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Ambiguity Degrees of Courtesy in Trial: Ethical and Legal Norms, Legal Reasoning in Judicial Decisions

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Abstract: Courtesy reasons are the basis for the legal reasoning of mitigation, as stated in the decision. Courtesy reasons only happen in one case. The Criminal Code explains the aggravating and mitigating circumstances of a sentence that is not considered decent in a conference. Explicitly, the word courtesy is not a reason to lighten the sentence. Article 197, paragraph 1, letter f of the Criminal Procedure Code contains the words "articles of statutory regulations which are the basis for punishment or action and articles of statutory regulations which are the legal basis of the decision." This paper uses normative legal research methods to analyze legal problems with analytical and prescriptive discipline. The findings in this research show that courtesy is not worthy of consideration in the decision as a basis for mitigation. Courtesy is an obligation for all parties in a court conference. Because when a party does not act politely, it is a crime against the judiciary or an insult to the Court. Also, courtesy norms are individual subjectivities that cannot be determined by law, especially by judges. Judges do not judge ethical norms but legal norms. The legal norms align with criminal law in that the use of norms of courtesy causes their application to criminal law because of their abstract and different nature.
Keywords: Degree of Courtesy; Ethical and Legal Norms; Legal Reasoning.

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Abstrak**:** *Alasan sopan menjadi dasar pertimbangan hakim meringankan yang tertuang dalam amar putusan. Hal ini tidak hanya terjadi pada satu perkara saja, KUHP menjelaskan hal yang memberatkan dan meringankan pemidanaan tidak termasuk sopan dalam persidangan. Secara eksplisit kata sopan bukan menjadi alasan meringankan pemidanaan. Pasal 197 Ayat 1 huruf f KUHAP terdapat kata "pasal peraturan perundang-undangan yang menjadi dasar pemidanaan atau tindakan dan pasal peraturan perundang-undangan yang menjadi dasar hukum dari putusan". Tulisan ini menggunakan metode penelitian hukum normatif yang bertujuan untuk melakukan analisa terhadap permasalahan hukum dengan disiplin analitis dan preskriptif. Temuan pada penelitian ini yaitu, alasan sopan tidak perlu dimasukan dalam putusan sebagai dasar meringankan, sopan sudah menjadi kewajiban semua pihak dalam persidangan di pengadilan. Karena Ketika pihak tidak berlaku sopan maka merupakan suatu penghinaan terhadap badan peradilan atau contempt of court. Selain itu, norma kesopanan merupakan subjektifitas individu yang tidak dapat ditentukan oleh hukum, terutama oleh hakim. Hakim tidak mengadili norma etik, melainkan norma hukum. Hal tersebut sejalan dengan asas hukum pidana bahwa penggunaan norma kesopanan menyebabkan penerapannya dalam pemidanaan melanggar asas hukum pidana karena sifatnya yang abstrak dan berbeda-beda.*
Kata Kunci: *Derajat Kesopanan; Norma Etik dan Hukum; Pertimbangan Hakim.*

Introduction

Legal reasoning in judicial decisions[1] forms the judge's responsibility[2] for what he decided in the verdict. In the Rule Theory of *Ratio Decidendi* mentioned that legal reasoning[3] is the resulting decision in a comprehensive way consisting of philosophy, judge motivation, education, expediency, humanity, and enforcement law until downstream to something

[1] Fitriyani et al., "The Judges' Legal Consideration on Divorce of Nushūz Cases at the Kupang High Religious Court: Gender Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023), p. 1972-1989.

[2] Rohmawati and Ahmad Rofiq, "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on Tte Protection of Biological Children's Civil Rights," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021), p.1-19.

[3] Abdullah Jarir, Ratno Lukito, and Moch. Nur Ichwan, "Legal Reasoning on Paternity: Discursive Debate on Children Out of Wedlock in Indonesia,"*Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023), p.449-472.

certainty law.[4] All things decided inside the decision must have a base legal reasoning strongly loaded into the body verdict. Article 197 of the Criminal Procedure Code explains that the judge handed down the decision from decision punishment. One thing that must loaded in the decision is *"aggravating and mitigating circumstances defendant"*.[5]

Please include this to avoid making a null and void decision. However, the Criminal Procedure Code does not explain what you mean by aggravating and mitigating circumstances. Other regulations explain that in Article 8 Paragraph (2) of Law Number 48 of 2009 concerning power, the judiciary decides that "deep consider heavy its light criminal, the judge is obliged to notice good and evil traits from the defendant ." Only the Constitution No, in a way, firmly explains what just that characteristic is good and nature terrible, as well as how it limits.[6]

Aggravating and mitigating matters the defendant in the judge arranged clearly in the Criminal Code, such as aggravating things Article 52 of the Criminal Code, Repetition *(recidive),* and merger follows criminal Articles 63-71. Next, the lightening one is Article 53, paragraphs (2) and (3) of the Criminal Code (trial in crime), which helps to *(medeplictigheid)* Article 57, paragraphs (1) and (2) of the Criminal Code, and not yet mature *(minderjarigheid)* Article 47 of the Criminal Code.

In its development, courtesy reasons become based on the judge's considerations mitigated following the statement in the verdict. This matter happened to only one case, as in the verdict case number 21/ Pid.S /2021/PN.Tng case Rachel Venya. When hearing the reading verdict, the judge said that the mitigating circumstance was Rachel Venya. She is still going to confess her actions. Besides that, Rachel Venya also said to behave politely and cooperatively while undergoing legal proceedings.[7] Next, the verdict case number 38/ Pid.Sus -TPK/2020/PN- Jkt.Pst. Case ex-

[4] Julius Stone, "The Ratio of the Ratio Decidendi," *The Modern Law Review* 22, no. 6 (1995), p. 597-620.

[5] Dwi Hananta, "Pertimbangan Keadaan-Keadaan Meringankan Dan Memberatkan Dalam Penjatuhan Pidana," *Jurnal Hukum Dan Peradilan* 7, no. 1 (2018): 88.

[6] Erie Hariyanto And Made Warka, The Political Scrimmage Of The Religious Court's Law As The Judicial Institution In the Reformation Era In Indonesia, *Al Ihkam,* Vol . 11 N o. 1 (2016), 182.

[7] "Putusan Hakim Ringan Karena Sopan, Ini Kata Pakar Hukum Unair Halaman All - Kompas.Com," accessed May 19, 2024, https://www.kompas.com/edu/read/2022/01/14/142136571/putusan-hakim-ringan-karena-sopan-ini-kata-pakar-hukum-unair?page=all.

prosecutor Pinangki uses courtesy reason as a mitigating circumstance.[8] Besides that, there is Verdict Number 151/ Pid. Sus /2013/PN Jkt. Tim., in the case of Defendant M. Rasyid Amrullah Rajasa, who dropped criminal test in case of accident Then traffic that results in deaths, injuries, and damaged goods, with consideration circumstances lighten one of them is defendant applies courtesy and not complicate things the way the judge. Then, in Kutacane District Court Decision Decision Case Number 571/ Pid.B /2004/PN KC, with defendants H. Muhammad Nya'kup Pagan and Jalaluddin Rifa, BA, who dropped the decision criminal test in the case following criminal corruption, with consideration of circumstances relieved one of them also the defendants behave politely in Court.[9] Still, many other cases regarding using courtesy reason as a base lighten up in the judge's consideration.[10]

If you look at the Criminal Code, there are aggravating and mitigating factors to punishment that are not considered courtesy in the conference. By explicit, courtesy is not a reason to lighten up punishment. Article 197, paragraph 1, letter f of the Criminal Procedure Code contains a statement that reads, "Articles of existing legislation-based punishment or acts. Articles regulating existing legislation base law from the verdict." It must be lined under the word "action " in a matter. The point is that this does not reflect attitudes and actions in the trial in Court; however, it should be a finalized deed in context and circumstances. Courtesy reasons are unattached to the decision as the basis to lighten the punishment; courtesy has already become an obligation for all parties in a trial in Court. When parties apply politely, it is an insult to the judiciary or *the contempt of the Court*.

This study examines a degree of courtesy used as a mitigating reason for judges' considerations in their decisions. This article will explain the reasons for courtesy in judges' considerations in legal decisions using a ratio theory approach and looking at its existence in legal norms.

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[8] "Hakim Vonis Pinangki 10 Tahun Penjara Denda Rp 600 Juta | Republika Online Mobile," accessed May 19, 2024, https://news.republika.co.id/berita/qo7lz4484/hakim-vonis-pinangki-10-tahun-penjara-denda-rp-600-juta?

[9] Dwi Hananta, "Pertimbangan Keadaan-Keadaan Meringankan Dan Memberatkan Dalam Penjatuhan Pidana," 87–108.

[10] Taufiqur Rohman, et al, Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia, *Journal of Islamic Law (JIL),* Vol.4,No.2, 2023. 221.

This paper uses normative legal research methods to analyze legal problems using analytical and prescriptive disciplines.[11] This normative legal research examines the internal aspects of positive law because law is an autonomous institution and does not correlate closely with other social institutions.[12] To find applicable legal rules by using legal doctrine to answer some legal issues.[13] The primary legal materials used are statutory regulations and legal literature. However, this article is not distributed solely on legal rules or science. However, it uses secondary legal materials in the form of other social science literature, for example, as well as norms outside legal norms, which are one of the bases for analyzing courtesy in legal norms.

The approach used in this study is the Statute Approach, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and Law Number 48 of 2009 concerning Judicial Power and regulations, and other relevant laws and regulations,[14] as well as court decisions to analyze legal relief in a decision; and the Conceptual Approach in the form of Decidendi Ratio Theory as well as other sciences outside legal science in the form of ethical norms to test the existence of courtesy in Court Decisions on legal activities and practices.

Practice Judiciary and Legal Considerations

In realizing a law in society, there is a legal tradition in a country, and practically, it always goes hand in hand with the procedures for the gambling process, especially criminal gambling, known in two terms of legal tradition, namely Civil Law (Continental Europe) and Common Law (Anglosaxon). It is called tradition and is different from the legal system as a general understanding because legal tradition, according to I Dewa Gede Palguna, refers more to a collection of attitudes that have existed and been formed historically regarding the nature, role, enforcement of law in society

[11] Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *Fiat Justitia Jurnal Ilmu Hukum* 8, no. 1 (2014): 25.

[12] Kornelius Benuf and Muhammad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 23–24.

[13] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 35.

[14] Zaiyad Zubaidi, Maslahah dalam Putusan Hakim Mahkamah Syar`iyah di Aceh Tentang Perkara Harta Bersama, *El-Usrah: Jurnal Hukum Keluarga,* Vol.4 No.1, (2021). 205.

and government and how a legal system works and formed.[15] So, the legal system is a genus of legal tradition.

In the common law legal tradition, legal practice in society and government tends to use unwritten law.[16] Such as in England, which depends on constitutional practices that have been going on for a long time. When state institutional institutions carry out government activities, they do so following previous constitutional practices.[17] Such a tradition, the mutatis mutandis, also applies to gambling, namely the existence of precedent as the basis for a judge's decision, which comes from understanding precedent or looking at decisions. I firmly understand that judicial practice in the Common Law country tradition requires following previous judges' decisions.

When there is no written law in a Common Law country, the person making the law is the judge or what is known as the judge making the law. By *the stare decisis* principle,[18] The judge's considerations or *ratio decidendi* have the effect of authoritative legislation to set a precedent in cases with the same classification. In the formation of law by a judge[19], what becomes the law to be followed in the same matter afterward is the judge's considerations or the ratio of his decision. In contrast, his decision only applies to the parties involved.[20]

The importance of the judge's consideration[21] in General Law, at least according to Roscoe Pound, reflects the experience developed and tested through reason and vice versa in making a legal decision by the

[15] I Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain* (Jakarta: Konstitusi Press, 2016), 35.

[16] Jeffrey A. Pojanowski, "Reading Statutes in the Common Law Tradition," *Virginia Law Review* 101, no. 5 (2015): 1357–1424.

[17] Ahmad Mukri Aji and friends, "The Ministerial Regulation Position in the Hierarchy of Legislation in the Indonesian Legal System," *International Journal of Advanced Science and Technology* 29, no. 02 (2020): 2217.

[18] "Stare Decisis," *Harvard Law Review* 34, no. 1 (1920): 74–76.

[19] Husni Mubarrak, Faisal Yahya, and Iskandar, "Contestation on Religious Interpretation in Contemporary Aceh Sharīa: Public Caning In Prison as the Case Of Study," *Juris: Jurnal Ilmiah Syariah* 22, no. 3 (2023), p. 213-222.

[20] Umbu Rauta and friends, *Laporan Penelitian: Legitimasi Praktik Overruling Di Mahkamah Konstitusi* (Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2018), 31–32.

[21] Supriyadi and Siti Suriyati, "Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court," *Al Ihkam: Jurnal Hukum Dan Pranata Social* 17, no. 1 (2022), 136-161.

judge.[22] Therefore, precedents in Judges' Considerations are judges' efforts to determine appropriate law based on previous experiences and play an essential role in the traditions of judicial practice in Common Law countries.

In the legal tradition of civil law, legal practice in society and the judiciary is on valid written law.[23] It is, moreover, made authoritatively by the legislature. In judicial decisions in Civil Law countries, judges are obliged to enter into juridical doubts that originate from written statutory regulations.[24] So, the decision is materially flawed when the judge does not use written legal considerations in practice. The urgency of written law as a basis for judicial practice in Civil Law countries, for example, is because the birth of written law (or Constitution) is a long history of efforts to fight for and respect fundamental human rights, which the State often violates.[25] In particular, written law, for example, is intended to limit executive power, which can at any time carry out actions that are detrimental to society at any time, as stated by Richard S. Kay as "One of the most serious injuries..." so that the power contained in written law acts and examined by the judicial power is *conditio sine qua non*.[26]

In line with this, the importance of a court decision[27] with formal juridical considerations by adapting Hans Kelsen's opinion, for example, is to create a legality of justice based on legal certainty and prevent subjective justice from being applied differently in deciding a problem.[28] However, in practice, apart from written legal considerations, judges' considerations can include other factors outside of non-law but still relevant to existing statutory

[22] Roscoe Pound, "What of Stare Decisis?," *Fordham Law Review* 10, no. 1 (1941): 24.

[23] Rodrigo Sadi, "Legal Education and the Civil Law System," *New York Law School* 62, no. 1 (2018).

[24] Ibnu Elmi A.S. Pelu, Kedudukan Fatwa Dalam Konstruksi Hukum Islam, *El-Mashlahah Journal*, Vol. 9, No. 2, 2019, 171.

[25] I Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*, 18.

[26] Larry Alexander, *Constitutionalism, Philosphical Foundations* (United Kingdom: Cambridge University Press, 1998), 16–50; I Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*, 17.

[27] Fitriyani et al., "The Judges' Legal Consideration on Divorce of Nushūz Cases at the Kupang High Religious Court: Gender Perspective," 148–71.

[28] Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Konstitusi Press, 2018), 21.

regulations or written law, such as humanity, expediency, law enforcement, and legal certainty.[29]

The judge's efforts[30] in providing legal considerations[31] in a decision are an attempt to contextualize the applicable law. It aligns with the view that the Court is authorized to impose sanctions on a problem even though there is no prohibited general norm based on an opinion that the action is unpleasant, unfair, or unbalanced. The Court can concretize a specific problem into substantive law in such a context.[32] In the opposite situation, when the Court gives a sanction based on general written legal regulations, the Court interprets general norms on a problem.[33]

The concretization of a specific problem into substantive law in countries that adhere to the Civil Law tradition can be called practice in Common Law, namely jurisprudence. However, the difference is that when a judge's considerations become jurisprudence in the Civil Law tradition, it is only obligated sometimes to be followed by other fields because the mold is written law. As stated by Sudikno Mertokusumo, jurisprudence tries to fill the legal vacuum in a country with a civil law tradition. Due to the vacuum of written law in civil law, state tradition created by judges making law as jurisprudence to create a complete and standard legal codification.[34]

Efforts to fill in the gaps in written law basically cannot be done haphazardly but rather through several methods of interpretation that have relevance as legal rules, one of which is systematic interpretation. Such interpretation is a method of sharply interpreting a regulation with other regulations as a unified legal system, and the interpretation is in conjunction with a principle underlying the regulation.[35] Therefore, the legal discovery method can also use systematic interpretation. One example of systematic interpretation, when judges carry out legal discoveries, is the attempt to carry

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[29] Endra Wijaya, "Peranan Putusan Pengadilan Dalam Program Deradikalisasi Terorisme Di Indonesia," *Jurnal Yudisial* 3, no. 2 (Agustus 2010): 117–18.

[30] Mursyid Djawas et al., "The Alimony Obligation of a Civil Servant and Non-Civil Servant Father towards Children Post-Divorce (The Study on Aceh Syar'iyyah Court Decision Study of 2019)," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023): 91–144.

[31] Khairina et al., "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach," *Juris: Jurnal Ilmiah Syariah* 23, no. 1 (2024): 191–201.

[32] Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, 118.

[33] Jimly Asshiddiqie and M. Ali Safa'at, 118.

[34] Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar* (Yogyakarta: Liberty, 2009), 92.

[35] Bisariyadi and friends, *Laporan Hasi Penelitian: Penafsiran Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar* (Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, 2016), 60.

out the world's first judicial review of legislative policy, namely in the case of Marbury vs. Madison. In this case, the judge tried to test legislative policy by examining it and using the legal basis of the United States Constitution. As a result, although the authority to review legislative policy is not owned by the Chief Justice of the US Supreme Court, based on the United States Constitution (with a systematic interpretation), which states that Supreme Court Justices are obliged to approve the United States Constitution, the Supreme Court Judge judged legislative policy to be unconstitutional.[36]

Based on this, the legal considerations[37] in a decision in a country with a Civil Law tradition must still pay attention to aspects of applicable law, especially its correlation with the written law. In efforts to form jurisprudence, judges must accept offers to carry out interpretation efforts following the rules of legal interpretation and applicable general provisions. Apart from that, the efforts of judges who play a legislative role in concretizing a general regulation into a specific one are a function of extending the law to be applied in society. The rule is in line with Palguna's opinion, which states that judges, apart from being an extension of the law (the law that speaks), can state what the appropriate law is in a case (what the law is).[38]

Degrees of Courtesy in Norm Rules

Regarding ethics, courtesy is a genus of moral values that every person must have, especially in everyday life, and is a form of pleasing personality and noble character.[39] Courtesy norms can refer to a collection of rules of attitude or behavior regarding politeness in community relations. Courtesy norms can be a form of attitude of mutual respect in social life. The benchmark for courtesy norms, for example, is appropriateness, custom, or propriety that applies in society, so this causes society to have its

[36] I Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*, 58–62.

[37] Zainal Muttaqin Dahli et al., "Delegitimization Of Religious Motives in Polygamy in Banjar Society Vol. 24 No. 1 (2024)," *Syariah: Jurnal Hukum Dan Pemikiran* 121–35.

[38] I Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*, 99.

[39] Rizky Agassy Sihombing and friends, "Pemahaman Dan Pembinaan Norma Sopan Santun Melalui PPKN Pada Anak Sekolah GBI Sukma Medan," *Jurnal Kewarganegaraan* 18, no. 1 (2021): 39.

benchmarks regarding what can be considered appropriate, acceptable, and appropriate.[40]

In practice, courtesy norms are part of society in a particular regional culture, ethnicity, and customs. In certain circumstances, acts of mutual respect may be judged as rude, dirty, or unethical behavior by others, so the courtesy norms in a society can differ.[41] However, the primary orientation in a courtesy norm is respecting others in their respective positions.[42]

In line with this, it is clear that courtesy norms, for example, are a form of action that comes from reason and experience that comes from oneself to act reasonably, especially to respect each other between communities. According to Immanuel Kant, general decency (one of which is courtesy) that applies in society to everyone is a goodwill that originates from moral law as a genus of natural law in order to create order in relationships between humans.[43] This general morality is not a monopoly of a particular religion or nation because it comes from the inner wealth of humans or other external things. Morals or ethics (decency) come from the human mind as a feeling of obligation to act to create goodwill; it is commanding but not forcing.[44] According to Kaelan, the fundamental source of ethics is only produced through reason or human reason, which is a priori and consists of physical uncertainty, reason, feeling, intention, and one's own beliefs.[45]

The lack of coercive power of ethics (in this case, courtesy norms) was even expressed by Hazairin[46] and adapted by Jimly Asshiddiqie, that ethics is only a recommendation because there are three supporting rules for its validity, the rule of decency (*mubah*), the rule of recommendation to do something good (*sunnah*), and rules of recommendation for not doing

[40] Budi Pramono, "Norma Sebagai Sarana Menilai Bekerjanya Hukum Dalam Masyarakat," *Perspektif Hukum* 17, no. 1 (Mei 2017): 108–9.

[41] Khairuddin Hasballah, et al, Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City, *El-Usrah: Jurnal Hukum Keluarga,* Vol. 6 No. 2. 2023, 252.

[42] Budi Pramono, 109.

[43] Endang Daruni Asdi, "Imperatif Kategoris Dalam Filsafat Moral Immanuel Kant," *Jurnal Filsafat*, no. 23 (1995): 11.

[44] Endang Daruni Asdi, 9.

[45] Kaelan, *Pendidikan Pancasila* (Yogyakarta: Paradigma, 2010), 87.

[46] Soraya Devy, Amrullah, and Utari Zulfiana, "Divorce Petition Against Drug User Husband: Case Study of Kuala Simpang Syar'iyah Court Decision, Aceh Tamiang," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 281–97.

something that is not good (*makruh*).[47] Such rules in ethics, according to Jimly, gave birth to a branch of the ethical philosophy system in the form of descriptive ethics (descriptive ethics), which is only about correct and good behavior as other people think based on individual reason.[48] Therefore, this is in line with what Fernando M Manullang said, that ethical sanctions are not coercive in the form of physical, mental, or ownership sanctions but are oriented towards sanctions of shame and recommendations for reconciliation in order to recover or return (restoration) back to one's status. ethics or morality.[49]

This axiom also aligns with the statement that ethical or moral intensity, if forced, will not be effective because coercion does not penetrate the deepest bathing attitudes, which leads to the human heart or reason, which violates ethics. Ethical or moral sanctions can only be effective if the intensity of the action is declared guilty not from the visible action but rather the intention of the action, which comes from reason and conscience. So, when the intensity of the action is known, the feeling of guilt and shame because of going against ethics becomes a punishment in the ethical or moral upheaval in people's behavioral lives.[50]

The existence of such ethics was responded to counterproductively by Jeremy Bentham.[51] In regulating human behavior in society, they said that ethics, which are free and reflected through reason, cannot be limited by anything, including the law, because reason cannot be determined.[52] So, if the existence of ethics in the social order of society uses a definite or coercive guideline, then anarchy will be created; that is, a person will override reason to adjust the order of social behavior.[53] Moreover, the

[47] Jimly Asshiddiqie, *Menggagas Peradilan Etik Di Indonesia* (Jakarta: Komisi Yudisial, 2015), 23.

[48] Jimly Asshiddiqie, 29.

[49] Fernando M Manullang, "Pandangan Ahli Filsafat Hukum: Putusan PTUN Nomor 82/G/2020/PTUN-JKT," n.d.

[50] Widodo Dwi Putro, *Hukum Dan Moral Dalam Perspektif Filsafat Hukum Dalam Menggagas Peradilan Etika Di Indonesia* (Jakarta: Komisi Yudisial, 2015), 79.

[51] J. R. DINWIDDY, "BENTHAM ON PRIVATE ETHICS AND THE PRINCIPLE OF UTILITY," *Revue Internationale de Philosophie* 36, no. 141 (1982): 278–300.

[52] Yusna Zaidah, Judicial Discretion In Inheritance Case Resolution: Towards Progressive Legal Justice In Indonesia, *SYARIAH : Jurnal Hukum dan Pemikiran,* Volume 24, No.1, 2024, 137.

[53] Atip Latipulhayat, "Khazanah: Jeremy Bentham," *Padjadjaran Jurnal Ilmu Hukum* 2, no. 2 (2015): 423.

vulnerability of reason is often unobjective.[54] Based on this, Bentham emphasized that people's behavior cannot be determined sectorally by emphasizing individual ethics in the form of individual happiness originating from one human reason, but rather is a synthesis of all human reason in the form of the happiness of all humans (the greatest happiness of the most significant amount),[55] It includes juridical agreements in the form of law.[56]

This thesis also received positive affirmation from John Austin, who was of the view that the natural behavior of society, based on individual reason, cannot be used as a legal or definite behavioral preference to regulate but rather that such behavior must be determined and approved through law, made by parliament (people's representatives). According to Austin, this still happens; law regulates people's behavior, which is definite and different from ethical or moral values whose content varies in the form of recommendations for the appropriateness and inappropriateness of an action.[57]

Provision Reducing Sentencing

Punishment can generally be interpreted as a consequence of a delict (criminal act), as shown in the State's imposing penalties on delict makers based on statutory regulations.[58] In criminal gambling, the court decision by adapting Article 1 number 11 of the Criminal Procedure Code contains a criminal decision, acquittal, or release from all legal charges.

Sentencing decisions involve various forms of punishment, including Article 10 of the Criminal Code, which consists of the death penalty, imprisonment, imprisonment, fines, and cover-up (political offenses). In the Financing Decision, which has been made by the Panel of Judges, apart from the forms of punishment manifested in the decision, there are aggravating or mitigating factors in the punishment decision in the form of imprisonment. Article 197 letter f of the Criminal Procedure Code states that a criminal decision letter contains "... F. articles of statutory regulations which form the basis of the punishment or action and articles of statutory regulations which

[54] Widodo Dwi Putro, *Hukum Dan Moral Dalam Perspektif Filsafat Hukum Dalam Menggagas Peradilan Etika Di Indonesia*, 69.

[55] P. Burne, "Bentham and the Utilitarian Principle," *Mind* 58, no. 231 (July 1949): 367–68.

[56] Atip Latipulhayat, "Khazanah: Jeremy Bentham," 416–18.

[57] Atip Latipulhayat, "Khazanah: John Austin," *Padjadjaran Jurnal Ilmu Hukum* 3, no. 2 (2016): 439.

[58] Puteri Hikmawati, "Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif," *Negara Hukum* 7, no. 1 (June 2016): 74.

form the legal basis of the decision, a dissertation on aggravating and enlightening circumstances of the fraudster. …".

Provisions regarding a reduced sentence are also stated in general in Law Number 48 of 2009 concerning Judicial Power in Article 8 paragraph, which states that a court decision that contains a sentence or declares a defendant guilty and has permanent legal force is obliged to take into account the lightness of the sentence—alternatively, the severity of the crime base on the good and evil characteristics of the fraudster. Apart from the defendant's condition, other reasons are introduced judicially as enlightening, such as criminal probation (Poging), criminal assistance (Deelneming), and criminal punishment with child perpetrators.

In attempted crimes as described in Article 53 of the Criminal Code, several elements are included in attempted crimes as one of the elements, including attempting to commit a criminal crime if there is an intention to carry out the implementation, not completing the implementation of the act, not solely because of his own will. According to Didik Endro Purwoleksono, there are two initial theories for implementing criminal trials, namely Subjective and Objective Trial Theory. The subjective theory emphasizes that there has been an initial intention, which means it is not sure it has finished, which is suitable for probation. At the same time, the Objective Theory states that an initial implementation has endangered the interests of the law or the public. According to Didik, criminal trials in the Criminal Code currently use an Objective Theory approach, which requires that implementation be initiated as uncertain 1, 2, and 3, as mentioned previously.[59]

Apart from that, there are two forms of criminal trials: trials that have stopped (Geschorste Poging) or ended (Voleindigde Poging). An attempt is interrupted when the action meets the realization, but the attempt is still considered a criminal due to external obstacles. Meanwhile, in a fully completed trial, a criminal act has been committed, for example, an attempt to murder by stabbing. However, it turns out that the stabbing did not cause death, so the act included attempted murder.[60] Therefore, because the main criminal act has not occurred, something is enlightening about the existence of a criminal trial. The decision follows the provisions of Article 53 paragraph (2) of the Criminal Procedure Code, which states that the bare punishment is reduced, for example.

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[59] Didik Endro Purwoleksono, *Hukum Pidana* (Surabaya: Airlangga University Press (AUP), 2014), 54–55.

[60] Didik Endro Purwoleksono, 56.

Another mitigating consideration is criminal assistance (Deelneming). In a principal criminal act carried out jointly, punishment looks at the proportionality of the actions of the perpetrators who carry it out. For perpetrators who carry out assistance, as stated in Article 57 paragraph (4) of the Criminal Code, one of the primary penalties is reduced as follows, "In determining the crime for assistance, what takes it into account is only the act which is intentionally made easier or expedited by him, along with its consequences." Thus, criminal assistance is one of the things that can lighten the sentence in a decision.

Another fundamental consideration that can enlighten punishment is the existence of criminal acts involving child perpetrators. Article 81 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the prison sentence that can be imposed or meted on a child is a maximum of half the maximum penalty imposed. Apart from that, if a child is sentenced to a sentence, for example, life imprisonment or the death penalty, then the sentence imposed is a maximum of 10 (10) years. Using this legal basis for reducing sentences for children is generally based on the child's age who still needs to become an adult or legally competent.

Ambiguity Degrees of Courtesy in Mitigating Legal Considerations

The birth of criminal procedural law, in general, is to prevent the Law Enforcement Apparatus (APH) arbitrariness in implementing the Integrated Criminal Justice System (SPPT)[61]. Therefore, the purpose of the Criminal Procedure Code (KUHAP) is generally to protect human rights, honor, and dignity when they are a suspect or defendant.[62]

In broadcasting the Criminal Justice System[63], apart from protecting suspects or fraudsters from APH's arbitrariness, another aim is to protect laws or regulations that tend to apply sanctions to fraudsters. Thus, to find the truth of the material, it is necessary to apply criminal procedural law consistently and precisely to find those accused of being the perpetrators, determine the legal subject based on valid evidence, and examine and decide on a court decision to carry out criminal responsibility.[64]

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[61] Adi Hardiyanto Wicaksono, "Deferred Prosecution Agreement as an Alternative in Addressing Tax Crimes of the Corporate Taxpayers in Indonesia," *De Jure: Jurnal Hukum Dan Syariah* 14, no. 2 (2022): 262–75.

[62] Riadi Asra Rahmad, *Hukum Acara* (Depok: PidanaRajawali Pers, 2019), 56.

[63] Syamsul Fatoni, "Violence Eradication in Education through a Juridical-Religious Approach: Seeking an Ideal Model under the Criminal Justice System," *Al Risalah: Forum Kajian Hukum Dan Social Kemasyarakatan* 20, no. 1 (2020): 87–95.

[64] Riadi Asra Rahmad, *Hukum Acara*, 3–4.

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Using courtesy reasons in conferences as a mitigating factor, viewed from the perspective of the concept of criminal responsibility, is experiencing ambiguity in the practice of the Criminal Justice System. Likewise, artist Rachel Vennya received a reduced sentence in the Health Quarantine case with a prison sentence of four months and a probation period of eight months. The panel of judges outlined the considerations for reducing the sentence as follows:

"It is an enlightening thing. It helps to admit what he did. The defendant did not complicate his statements at the conference. **The defendant meant to be polite in court**".[65]

In context, criminal responsibility is a form of responsibility for someone who has committed a delict or evil act (*Actus Reus*) and is worthy of blame or blame because of his wrong thoughts or intentions.[66] *Actus Reus* includes not being sure that the purpose of the criminal act is to explain the offense, whether the act is active, passive, objective, or subjective against the law, and whether there is no justification. Meanwhile, *Mens Rea* includes subjective uncertainty about the ability to profit, intentional or negligent.[67]

Actus Reus determines that an action is qualified as criminal if it fulfills the elements stated in the article. However, this will experience inconsistencies in applying criminal responsibility when primary considerations of courtesy as a form of legal responsibility and commutation of punishment, which causally has no juridical basis for determining the final punishment.

Moreover, in a criminal decision following Article 197 paragraph (1) of the Criminal Procedure Code, it is stated that "...f. Articles of statutory regulations which are the basis for punishment or action and articles of statutory regulations which are the legal basis for the decision, a dissertation on aggravating circumstances and which enlighten the fraudster...". The quo article judicially stipulates that criminal decisions must be relevant to articles of statutory regulations, which form the legal basis for criminal sanctions. Therefore, with my inclusion of courtesy considerations in the conference, there is ambiguity in determining criminal sanctions in a criminal decision, significantly mitigating conclusions.

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[65] "Putusan Nomor 21/Pid.S/2021/PN Tng.," n.d.

[66] Jaholden, *Reformulasi Hukum Pidana Indonesia* (Sumatera Utara: Bircu-Publishing, 2021), 20.

[67] Andi Sofyan and Nur Azisa, *Hukum Pidana* (Makassar: Pustaka Pena Press, 2016), 104.

This ambiguity is at least based on the conceptualization of the Courtesy Norm as a rule of decency in the order of norms as expressed by Immanuel Kant, only as general decency that comes from the human mind in the form of a feeling of obligation to act to create goodwill, it seems to rule but is not coercive.[68] It is also different from legal norms in coercive laws and regulations. According to Jimly Asshiddiqie, the courtesy norm is a rule of decency or other norms (apart from legal norms), which is sustainable only by being patient and willing for oneself through reason or belief (religious norms). At the same time, the law bases it on coercion with coercive sanctions, such as physical, mental, and certain property sanctions.[69] This context means that ethical norms cannot combine with the practice of legal norms, especially in punishment.[70]

In line with this, in criminal theory, there is known the adage or principle of *nullum delictum nulla poena sine praevia lege poenali* (there is no punishment or criminal sanction without a prior criminal provision in the statutory regulations)[71] In its development, the basic principles of the following They have empathy, for example, *Lex Scripta* (law criminal must written), *Lex Certa* (formulation offense criminal must clear), *Lex Stricta* (formulation chapter criminal must interpreted firm and without analogy), *Lex Praevia* (the law cannot apply retroactively).[72]

The existing principle is what actual State a law criminal must write, evident in the offense, without existing analogy or not applying to recede. If matched with consideration, the law decision in case *a quo* states courtesy as mitigating circumstances in its relevance. That matters because of the norms of courtesy in rule ethics, which have no own reference. Confidentness is because of the norms of courtesy in society, culture, region, tribe, nation, or particular custom. In certain circumstances, the deeds of each other's honors

[68] Endang Daruni Asdi, "Imperatif Kategoris Dalam Filsafat Moral Immanuel Kant," 9.

[69] Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, 25.

[70] Muzakkir, The Analysis of Decisions of Sharia Court Judge on Childs Rape Cases in the City of Langsa 401.

[71] Lidya Suryani Widayati, "Perluasan Asas Legalitas Dalam RUU KUHP," *Negara Hukum* 2, no. 2 (2011): 313–14.

[72] "Ketentuan Hukum Yang Hidup Dalam Masyarakat Di RKUHP Ancam Hak Warga Negara | ICJR," accessed May 19, 2024, https://icjr.or.id/ketentuan-hukum-yang-hidup-dalam-masyarakat-di-rkuhp-ancam-hak-warga-negara/.

can be presumption as rude, dirty actions , or unethical by others, so standard courtesy in something public can make a difference.[73]

In line with this, polite behavior in conferences has no legal effect on the consideration of mitigating or attaching to the criminal decision, as stated in Article 176, paragraphs (1) and (2) of the Criminal Procedure Code, which states that "if a fraudster commits behavior that is not worthy of being recorded so that it disturbs the speaking of the trial, the presiding judge of the trial reprimanded him and if the warning ignored, he asked to dismiss from the courtroom, then the examination of the matter at that time continued without the presence of the fraudster" and "if the fraudster continues to have behavior that is not worthy of note so that it disturbs the Court, the presiding judge of the Court makes efforts in such a way that the decision can still align with the presence of a fraudster. " Therefore, based on the quo article, polite behavior in conferences has no juridical impact on sentencing decisions.

In line with this, according to Hans Kelsen, when a statutory regulation is a basis for a criminal sentence, it will be fair if the quo rule applies to one case, and it is unfair if the rule does not apply to another similar case. In the sense of legality, justice is if the action (delict) is acceptable or applicable legal norms are not to be assessed or sanctioned.[74] If polite behavior is considered a legal consideration in a sentencing decision, this will lead to injustice in the same case.

Another criminal incident that experienced ambiguity was the spread of false news carried out by Habib Bahar bin Smith. In this case, the judges sentenced Habib Bahar bin Smith to 6 months in prison in mitigating considerations. "What is enlightening is that the Defendant is polite, honest, and has family responsibilities."[75]

The legal considerations are similar to the quo decision in context if you look at other concepts of criminal responsibility, namely *Mens Rea* (fault), which has ambiguity. The basic concept of *Mens Rea* (fault) could be better; intending to do an action will be adjudicated as a delict.[76] In conference procedural law related to punishment, fault plays an essential role in determining the severity or lightness of a sentence. The condition is

[73] Budi Pramono, "Norma Sebagai Sarana Menilai Bekerjanya Hukum Dalam Masyarakat," 109.

[74] Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, 21.

[75] "Putusan Nomor 220/Pid.Sus/2022/PN Bdg.," n.d.

[76] Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Di Indonesia* (Tangerang Selatan: PT Nusantara Persada Utama, 2017), 53–54.

evident juridically through Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which states, "In considering the severity of the crime, the judge must also pay attention to the good and evil characteristics of the fraudster." Article 197, paragraph (1) of the Criminal Procedure Code is also stated as "... D. considerations that reprise regarding the facts and circumstances and evidence obtained from the examination at trial which are the basis for determining the fraudster's guilt." The severity or lightness of the punishment that will be visited is evident. However, it can also abolish the punishment, such as the reasons for forgiveness in Article 44 of the Criminal Code and the Reasons for Justification in Articles 48, 49, 50, and 51.[77]

Wrong is determined by the subject's motive when committing an offense when a criminal event occurs, and both in terms and circumstances that seriously impact the occurrence of a criminal act. When a legal subject commits an offense without justification or excuse to eliminate the crime, compensation for making an error using the elements in the criminal article. In line with this, errors, according to Eddy OS Hiariej, must meet the elements of at least being accountable by the perpetrator, the perpetrator's psychological relationship with his actions in the form of intention or negligence, and no basis eliminates his responsibility in the form of excuses or justificatory reasons.[78]

Through these errors, enlightening or enhancing matters can be introduced into a legal consideration in the decision, for example, aggravating or enlightening factors in the sentence. In the aggravation of punishment, for example, some factors aggravate the sentence due to statutory orders or additional circumstances, such as not being sure of the crime and the presence of aggravating circumstances within the judge's authority to determine.[79] In an enlightening matter, juridically, there are several provisions for them. If a crime has occurred because the perpetrator is a criminal accomplice, as is not particular Article 57 paragraph (4) of the Criminal Code, the criminal sentence for a child perpetrator with a prison sentence that can be imposed or found on a child is a maximum of half of the maximum the threat of punishment imposed as stipulated in Article 81 of

[77] Ayu Efritadewi, *Modul Hukum Pidana* (Kepulauan Riau: UMRAH Press, 2020), 28–37.

[78] Lakso Anindito, "Lingkup Tindak Pidana Korupsi Dan Pembuktian Kesalahan Dalam Sistem Pertanggungjawaban Pidana Korupsi Di Indonesia, Inggris, Dan Prancis," *Integritas* 3, no. 1 (2017): 11–12.

[79] Dwi Hananta, "Pertimbangan Keadaan-Keadaan Meringankan Dan Memberatkan Dalam Penjatuhan Pidana," 92–97.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the application of Justice Collaborators as regulated in Article 10A paragraph (3) letter a, namely Witnesses to Perpetrators who collaborate with law enforcers in uncovering criminal acts in cases involving. Likewise, they can get rewards in the form of reduced criminal sentences.

The use of polite behavior in conferences as a mitigating reason experiences ambiguity because courtesy is not seen as an enlightening thing, especially in determining the severity of a fraud based on errors in the conception of criminal responsibility, only looking at the impact or order of the law to reduce the sentence. Using courtesy as a reason for enlightening legal considerations in proving guilt has no legal relevance because polite behavior is not a legal rule, and it is not within the judge's authority to judge whether or not a legal subject is polite. Judges do not assess ethics in legal conferences, especially criminal law, but rather assess the legal subject's mistakes in committing crimes.

Conclusion

The basis for the judge's consideration is giving a mitigating sentence to legal subjects who carry out crimes, such as trials, assistance from criminal and justice collaborators, or crimes with child perpetrators. Courtesy cannot considered as a mitigating reason in the legal reasong of a judicial decision. The condition is because the dimensions of courtesy norms are ethical norms, not legal norms. Also, courtesy norms are individual subjectivities that cannot be determined by law, especially by judges. Judges do not judge ethical norms but legal norms. The statement is in line with criminal law in that the use of norms of decency causes their application in criminal law across criminal law because of their abstract and differentiated nature.

References

Abdullah Jarir, Ratno Lukito, and Moch. Nur Ichwan. “Legal Reasoning on Paternity: Discursive Debate on Children Out of Wedlock in Indonesia.” *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023).

Adi Hardiyanto Wicaksono. “Deferred Prosecution Agreement as an Alternative in Addressing Tax Crimes of the Corporate Taxpayers in Indonesia.” *De Jure: Jurnal Hukum Dan Syariah* 14, no. 2 (2022).

Ahmad Mukri Aji and friends. “The Ministerial Regulation Position in the Hierarchy of Legislation in the Indonesian Legal System.”

International Journal of Advanced Science and Technology 29, no. 02 (2020).

Andi Sofyan and Nur Azisa. *Hukum Pidana*. Makassar: Pustaka Pena Press, 2016.

Atip Latipulhayat. "Khazanah: Jeremy Bentham." *Padjadjaran Jurnal Ilmu Hukum* 2, no. 2 (2015).

———. "Khazanah: John Austin." *Padjadjaran Jurnal Ilmu Hukum* 3, no. 2 (2016).

Ayu Efritadewi. *Modul Hukum Pidana*. Kepulauan Riau: UMRAH Press, 2020.

Bisariyadi and friends. *Laporan Hasi Penelitian: Penafsiran Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar*. Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, 2016.

Budi Pramono. "Norma Sebagai Sarana Menilai Bekerjanya Hukum Dalam Masyarakat." *Perspektif Hukum* 17, no. 1 (Mei 2017).

Depri Liber Sonata. "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum." *Fiat Justitia Jurnal Ilmu Hukum* 8, no. 1 (March 2014).

Didik Endro Purwoleksono. *Hukum Pidana*. Surabaya: Airlangga University Press (AUP), 2014.

Dwi Hananta. "Pertimbangan Keadaan-Keadaan Meringankan Dan Memberatkan Dalam Penjatuhan Pidana." *Jurnal Hukum Dan Peradilan* 7, no. 1 (2018).

Elmi A.S, Ibnu, Pelu, Kedudukan Fatwa Dalam Konstruksi Hukum Islam, *El-Mashlahah Journal*, Vol. 9, No. 2, 2019.

Endang Daruni Asdi. "Imperatif Kategoris Dalam Filsafat Moral Immanuel Kant." *Jurnal Filsafat*, no. 23 (1995).

Endra Wijaya. "Peranan Putusan Pengadilan Dalam Program Deradikalisasi Terorisme Di Indonesia." *Jurnal Yudisial* 3, no. 2 (Agustus 2010).

Fernando M Manullang. "Pandangan Ahli Filsafat Hukum: Putusan PTUN Nomor 82/G/2020/PTUN-JKT," n.d.

Fitri Wahyuni. *Dasar-Dasar Hukum Pidana Di Indonesia*. Tangerang Selatan: PT Nusantara Persada Utama, 2017.

Fitriyani, Asep Saepuddin Jahar, Zaitunah Subhan, and Rosdiana. "The Judges' Legal Consideration on Divorce of Nushūz Cases at the Kupang High Religious Court: Gender Perspective." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023).

"Hakim Vonis Pinangki 10 Tahun Penjara Denda Rp 600 Juta | Republika Online Mobile." Accessed May 19, 2024. https://news.republika.co.id/berita/qo7lz4484/hakim-vonis-pinangki-10-tahun-penjara-denda-rp-600-juta?

Hariyanto, Erie and Made Warka, The Political Scrimmage Of The Religious Court's Law As The Judicial Institution In the Reformation Era In Indonesia, *Al Ihkam,* Vol . 11 N o. 1 2016,

Husni Mubarrak, Faisal Yahya, and Iskandar. "Contestation on Religious Interpretation in Contemporary Aceh Sharīa: Public Caning in Prison as the Case of Study." *Juris: Jurnal Ilmiah Syariah* 22, no. 3 (2023).

I Dewa Gede Palguna. *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*. Jakarta: Konstitusi Press, 2016.

J. R. DINWIDDY. "BENTHAM ON PRIVATE ETHICS AND THE PRINCIPLE OF UTILITY." *Revue Internationale de Philosophie* 36, no. 141 (1982).

Jaholden. *Reformulasi Hukum Pidana Indonesia*. Sumatera Utara: Bircu-Publishing, 2021.

Jeffrey A. Pojanowski. "READING STATUTES IN THE COMMON LAW TRADITION." *Virginia Law Review* 101, no. 5 (2015).

Jimly Asshiddiqie. *Menggagas Peradilan Etik Di Indonesia*. Jakarta: Komisi Yudisial, 2015.

Jimly Asshiddiqie and M. Ali Safa'at. *Teori Hans Kelsen Tentang Hukum*. Jakarta: Konstitusi Press, 2018.

Julius Stone. "The Ratio of the Ratio Decidendi." *The Modern Law Review* 22, no. 6 (1995).

Kaelan. *Pendidikan Pancasila*. Yogyakarta: Paradigma, 2010.

"Ketentuan Hukum Yang Hidup Dalam Masyarakat Di RKUHP Ancam Hak Warga Negara | ICJR." Accessed May 19, 2024. https://icjr.or.id/ketentuan-hukum-yang-hidup-dalam-masyarakat-di-rkuhp-ancam-hak-warga-negara/.

Khairina, Khairani, Roni Efendi, Kasmuri, and Okky Afrianto. "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach." *Juris: Jurnal Ilmiah Syariah* 23, no. 1 (2024).

Kornelius Benuf and Muhammad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Jurnal Gema Keadilan* 7, no. 1 (June 2020).

Lakso Anindito. "Lingkup Tindak Pidana Korupsi Dan Pembuktian Kesalahan Dalam Sistem Pertanggungjawaban Pidana Korupsi Di Indonesia, Inggris, Dan Prancis." *Integritas* 3, no. 1 (March 2017).

Larry Alexander. *Constitutionalism, Philosphical Foundations*. United Kingdom: Cambridge University Press, 1998.

Lidya Suryani Widayati. "Perluasan Asas Legalitas Dalam RUU KUHP." *Negara Hukum* 2, no. 2 (November 2011).

Mursyid Djawas, Nahara Eriyanti, Anita Yulia, and Faisal Fauzan. "The Alimony Obligation of a Civil Servant and Non-Civil Servant Father towards Children Post-Divorce (The Study on Aceh Syar'iyyah Court Decision Study of 2019)." *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023).

P. Burne. "Bentham and the Utilitarian Principle." *Mind* 58, no. 231 (July 1949).

Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2005.

Puteri Hikmawati. "Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif." *Negara Hukum* 7, no. 1 (June 2016).

"Putusan Hakim Ringan Karena Sopan, Ini Kata Pakar Hukum Unair Halaman All - Kompas.Com." Accessed May 19, 2024. https://www.kompas.com/edu/read/2022/01/14/142136571/putusan-hakim-ringan-karena-sopan-ini-kata-pakar-hukum-unair?page=all.

Riadi Asra Rahmad. *Hukum Acara*. Depok: PidanaRajawali Pers, 2019.

Rizky Agassy Sihombing and friends. "Pemahaman Dan Pembinaan Norma Sopan Santun Melalui PPKN Pada Anak Sekolah GBI Sukma Medan." *Jurnal Kewarganegaraan* 18, no. 1 (March 2021).

Rodrigo Sadi. "Legal Education and the Civil Law System." *New York Law School* 62, no. 1 (2018).

Rohmawati and Ahmad Rofiq. "Legal Reasonings of Religious Court Judges in Deciding the Origin of Children: A Study on Tte Protection of Biological Children's Civil Rights." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021).

Rohman, Taufiqur, et al, Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia, *Journal of Islamic Law (JIL),* Vol.4,No.2, 2023.

Roscoe Pound. "What of Stare Decisis?" *Fordham Law Review* 10, no. 1 (1941).

Soraya Devy, Amrullah, and Utari Zulfiana. "Divorce Petition Against Drug User Husband: Case Study of Kuala Simpang Syar'iyah Court Decision, Aceh Tamiang." *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023).

"Stare Decisis." *Harvard Law Review* 34, no. 1 (1920).

Sudikno Mertokusumo. *Penemuan Hukum Sebuah Pengantar*. Yogyakarta: Liberty, 2009.

Supriyadi and Siti Suriyati. "Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court." *Al Ihkam: Jurnal Hukum Dan Pranata Social* 17, no. 1 (2022).

Syamsul Fatoni. "Violence Eradication in Education through a Juridical-Religious Approach: Seeking an Ideal Model under the Criminal Justice System." *Al Risalah: Forum Kajian Hukum Dan Social Kemasyarakatan* 20, no. 1 (2020).

Umbu Rauta and friends. *Laporan Penelitian: Legitimasi Praktik Overruling di Mahkamah Konstitusi*. Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2018.

Widodo Dwi Putro. *Hukum Dan Moral Dalam Perspektif Filsafat Hukum Dalam Menggagas Peradilan Etika di Indonesia*. Jakarta: Komisi Yudisial, 2015.

Zaidah, Yusna, Judicial Discretion In Inheritance Case Resolution: Towards Progressive Legal Justice In Indonesia, *SYARIAH : Jurnal Hukum dan Pemikiran,* Volume 24, No.1, 2024,

Zainal Muttaqin Dahli, Masyithah Umar, Mujiburohman, Rusdiyah, Sa'adah, and Nadiyah Khalid Seff. "Delegitimization Of Religious Motives in Polygamy in Banjar Society Vol. 24 No. 1 (2024)." *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024).

Zubaidi, Zaiyad, Maslahah dalam Putusan Hakim Mahkamah Syar`iyah di Aceh Tentang Perkara Harta Bersama, *El-Usrah: Jurnal Hukum Keluarga,* Vol.4 No.1, (2021).

Rules of Law

"Decision Number 21/Pid.S/2021/PN Tng.," n.d.

"Decision Number 220/Pid.Sus/2022/PN Bdg.," n.d.