author is using normative legal research (doctrinal legal research), while the approach method used in this research is the statutory approach which refers to regulations in existing positive law such as Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power also applies to conceptual approaches such as the attribution correspondence inference theory which includes an analysis related to the urge of conscience as *affect* as a unitary subject and behavioral jurisprudence theory as well as a comparative analysis with countries that adhere to the different legal system. The sources of legal materials for this research consist of primary legal materials and secondary legal materials. In addition, the data source uses secondary data. The technique of collecting

⁶ Muh Nur Arisakti, "Perbandingan Delik Pidana Menurut Aliran Monistis, Dualistis, dan Mazhab Fikih." (L.L.B. Thesis., UIN Alauddin Makassar, 2021), 37-39.

legal materials in this research is library research related to the object of the research. The methods of analyzing legal materials and data analysis using deductive logic. That the general description of the research to be studied will be described first so that later a specific conclusion will be obtained.⁷

3. RESULTS AND DISCUSSION

3.1 The Role of the Correspondence Inference Attribution Theory on the Determination of the Condition of the Defendant's Sentence which is embodied in the Conscience of the Judge

a. Analysis of Judge's Consideration in Exploring the Human Value of the Defendant Using Correspondence Inference Attribution Theory

According to Yusti Probowati Rahayu, a legal psychologist at the University of Surabaya, in her book entitled "*Putusan Hakim Pada Perkara Pidana: Kajian Psikologis*" explained that the attribution correspondence inference theory is a theory that is used to find out whether an action was intentional or not and the extent to which the intention is reflected in the perpetrator, then it is determined whether the act committed was due to a dispositional or situational act. So that the theory is useful for judges in making considerations in a decision to find out the gradation of errors in the defendant and the causes or reasons that encourage the defendant to commit a criminal act.

The presence of this theory is also a justification that even though a person is proven to have committed a criminal act, it is still necessary to consider aggravating and mitigating circumstances in determining the defendant's sentence which is manifested in the conscience of the judge. This is based on the fact that there are various underlying causes. According to Cosmin Peonasu, "*circumstances*" are situations, events, or facts that are outside the contents of the offense, but are related to the act or defendant as a benchmark in assessing the seriousness of the act or the danger of the defendant.⁸

Determination of aggravating and mitigating circumstances is very casuistic, where each case has its characteristics. As for the characteristics of aggravating and mitigating circumstances, including the following: in the form of nature, a thing, atmosphere, or situation that affects a criminal act or the consequences of a criminal act (cause, impetus for a criminal act at the time the crime was committed or the impact of a criminal act), related formulations mitigating circumstances and aggravating circumstances exist outside the formulation of the crime and describe the seriousness of the crime committed or the dangerous situation of the accused.⁹

Juridically, arrangements related to matters that need to be included in the judge's decision are contained in Article 197 Paragraph (1) of the Criminal Procedure Code. Furthermore, Article 197 Paragraph (1) letter (f) of the Criminal Procedure Code legitimizes that the decision handed down by the judge needs to contain considerations related to aggravating circumstances and mitigating circumstances for the defendant. The presence of determining aggravating and mitigating circumstances in the decision handed down has the urgency to be able to explain why a defendant is sentenced to a maximum, minimum,

⁷ Jonaedi Efendi and Johnn Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Depok: Prenadamedia Group, 2018), p. 5.

⁸ Cosmin Peonasu, "Mitigating and Aggravating Circumstances: Their Impact on Judicial Individualization of Punishment," *Journal of Danubian Studies and Research* 5, no. 1 (2015): 147.

⁹ Dwi Hananta, "Pertimbangan Keadaan-Keadaan Meringankan dan Memberatkan dalam Penjatuhan Pidana." *Jurnal Hukum dan Peradilan* 7, no. 1 (2018): 91, <http://dx.doi.org/10.25216/jhp.7.1.2018.87-108>.

or imprisonment for a certain period and a fine of several rupiahs.

Referring to a case such as in the Narcotics Crime Case where the perpetrators distribute narcotics by selling narcotics to various countries in an organized manner to get very large profits or using narcotics as mere lust satisfaction are punished with heavier penalties. It is different when we compare the case of the defendant named Fidelis using narcotics to his wife for the treatment of his wife's illness which is getting worse and does not go away and it is known that this treatment is the way to go because the defendant's efforts with other treatments have not yielded results. In this case, it is necessary to consider as a mitigating situation for Defendant by exploring the defendant's sense of humanity that his intention was none other than his wife's treatment.¹⁰ In addition, a Defendant, Reyndhart Rossy N. Siahaan, committed an act of using Narcotics Category I for himself, where the cause of the defendant to do this was to recover from his illness.¹¹ It was known that the defendant consumed the marijuana only by drinking boiled water and had never smoked marijuana. After taking such treatment, the defendant felt that his body condition was getting better.¹²

This is where the important role of the attribution theory of correspondence inference in determining a person's legal situation, both aggravating and mitigating circumstances, which need to be considered by the judge in his decision to be able to find out the basis for a person to commit an act and the basis for imposing a sentence. So that the mitigating circumstances for Defendant are more precisely related to the Defendant's personality which leads to the cause of his behavior due to external factors, and vice versa that the aggravating circumstances of Defendant are related to the Defendant's personality which leads to the Defendant's behavior caused by internal factors.¹³ Therefore, when the judge views it based on the judge's conscience, a decision can be created that does not comply with the wishes of the community, but creates a fair decision in the community.

b. The Urge of Conscience as *Affect* in the Defendant is not the Reason for Abolition of the Crime According to Criminal Law and Correspondence Inference Attribution Theory

The urge of conscience as *affect* becomes an existential belief in the defendant in determining the consideration of the circumstances of the criminal imposition by the judge which can be realized in various relevant cases as one of the mitigating circumstances, not as the basis or reason for the abolition of the crime. *Affect* itself according to Jan Rimmelink in his book entitled "*Hukum Pidana: Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*," page 235, is an emotion pressure or stress. So that the urge of conscience as *affect*

¹⁰ Supreme Court, "A copy of the Sanggau District Court Decision Number 111/Pid.Sus/2017/PN Sag," accessed January 15, 2017, <https://putusan3.mahkamahagung.go.id/direktori/putusan/54d10901a7a6f1d6d050396416f81cc2.html>.

¹¹ Supreme Court, "A copy of the Kupang District Court Decision Number 83/Pid. Sus/2020/PN Kpg," accessed January 15, 2020, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeb9aca2e721110a30e323033313131.html>.

¹² Institute for Criminal Justice Reform (ICJR) et al., "Ganja Untuk Kesehatan Bukan Kejahatan: Amicus Curiae untuk Majelis Hakim dalam Perkara No. 83/Pid. Sus/2020/PN. Kpg atas nama Terdakwa Reyndhart Rossy N. Siahaan di PN Kupang." *Institute for Criminal Justice Reform (ICJR)*, January 17, 2020, p. 11, <https://icjr.or.id/ganja-untuk-kesehatan-bukan-kejahatan-amicus-curiae-untuk-perkara-reyndhart-rossy-n-siahaan-di-pn-kupang/>.

¹³ Denny Iskandar, "Analisis Yuridis Terhadap Putusan Hakim Bebas Murni (*Vrijs Praacht*) Atas Dugaan Tindak Pidana Korupsi: Studi Kasus Putusan Nomor 51/Pid.Sus.K/2013/PN. Mdn." (L.L.B. Thesis., University of Medan Area, 2014), 36.

is a pressure in the emotional self which is based on the impulse of conscience. However, it should be underlined that in conditions of an impulse of conscience, it is necessary to see whether the output of the actions taken is a deviation or not.

Judging from the elements of a criminal act or what is known as "*Strafbaar feit*" according to Van Hamel, among others, the act is against the law, against the law, mistakes, and the ability to be responsible. Referring to the elements of the criminal act, namely objective, meaning on the actions and subjective to the perpetrator himself, then a person can be declared guilty if he fulfills these criteria, including criminal liability. In the theory of criminal responsibility, there is a correlation of a person's psychological condition with the determination of whether or not he can be held criminally responsible. Van Hamel stated that accountability is the ability to understand the meaning and consequences of actions, be aware that the act is contrary to the law, and be able to determine the will of an act, where there are various criteria in measuring whether a person can be sentenced to a crime or not.

The reasons for eliminating criminals include being unable to take responsibility (Article 44 of the Criminal Code), coercive power (Article 48 of the Criminal Code), emergencies, forced defense (Article 49 Paragraph (1) of the Criminal Code, forced defense through limits (Article 49 Paragraph (2) of the Criminal Code), carry out statutory orders (Article 50 of the Criminal Code), office orders. However, it is necessary to remember and take notes whether the defendant did it consciously and willingly and knew the consequences of the action he had committed (*Willens en Wetens*) as an element of error.

As one of the studies, in the case on behalf of Defendant Fidelis in the Sanggau District Court Decision Number 111/Pid. Sus/2017/PN. there is a view that the actions carried out by Defendant were *overmacht* in the use of marijuana against his wife so that they could not be convicted. With the consideration that the defendant used marijuana for the treatment of the defendant's wife who did not recover. However, judging by the definition of *overmacht* itself in Article 48 of the Criminal Code, it is an external force that has the dominant power of the perpetrator's free will. Furthermore, in *Memorie van Toelichting* that *overmacht* was born due to events of physical coercion, psychological coercion, and events that caused an emergency.¹⁴ While the urge or impulse of conscience is based on the internal power within oneself which has free will, to commit deviant acts or not. In addition, in his judgment, Defendant also admitted that his actions were contrary to the law. This means that the defendant did it consciously and knew and wanted the action to occur so that he could be held criminally responsible and not be the reason for the abolition of the crime. Because the benchmark here is an act that was carried out with full awareness according to the instructions of the conscience, not because of the helplessness of the accused.

Returning to the correspondence inference attribution theory that has been described previously, one of the points is that this theory is a justification that even though a person is proven guilty, the judge in his conscience considers both mitigating and aggravating circumstances for the defendant. Responding to the case and the arguments related to the urge of conscience as *affect*, it can be used as a condition to alleviate sentencing. So that, this can be one of the considerations for judges in mitigating the sentence imposed on the defendant. In addition, the judge, through his consideration, is allowed to impose a conditional sentence on the defendant as an alternative to imprisonment with a probationary period, such as the defendant does not need to serve a sentence except before the probation period ends when the defendant commits a criminal act, he can be sentenced

¹⁴ Budayawan Tahir, "Pertanggungjawaban Pidana Menurut Hukum Pidana Tentang Daya Paksa (*Overmacht*)," *Spirit Pro Patria* 4, no. 2 (2018): 119, <https://doi.org/10.29138/spirit%20pro%20patria.v4i2.672>.

later. Because, of course, based on the consideration that the basis/reason for the actions carried out by the defendant, as in that case was for the treatment of his wife and it was known that the defendant was negative (-) for narcotics. Many benchmarks must be considered in imposing a crime such as a defendant's guilt, a motive for the act, the defendant's inner attitude, sociological aspects, psychological aspects, and others in fulfilling a sense of justice.¹⁵ Thus, the task of the judge is not only to determine the appropriate law to be imposed in his decision.¹⁶ Therefore, it is necessary to see *case by case* what kind of actions are classified as impulses of conscience that can make the situation alleviation of the defendant or conditional punishment based on the judge's conscience considerations.

3.2 The Urgency Behavioral Jurisprudence Theory in Creating Fair Decisions Based on Judge Conscience

Behavioral Jurisprudence or behavioral law is the actual behavior of the judge, how the judge interacts with the parties in the trial, then what are the steps taken by the judge in making a decision which will become a decision that is read out before the Defendant/Legal Counsel and Public Prosecutor. So that the judge himself and the parties involved hold important attention following the certain social roles that each has when making legal decisions in addition to the application of the existing positive law. According to Friedman, judges have an important role in the court process that in deciding the cases being handled cannot be separated from the background, attitudes, values held by the judges themselves and the institutions.¹⁷

Referring to the comparison between the decisions of judges in countries that adhere to the common law system and countries that adhere to the civil law system, of course there are differences. Whereas judges in the common law system in considering the decisions handed down do not only interpret the legal regulations used but also affect the formation of people's lives because the decisions handed down follow developments and customary law in society so that they must be able to guarantee that the decisions handed down can be used as guidance and new law for other judges in deciding a case.¹⁸ In contrast to judges in the civil law system, although there are limitations according to their authority and often referrals are made to statutory regulation, even though there is jurisprudence, it only contains it as a consideration, not as a basis for imposing a crime.

Because in the common law system, the law is formed so that it is always in line with a sense of justice and has benefits that are directly felt by the community in real terms.¹⁹ That the judge is given a very broad role. Whereas in the civil law system, the judge's view of the law is more technical as a result, judges are not free to create laws that have binding power in general.²⁰ So that this is one of the factors that influence the behavior of judges in their discretion on the independence of judges in making decisions.

¹⁵ Jauhari D. Kusuma, "Tinjauan dan Pedoman Pemidanaan dalam Pembaharuan Sistem Pemidanaan di Indonesia," *Jurnal Muhakkamah* 1, no. 2 (2016): 102.

¹⁶ Achmad Rifai, *Kesalahan Hakim dalam Penerapan Hukum Pada Putusan Menciderai Keadilan Masyarakat* (Makassar: Nas Media Pustaka, 2020), p. 154.

¹⁷ Rizki Dwi Wira Siregar, "Peranan Kepolisian dalam Penerapan Restorative Justice Terhadap Kedelakanan Lalu Lintas di Wilayah Polsek Deli Tua." (L.L.B. Thesis., University of Medan Area, 2018), 19.

¹⁸ Afif Khalid, "Penafsiran Hukum Oleh Hakim dalam Sistem Peradilan di Indonesia," *Al' Adl: Jurnal Hukum* 6, no. 11 (2014): 34, <http://dx.doi.org/10.31602/al-adl.v6i11.196>.

¹⁹ Fajar Nurhardianto, "Sistem Hukum dan Posisi Hukum Indonesia," *Jurnal TAPIS* 11, no. 1 (2015): 39-40, <https://doi.org/10.24042/tps.v11i1.840>.

²⁰ *Ibid.*, p. 37.

Judging from the views of Satjipto Rahardjo in his book entitled *“Beberapa Pemikiran Tentang Ancaman Antar Disiplin dalam Pembinaan Hukum Nasional”* states that the focus of the behavioral law approach is how a person behaves in judgment and the institutional relationship with the general theory of people's behavior in decision making; knowing that a decision affects a person's behavior and the factors that influence the judge's decision in adjudicating; studying the behavior of judges in their role in adjudicating, both in terms of the cultural and subcultural differences of each judge; and how the relationship between the judiciary and the community.

Regarding behavioral jurisprudence, Glendon Schubert also explained that judges have differences in attitudes, personality, and values which are also ordinary human beings so there are three psychological functions in the personality subsystem they have, including in terms of perception, cognition, and choices.²¹ This is in line with what was stated by Blumer, who is a figure who adheres to the flow of symbolic interactionism saying that human actions are certainly based on various considerations of something that according to his thoughts and is known to be then implemented in his behavior on the thoughts that are carried out. Therefore, human actions are interpretations made by humans themselves based on what they interpret. So that the good and bad of human behavior depends on what is interpreted through his thoughts. The interpretation and philosophical thoughts of judges affect how judges in their decisions will increase their sensitivity to the value of justice. There are types of substantive justice as well as procedural justice in assessing the parameters of justice in the judge's decision. As illustrated in Table 1 as follows:

Table 1. Parameters of Justice in Judges' Decisions in Criminal Cases

Procedural Justice	Parameter
<p>Basic Assumptions:</p> <ul style="list-style-type: none"> It is justice related to the protection of the legal rights of the parties (suspects/defendants/interested parties) in every stage of the judicial process, which is based on the Formal Criminal Law (Criminal Procedure Law). 	<ul style="list-style-type: none"> Does the judge's decision contain things that must be included in a court decision as referred to in Article 197 jo. 1999 Criminal Procedure Code? Has the judge's decision been supported by at least two valid pieces of evidence as referred to in Article 183 jo. Article 185 of the Criminal Procedure Code? Is there a difference in the date of the deliberation and the judge's decision?
	<ul style="list-style-type: none"> Has the judge examined/assessed the evidence in accordance with the law, doctrine and/or jurisprudence? Does the judge's decision contain proportionally the arguments of the public prosecutor, legal advisor, and the defendant?

²¹ Fajri Nur Syamsi et al., "Problematika Hakim dalam Ranah Hukum, Pengadilan, dan Masyarakat di Indonesia: Studi Sosio-Legal," *Judicial Commission of the Republic of Indonesia*, January 17, 2014, p. 10-14, <https://ppid.komisijudisial.go.id/assets/uploads/berkas/Penelitian%20KY/problematika-hakim-dalam-ranah-hukum.pdf>.

Substantive Justice	Parameter	Parameter
<p>Basic Assumptions:</p> <ul style="list-style-type: none"> • Is justice related to the content of judges' decisions in examining, adjudicating, and deciding cases that must be made based on considerations of rationality, honesty, objectivity, <i>impartiality</i>, without discrimination and based on conscience (the judge's belief), which is based on the Material Criminal Law. 	<ul style="list-style-type: none"> • Has the judge's decision fully described the elements charged? • Do judges also use jurisprudence as a basis for considering their decisions? • Do judges also use legal sources in the form of legal doctrines as the basis for considering their decisions? • Does the judge's decision use other legal sources (legal values that live in society, namely in the form of customary law and/or custom) • Is there an adequate description of mitigating as well as aggravating factors? • Does the judge's argument show the relationship between legal considerations, facts, and conclusions? 	<ul style="list-style-type: none"> • Does the judge's decision contain a new interpretation (beyond the grammatical and authentic interpretation)? • Does the judge's decision contain new legal constructions (eg analogies)? • In the line of reasoning shown by the judge, was there a conclusion that was "too forced"? • To determine the length of the sentence (<i>straftoemeting</i>) does the judge's decision identify considerations of non-judicial factors (psychological, social, economic, educational, environmental, religious)? • Are the factors mentioned in the previous question in line with the sound of the verdict (criminal sentence, acquittal, or acquittal)?

Sumber: Term of Reference Research Decisions of Judges of the Judicial Commission of the Republic of Indonesia 2022 with necessary simplifications based on substantive and procedural justice theories.

Based on the explanation in the table, it can be observed that substantive justice is justice that originates from material law which is manifested in the judge's consideration through its interpretation, still looking at the conscience of the judge himself and the defendant.²² Meanwhile, procedural justice is how judges carry out criminal procedural legal processes while still paying attention to and protecting the rights of the parties including the defendant.²³ So in making a fair decision, the judge must be able to harmonize both substantive justice and procedural justice through how the judge's behavior responds to conscience itself. Because it is not only the wrong application of the law that has fatal consequences for justice seekers.²⁴ According to Thomas Aquino, at the level of *natural law*, one of which is *lex divina*, which is a law that originates from God's love and is inspired in the form of the human conscience.

Therefore, the behavioral jurisprudence approach works in understanding how the basis of a person's behavior is, not only for the defendant when committing an act related to the factors that encourage someone to commit a crime but also identifying how the judge interprets in making a fair decision. which is based on the judge's conscience apart from

²² Muhammad Randhy Martadinata and Faisal Ahmadi, "Asas Keadilan Hukuman Putusan Peradilan," *Jurnal Wasatiyah: Jurnal Hukum* 1, no. 2 (2020): 18-19.

²³ *Ibid.*

²⁴ Achmad Rifai, *Menggapai Keadilan Dengan Hukum Progresif (Sebuah Upaya Menyempurnakan Putusan Hakim Pada Keadilan)* (Makassar: Nas Media Pustaka, 2020), p. 139.

legal events, legal facts, evidence as well as how positive law accommodates such. Because the law always requires thinking about what justice is and its effectiveness in creating behavior to prevent injustice in the future.²⁵

4. CONCLUSION

Indeed, the main purpose of law enforcement is to create justice. If justice is not achieved, it will result in reduced public trust and justice seekers towards the judiciary. Because mistakes in applying the law and justice are not only fatal for the community and justice seekers. For this reason, it is also important that the judge considers the basis or reason for the defendant to commit an act because there are various circumstances and factors that encourage someone to commit a crime. This is also the basis why someone commits a crime not necessarily convicted. Thus, the judge's belief needs to grow strongly in determining the guilt of the actions committed by a person suspected of being a defendant because the decision handed down by the judge has urgency in determining a person's future as well. Based on the explanations that have been described in the discussion, these two theories, namely the attribution correspondence inference theory approach, and the behavioral jurisprudence theory approach are important to be appointed as judges' consideration in determining mitigating circumstances and aggravating circumstances for the defendant which are interpreted through the judge's conscience. In addition, it has implications for the settlement of a case, where the judge plays an important role so that the judge's consideration of the defendant's behavior and how the judge interprets through his thoughts on his personality and conscience also determines. Through this research, the urge of conscience as *affect* can be used as one of the considerations for judges in determining the circumstances of mitigating someone or imposing a conditional sentence. Therefore, not only the juridical aspect as an important element but the sociological, cultural, psychological, and other aspects often influence the determination of the fate of the defendant in making a fair decision. So it is hoped that the results of this research are not only beneficial for the development of the academic world but also the practical world, especially law enforcement and society

REFERENCES

Journal Article

- Hananta, Dwi. "Pertimbangan Keadaan-Keadaan Meringankan dan Memberatkan dalam Penjatuhan Pidana." *Jurnal Hukum dan Peradilan* 7, no. 1 (2018): 87-108. <http://dx.doi.org/10.25216/jhp.7.1.2018.87-108>.
- Khalid, Afif. "Penafsiran Hukum Oleh Hakim dalam Sistem Peradilan di Indonesia." *Al' Adl: Jurnal Hukum* 6, no. 11 (2014): 9-36. <http://dx.doi.org/10.31602/al-adl.v6i11.196>.
- Kusuma, Jauhari D. "Tinjauan dan Pedoman Pemidanaan dalam Pembaharuan Sistem Pemidanaan di Indonesia." *Jurnal Muhakkamah* 1, no. 2 (2016): 94-109.
- Martadinata, Muhammad Randhy and Faisal Ahmadi. "Asas Keadilan Hukuman Putusan Peradilan." *Jurnal Wasatiyah: Jurnal Hukum* 1, no. 2 (2020): 12-23.
- Nurhardianto, Fajar. "Sistem Hukum dan Posisi Hukum Indonesia." *Jurnal TAPIS* 11, no. 1 (2015): 34-45. <https://doi.org/10.24042/tps.v11i1.840>.
- Peonasu, Cosmin. "Mitigating and Aggravating Circumstances: Their Impact on Judicial

²⁵ Benjamin Van Rooij, *Op. Cit.*, p. 76.

Individualization of Punishment." *Journal of Danubian Studies and Research* 5, no. 1 (2015): 147-159.

Rooij, Benjamin Van. "Behavioral Jurisprudence: The Quest for Knowledge About the Ex-ante Function of Law and Behavior." *Jerusalem Review of Legal Studies* 22, no. 1 (2020): 55-77. <https://doi.org/10.1093/jrls/jlz016>.

Tahir, Budayawan. "Pertanggungjawaban Pidana Menurut Hukum Pidana Tentang Daya Paksa (*Overmacht*)." *Spirit Pro Patria* 4, no. 2 (2018): 115-124. <https://doi.org/10.29138/spirit%20pro%20patria.v4i2.672>.

Vujošević, Marijana. "The Judge in the Mirror: Kant on Conscience." *Kantian Review* 19, no. 3 (2014): 449-474. <https://doi.org/10.1017/S1369415414000181>.

Book

Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Depok: Prenadamedia Group, 2018.

Rifai, Achmad. *Menggapai Keadilan Dengan Hukum Progresif (Sebuah Upaya Menyempurnakan Putusan Hakim Pada Keadilan)*. Makassar: Nas Media Pustaka, 2020.

Rifai, Achmad. *Kesalahan Hakim dalam Penerapan Hukum Pada Putusan Menciderai Keadilan Masyarakat*. Makassar: Nas Media Pustaka, 2020.

Santoso, Agus. *Hukum, Moral & Keadilan: Sebuah Kajian Filsafat Hukum*. Jakarta: Prenadamedia Group, 2015.

Syamsudin, M. and Salman Luthan. *Mahir Menulis Studi Kasus Hukum*. Jakarta: Prenadamedia Group, 2018.

Thesis, Web Page, and Others

Atasila, Muh Nur Arisakti. "Perbandingan Delik Pidana Menurut Aliran Monistis, Dualistis, dan Mazhab Fikih." L.L.B. Thesis, UIN Alauddin Makassar, 2021.

Iskandar, Denny. "Analisis Yuridis Terhadap Putusan Hakim Bebas Murni (*Vrijs Praacht*) Atas Dugaan Tindak Pidana Korupsi: Studi Kasus Putusan Nomor 51/Pid.Sus.K/2013/PN. Mdn." L.L.B. Thesis, Medan Area University, 2014.

Reform, Institute for Criminal Justice (ICJR), Indonesia Judicial Research Society (IJRS), Community Legal Assistance Institutions, and Judicial Independence Study and Advocacy Institution. "Ganja Untuk Kesehatan Bukan Kejahatan: Amicus Curiae untuk Majelis Hakim dalam Perkara No. 83/Pid. Sus/2020/PN. Kpg atas nama Terdakwa Reyndhart Rossy N. Siahaan di PN Kupang." *Institute for Criminal Justice Reform (ICJR)*, January 17, 2020. <https://icjr.or.id/ganja-untuk-kesehatan-bukan-kejahatan-amicus-curiae-untuk-perkara-reyndhart-rossy-n-siahaan-di-pn-kupang/>.

Siregar, Rizki Dwi Wira. "Peranan Kepolisian dalam Penerapan Restorative Justice Terhadap Kedelakanan Lalu Lintas di Wilayah Polsek Deli Tua." L.L.B. Thesis, Medan Area University, 2018.