



## The Judge's Consideration of the Defendant's Statement in Imposing a Sentence Against the Security Guard While on Duty

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### Abstract

In Article 184 Paragraph (1) of Indonesian Criminal Code (KUHP) it is stated that a defendant's testimony in a trial is not sufficient to prove that the defendant has been guilty of committing a criminal offense without being supported by other evidence. There are various forms of consideration of the judge against the defendant's testimony in criminal sentencing by the security guard on duty in the Decision Number: 372/Pid.B/2022/PN.Pdg and Decisions Number: 373/Pid.B/2022/PN.Pdg. The issues being studied are First, How is the judge's consideration of the defendant's testimony in criminal sentencing by a security guard on duty. (On the Decisions Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg)? Second, How is the judge's decisions based on the consideration of the defendant's testimony in criminal sentencing by a security guard on duty. (On the Decisions Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg)? This study is analytical descriptive research. The approach used in this study was normative juridical approach. The data used in this study were secondary data. All data and materials obtained from the results of the study were prepared and analyzed qualitatively, and presented in a descriptive qualitative form. Based on the results of discussion and analysis it can be concluded that. First, That the judge's Consideration of the Defendant's Testimony in Criminal sentencing by the Security Guard on Duty on the Decisions Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg has covered both juridical and non-juridical considerations. Second, That the decision of the judge Based on Consideration of The Defendant's Testimony in criminal sentencing by the Security Guard on Duty on The Decisions Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg is based on the defendant's evidence and aligned with other evidence such as witness testimony and letters.

## INTRODUCTION

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty. In addition, the judge's consideration also contains benefits for the parties concerned so that this judge's consideration must be addressed carefully, well and carefully before being stated by the judge in his decision. The judge's consideration related to the defendant's testimony has an important power to expose the truth of a case, especially cases of criminal abuse leading to death by security guards while on duty. In the <sup>1</sup>Code of

<sup>1</sup> Lilik Mulyadi, *Verdict Judge deep Procedural Law Punishment* PT. Image Adtya Filial piety, Bandung, 2007, p. 45.

Criminal Procedure (KUHAP) it is explained, without the support of other evidence, the defendant's testimony at the trial will fail to condemn the defendant for the case inflicted on him. This is contained in Article 184 Ayat (1) and Article 189 of the Code of Criminal Procedure (KUHAP).

Criminal Abuse is the use of physical force, whether threatened or not on a person, group, or community that can cause trauma, death, psychological trauma, developmental impairment, and harm. Moral decline, economic crush, impatience and hatred are some of the factors that lead to persecution.<sup>2</sup> The crime of persecution is deviant behavior that always exists in society. Crimes such as murder, molestation, robbery and others are very disturbing and detrimental to the community therefore to overcome it and protect the community, the government takes law enforcement measures to prevent the occurrence of crime. The criminal act of persecution has been regulated in Article 351 of the Criminal Code<sup>3</sup> which states:

- (1) Persecution is punishable by imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiah.
- (2) If the act results in serious injury, the guilty person shall be punished with imprisonment for not more than five years.
- (3) If the act results in the death of a person, it is punishable by imprisonment for a maximum of seven years.
- (4) With persecution is equated to deliberately damaging people's health.
- (5) Attempts to commit this crime are not criminal.

From the sound of the article above, it can be seen that acts of persecution resulting in the death of people committed by everyone can be punished, including those committed by security guards. Not only that, punishable persecution does not have to be in the form of persecution that results in serious injury. All maltreatment that causes minor injury, serious injury, or death is punishable.

Related to security units or better known as security guards or *security* is a profession that is still considered small and carried out by people who are considered *low level* or lower class only. As we know, security guards are a very important and strategic element in assisting police tasks as an institution prioritized by the state in maintaining security and order in the domestic community. Security guards are synonymous with guards who are said to be ready as long as they are sturdy, fierce and brave.<sup>4</sup>

In carrying out their duties, security guards are required to always be responsible for security and all events that occur around the environment where they work. The high work demands given to security guards often make them do anything to maintain the security of the place where they work. In fact, for the sake of this responsibility, security guards do not hesitate to install bodies to face threats of danger such as fighting with thieves, thugs, or other parties who interfere with security at their place of work. However, if it is related to applicable law, the security guard on duty is not always free to perform his duties. When on duty, security guards also need to pay attention to their behavior towards people who are considered to disturb security or perpetrators of crimes found at their place of work. Security guards must not take the law into their own hands, persecute them, let alone kill the perpetrators of crimes they find while on duty. If a security guard is forced to commit violence while on duty, his violent act must be accounted for before the law. Acts of violence that are often carried out by security guards not only often end with him being charged with

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<sup>2</sup> Marsudi Utayo, "Perpetrators of murder who defend themselves in defense Honor and property", *College of Science Youth Oath Law Journal of Legal Institutions*, Vol. 8 No. 2., Palembang, 2013, hlm. 1.

<sup>3</sup> Adami Chazawi, *Crime Towards Body and Soul*, King Grafindo Persada. Jakarta, 2010, p. 23.

<sup>4</sup> Directorate Binmas Polda West Sumatra, "Role AMSI deep Industrial Security", *Set Material Seminar*, No. 1, Vol. 14, Journal Law January, 2002, Pp. 5.

criminal acts of molestation and murder in court.<sup>5</sup>

One of the cases of persecution resulting in the death of people committed by security guards while on duty that is quite interesting is persecution and murder or resulting in the death of people committed by PT security guards. CSK Teluk Bayur. In this case, two security guards who were on duty at Teluk Bayur Port were sentenced to prison for molestation and murder or resulting in the death of victims who at that time entered the forbidden area at Teluk Bayur Port.

The security guard suspected that the victim would commit the crime of stealing bulk cement at Teluk Bayur Port so that the security guard on duty did not hesitate to persecute, resulting in the death of the victim. This case was successfully decided by the Padang District Court Class 1-A on October 16, 2020. In Decision Number: 372/Pid.B/2020/PN.Pdg the defendant Eko Sulistiyono was sentenced to imprisonment for 1 (one) year and 6 (six) months and in Decision Number: 373/Pid.B/2020/PN.Pdg the defendant Effendi Putra was sentenced to imprisonment for 4 (four) years and 6 (six) months. In other words, two security guards on duty in the Teluk Bayur Port area, Padang City, West Sumatra, were convicted of criminal abuse involving the death of people in the Padang District Court Class 1-A. Based on the above background, the author is interested in conducting research, by raising the issue of how the judge considers the defendant's statement in imposing a conviction by a security guard while on duty there is Decision Number: 372/Pid.B/2020/PN.Pdg and Number; 373/Pid.B/2020/PN.Pdg? and how is the judge's decision based on consideration of the defendant's statement in imposing a sentence of a security guard while on duty there is a Decision Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg?

## METHODS

This research is a legal research with the specification of research that is *descriptive analytical*. The approach used is normative juridical by conducting *in-concreto* research on court decisions Number: 372/Pid.B/2020/PN.Pdg and Number; 373/Pid.B/2020/PN.Pdg. The data used is secondary data, obtained through literature studies/document studies. The data obtained by the ministry were analyzed qualitatively and presented in a qualitative descriptive form.

## RESULTS AND DISCUSSION

### Case of Position of Decision Number: 372/Pid.B/2020/PN.Pdg and Number 73/Pid.B/2020/PN.Pdg

#### 1. Verdict No. 372/Pid.B/2020/PN.Pdg

One of the case decisions analyzed in writing this article is case Number: 372/Pid.B/2020/PN.Pdg, which has been heard by the First Instance at the Padang District Court Class I-A, which concerns issues concerning the criminal act of maltreatment causing death by security guards while on duty, as regulated and threatened with crime in Article 351 Paragraph (1) of the Criminal Code. The criminal act of molestation was committed by the defendant named Eko Sulistiyono Bin Suraji Pgl. Eko, aged 30 years, male, working as Security.

The defendant was arrested by: Investigators on January 1, 2020. His Legal Advisor is named: Sahnan Sahuri Siregar, S.H., M.H, Julaidin, S.H., M.H, Ahmad Rojali Nasution, S.Sy., M.H, Zennis Helen, S.H., M.H, Yulisna Dewi, S.H., M.H, Sonny Dali Rakhmat, S.H., C.P.L, Medi Afrizal, S.H.I. Based on a Special Power of Attorney dated June 10, 2020, which has been registered at the Registrar of the Padang District Court on June 15, 2020 Number: 64/PF- Pid/VI/2020/PN Pdg. The defendant was charged with the

<sup>5</sup> Hermawan Sulistyo, et al, *State Security, National Security, and Civil Society*, Pencil-324, Jakarta, 2009, p. 19.

FIRST charge, violating Article 338 Jo article 55 paragraph (1) 1st of the Criminal Code.; SECOND, violating Article 170 paragraph (2) 3rd of the Criminal Code, or THIRD namely Article 351 Paragraph (1) of the Criminal Code. Considering that the defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges taking into account the legal facts mentioned above, directly chose the third alternative charge, namely Article 351 Paragraph (1) of the Criminal Code, whose elements are as follows:

- a. Whose goods;
- b. Causing bad feelings (suffering), pain (pijn) or injury;
- c. Done deliberately;

All elements of Article 351 Paragraph (1) of the Criminal Code have been fulfilled, so the accused must be declared to have been legally and convincingly proven to have committed a criminal act as charged to him in the Third alternative. The defendant was sentenced to imprisonment for 1 (one) year and 6 (six) months.

## 2. Decision Number: 373/Pid.B/2020/PN.Pdg

The decision of the second case analyzed in the writing of this article is case Number: 373/Pid.B/2020/PN.Pdg, which has been heard by the Padang District Court Class I-A which concerns the criminal issue of torture to death by security guards while on duty, as regulated and threatened with crime in Article 351 Paragraph (3) of the Criminal Code of the defendant named Efendi Putra Bin Syafril Pgl.Pendi, aged 32 years, Male, Security Occupation.

Defendant The defendant was arrested by: Investigators on January 1, 2020. The defendant was accompanied by his Legal Counsel Sahnan Sahuri Siregar, S.H., M.H, Julaidin, S.H., M.H, Ahmad Rojali Nasution, S.Sy., M.H, Zennis Helen, S.H., M.H, Yulisna Dewi, S.H., M.H, Sonny Dali Rakhmat, S.H., C.P.L, Medi Afrizal, S.H.I. Based on the Special Power of Attorney dated June 10, 2020, which was registered at the Registrar of the Padang District Court on June 15, 2020 Number: 64/PF- Pid/VI/2020/PN Pdg. The defendant has been charged with charges in the form of a combination of subsidairity with alternatives, namely, First Article 338 Jo article 55 paragraph (1) 1st of the Criminal Code, second Article 170 paragraph (2) 3rd of the Criminal Code or Third Article 351 paragraph (3) of the Criminal Code. Based on the facts revealed and evidence found, the defendant was sentenced to imprisonment for imprisonment for 4 (four) years and 6 (six) months.

## The judge's consideration of the defendant's statement in imposing a sentence by the security guard while on duty In Decision Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg.

The judge's consideration is absolutely necessary in the trial process and in making decisions. Criminal Offences of Mistreatment are the use of physical force, whether or not under threatened conditions on a person, group, or community that can cause trauma, death, psychological trauma, developmental disorders, and harm. In short, in this discussion persecution is committing acts of violence that have resulted in the death of another person. In both cases examined in this study, both defendants were involved in an incident that caused the death of the victim. In court, defendant awas found to have violated Article 351 a yat (1) and (3) of the Criminal Code on the criminal offense of molestation. The defendant in decision Number: 372/Pid.B/2022/PN.Pdg was proven to violate Article 351 ayat (1) while the defendant in decision Number: 373/Pid.B/ 2022/PN.Pdg was proven to violate Article 351 Paragraph (3).

In other words, in both cases, the defendant has been held accountable for his actions in

court. The form of criminal liability in decision Number: 372/Pid.B/2022/PN.Pdg and decision Number: 373/Pid.B/2022/PN.Pdg, related to acts of mistreatment committed by security guards while on duty which has been decided by the panel of judges also looks different. In decision Number: 372/Pid.B/2022/PN.Pdg, the defendant was decided to account for his actions by serving a prison sentence of 1 year 6 months while in decision Number: 373/Pid.B/2022/PN.Pdg the defendant was decided to account for his actions by serving a prison sentence of 4 years and 6 months.

According to the theory of criminal liability, criminal liability is imposing penalties on makers for acts that violate prohibitions or give rise to prohibited circumstances. Criminal liability therefore involves the process of transferring the existing punishment for the crime to the maker. Before deciding on the form of responsibility for the actions committed by the defendant, the panel of judges must first give its consideration. The judge's own consideration includes two forms, namely juridical and non-juridical considerations. Juridical considerations are considerations that are legal in nature or pertain to matters listed in the criminal justice system. In other words, juridical considerations relate to the following:

**a. Public Prosecutor's Indictment**

The indictment is the basis of criminal procedure law because it is the basis for examination at trial (Article 143 Paragraph 1 of the Code of Criminal Procedure). The indictment containing the identity of the accused also contains a description of the crime and the time it was committed, as well as the article violated (Article 143 Paragraph 2 of the Code of Criminal Procedure).

**b. Witness Statements**

According to Article 184 of the Code of Criminal Procedure, witness statements are evidence. As long as the testimony relates to a criminal event that he himself heard, saw, and experienced, and must appear in court under oath.

**c. Defendant's Statement**

The defendant's testimony including evidence according to Article 184 of the Code of Criminal Procedure is regulated in point e. The defendant's testimony is what the defendant says in court about the acts he has done or that he knows or experienced himself.

**d. Evidence of Suspects or Defendants**

Items of the Accused or Suspect that can be used as evidence are items that are wholly or partially suspected or obtained from a criminal act or partly proceeds from a criminal act.

**e. Articles indicted**

The articles imposed to sentence the accused are often revealed in court. These articles begin and are seen in the public prosecutor's indictment as a legal provision for criminal acts committed by the accused.

Meanwhile, non-juridical considerations relate to matters inherent in the defendant (not legal) such as the defendant's history or other things that may affect the appropriateness of the sentence to be served by the defendant. On this occasion, the discussion will focus on juridical considerations related to evidence, especially the evidence of the defendant's statement.

According to Article 189 of the Code of Criminal Procedure (KUHAP), (1) the defendant's statement is what the defendant says at the trial about the acts he committed or

that he knows or experienced, and (2) the defendant's statement is given outside the court. The trial may be used to assist in the discovery of evidence, provided that the testimony is supported by valid evidence as long as it relates to the charges against him, (3) the defendant's testimony can only be used against himself; and (4) the defendant's testimony alone is insufficient to prove that he committed the act for which he is accused; must be accompanied by other evidence. In the process of proving every case, including cases of persecution, the evidence of the defendant's testimony becomes something that should be carefully considered by the panel of judges.

Meanwhile, in the theory of evidence, it is explained that the evidentiary process is divided into two, namely the activity of revealing facts, and the work of analyzing facts as well as analyzing the law. The fact itself will be revealed by analyzing all evidence, including the defendant's statement. As explained earlier, in both cases, each defendant was found to have violated a different article. In other words, the proof process will also be different. In decision Number: 372/Pid.B/2022/PN.Pdg, the evidentiary process will relate to whether the defendant is proven to have violated Article 351 Paragraph (1), while in decision Number: 373/Pid.B/2022/PN.Pdg, the evidentiary process will relate to whether the defendant is proven to have violated Article 351 Paragraph (3). To declare that a defendant has been found to have violated the article charged by the public prosecutor, the defendant must first be proven to have fulfilled all the elements of the article charged against him.

In decision Number: 372/Pid.B/2022/PN.Pdg, the elements of Article 351 Paragraph (1) are as follows:

- a) Whose goods;
- b) Causing bad feelings (suffering), pain (*pijn*) or injury;
- c) Done deliberately.

Meanwhile, in decision Number: 373/Pid.B/2022/PN.Pdg, the elements of Article 351 Paragraph (3) are:

- a) Whose goods;
- b) Committing Persecution that leads to the Death of persons;
- c) Done deliberately;

After knowing the elements of each article charged against the defendant, the judge's consideration will be given. To be able to explain whether the defendant has been able to fulfill these elements, the Panel of Judges will give its consideration based on several things, one of which is based on the defendant's statement.

In decision Number: 372/Pid.B/2022/PN.Pdg, for the element of "everyone", based on the defendant's statement, the Panel of Judges considered that the defendant was not a person who was physically and spiritually unhealthy. The defendant is able to give clear testimony so that the element of "everyone" is declared to have been fulfilled.

Then for the element "Causing bad feelings (suffering), pain (*pijn*) or injury", from the defendant's statement it is found that the defendant justifies himself having caused bad feelings (suffering), pain (*pijn*) or injury to the victim. The accused said that the accused also fought with the victim named Adek Bidai. Initially, the defendant and witness Efendi were patrolling a public concrete pier using a motorcycle, then witness Efendi got off and waited at the guard post while the defendant patrolled on foot alone. During the patrol, the defendant met the victim and then the defendant tried to tell the victim to get out of the port area.

Initially, the victim followed the defendant's advice and walked towards the exit, but on the way the victim turned right towards the PT mess. CSK. Then the accused met witness Efendi at the guard post and asked if witness Efendi saw the victim passing by and it turned out that witness Efendi said there was no seeing the victim. Then the defendant walked towards the PT mess. CSK and saw the victim enter the mess so the accused told the victim to get out of the port. While the victim was in the mess, the defendant gave a flashlight signal

towards the guard post to ask witness Efendi for help. The victim was unwilling to come out and utter obscenities to the defendant, so the defendant pulled the victim's jacket.

The victim resisted by hitting the defendant and then the defendant also hit the victim back with a wooden stick letter T 2 (two) times and with the defendant's hand so that the defendant fought with the victim. The victim then pulled out a knife and swung it towards the defendant. When there was a fight between the defendant and the victim, witness Efendi came from the direction of the guard post approached the defendant and because he saw the victim pull out a knife, witness Efendi told the defendant to retreat. Witness Efendi pushed the victim's body so that it stumbled against the mess wall and twisted the victim's hand so that the knife held by the defendant fell to the ground. After the knife fell, witness Efendi lowered his head to get the knife. When witness Efendi looked down, the victim took out a machete from his jacket and swung it at the defendant so witness Efendi thrust a knife into the victim's thigh.

When the victim pulled out a machete and swung it at witness Efendi saying "den bunuah ang (I kill you)", witness Efendi was able to avoid it. Seeing that, the defendant just stood while closing his eyes so he did not know how the knife stabbing carried out by witness Efendi on the victim. The distance the defendant stood from the location of the witness Efendi fighting with the victim was about 2 meters. The duration of the fight between witness Efendi and the victim was less than 10 minutes. The defendant opened his eyes again and saw the incident when the victim had fallen face down on the ground. When the victim was face down on the ground, the defendant saw a knife located on the victim's left and a cleaver near the victim's right hand.

If viewed in more detail, the author found that according to the testimony of witnesses who participated in fighting with the defendant to defeat the victim, the witness was unable to provide detailed information as to what kind of injuries caused by the defendant to the victim. The witness only gave a statement saying that the witness saw the defendant hit the victim's body but the defendant had no injuries. From the defendant's statement, the word that confirmed that the defendant had caused the victim injury was "The defendant also hit the victim back with a T letter stick 2 (two) times and with the defendant's hand so that the defendant fought with the victim". In connection with other evidence that also supports this fact is the evidence of the letter, the letter of *Visum et Repertum* results against the victim whose results on the examination of the victim's head were found as follows:

- a) Face abrasions were found on the right cheek 25 cm, distance from mid-6.5 cm, distance from mouth corner 7.5 cm;
- b) Abrasions were found near the nose, 1 cm long, 1 cm wide, nostril distance, 1 cm distance from the first wound, 2 cm;
- c) Abrasions were found on the neck, 2 cm long, 1 cm wide, distance from the midline of the body, 3 cm, distance from the ears, 8 cm.

Thus, the defendant's testimony regarding the sequence of events, then adjusted to the testimony of witnesses, evidence and clues, the panel of judges stated that the element of "Causing bad feelings (suffering), pain (*pijn*) or injury" was also fulfilled.

Furthermore, with respect to the element "Done intentionally", the defendant's testimony also had a major influence in the judge's consideration to declare the element fulfilled. The element of intentionally having to include the purpose of inflicting pain or injury on another person. Inflicting pain or injury on another person is the goal or will of the perpetrator where this will or purpose must be inferred from the nature of the act that can cause the pain or injury. In this case there must be a touch on the body of another person which in itself causes pain or injury to the body of that person, for example by hitting, kicking, scratching, or stabbing or slicing with sharp tools. Just like the previous element, the defendant's statement that "the defendant also hit the victim back with a T letter stick 2 (two)

times" became the key information to state that the defendant fulfilled this element because the fight between the defendant and the victim was not entirely witnessed by witnesses. In addition, from the defendant's statement that said, "the victim did not want to be told to leave the forbidden area but instead uttered obscenities" it was also illustrated that the defendant was ignited with emotion and that was the reason the defendant hit the victim. Therefore, the element of "deliberately" is said to have been fulfilled by the panel of judges.

Then, the same as decision Number: 372/Pid.B/2022/PN.Pdg, while in decision Number: 373/Pid.B/2022/PN.Pdg, "whose element of goods" is also said to be fulfilled based on the ability of the accused to give information and by looking at his identity that has met the category of a capable person before the law. However, the difference in the judge's consideration lies in the element of "Committing Persecution that causes the Death of People". In the element of "Committing Persecution that Causes Death of People" the defendant's statement has no major effect because the key to this element is fulfilled or does not lie in the doctor's testimony about what caused the death of the victim. Even if the victim admits that he has committed violence, it does not mean that he is the cause of the victim's death.

To say that this element is fulfilled, the panel of judges considered two things, first whether it was true that the persecution was committed by the accused and whether the death of the victim was caused by the persecution. The defendant's testimony in this section makes it clear that it was true that he committed the persecution that caused the death of the victim. The statement reads "the defendant plunged the knife that the defendant took when the knife fell on the ground and then plunged the knife towards the victim's thigh and after being stabbed by the knife, the victim lowered his body slightly and then the defendant thrust the knife back in his hand towards the victim's body so that it hit the victim's chest and then the victim fell face down to the ground and bleeds heavily".

Because the doctor's statement said that the cause of death of the victim was severe bleeding in the left chest due to stab wounds between the fourth sternum penetrating the left lung and penetrating the heart bag to the left heart muscle and there was blood in the heart bag (heart failure) caused by sharp trauma. Thus the question of whether the abuse by the accused caused the death of the victim. Thus, based on the defendant's testimony and other evidence, the panel of judges said the element of "Committing Persecution causing the Death of a person" was fulfilled.

Furthermore, the Element of "done intentionally" was also said to be fulfilled by the panel of judges taking into account that the defendant gave testimony justifying himself stabbing the victim with a knife more than once until he lay on the ground. According to the author, the judge's consideration of this element may be erroneous because the information related to "the victim who bowed to the ground after being stabbed" may be interpreted by the defendant as a threatening act because bowing may be a movement to find a tool to attack back the defendant. In addition, the fight between the defendant and the victim first started because the defendant saw that his co-worker (witness) had already fought with the victim. It could be that the reason the defendant participated in the fight and stabbed the victim was because he wanted to save witnesses who had been threatened because of the victim's actions. In this element, according to the author, the panel of judges has not thoroughly considered the information given by the defendant.

Based on the explanation above, in these two cases, the defendant's testimony supported by other evidence provided in the trial can prove the elements of the criminal act referred to in the article charged. In other words, based on the facts described in the defendant's statement, it can be understood that the panel of judges has given consideration to the information so that the defendant has been found guilty, receiving punishment in accordance with the criminal act he has committed. However, according to the author,



regarding the element of "intentional conduct" in the decision Number: 373/Pid.B/2022/PN.Pdg, the judge's consideration can still be refuted by the defendant's interpretation regarding the movement of the fight victim.

After that, non-judicial considerations related to the defendant's testimony were illustrated from the judge's consideration which stated the defendant's statement that said that the defendant regretted his actions and the defendant's actions were also preceded by the victim's actions entering the port area without permission which was the responsibility of the defendant as mitigating. Thus, the judge's consideration of the defendant's testimony in imposing a conviction by the security guard while on duty. In Decision Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg have referred to judicial and non-judicial considerations.

**The judge's decision is based on consideration of the defendant's testimony in imposing a sentence by a security guard while on duty. In Decision Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg**

In decision Number: 372/Pid.B/2022/PN.Pdg and decision Number: 373/Pid.B/2022/PN.Pdg, which were examined in this study, the panel of judges has handed down different decisions. In the decision Number: 372/Pid.B/2022/PN.Pdg, decided to declare the defendant Eko Sulistiyono Bin Suraji Pgl. Eko legally and conclusively guilty of committing the crime of "Persecution" as in the third alternative charge of the Public Prosecutor, namely violating Article 351 Paragraph (1) of the Criminal Code, punishing the defendant Eko Sulistiyono Bin Suraji Pgl. Eko therefore with imprisonment for 1 (one) year and 6 (six) months, stipulate that the period of arrest and detention that has been served by the defendant be deducted entirely from the sentence imposed, order the defendant to remain in custody, declare evidence in the form of: 1 (one) wood-handled machete blade with a length of 38 cm, 1 (one) silver knife blade with a length of 26 cm, 1 (one) piece of T lethal stick 56 cm long, seized for destruction, 1 (one) strand of black parachute jacket brand *Lands end*; 1 (one) strand of striped patterned shorts, 1 (one) strand of dark blue T-shirt brand *Quik silver*, Returned to the victim's heirs (witness Wira Frianti), burdening the defendant to pay the cost of the case in the amount of Rp. 2,000,- (two thousand rupiah).

Meanwhile, in the decision Number: 373/Pid.B/2022/PN.Pdg, the panel of judges decided that the defendant Efendi Putra Bin Syafril Pgl. Fendi was legally and conclusively proven guilty of committing the crime of Persecution resulting in death as in the third indictment of the Public Prosecutor, namely violating Article 351 a yat (3) of the Criminal Code, punishing the defendant Efendi Putra Bin Syafril Pgl. Pendi therefore with imprisonment for 4 (four) years and 6 (six) months, stipulate that the period of arrest and detention that has been served by the defendant be deducted entirely from the sentence imposed, order the defendant to remain in custody, declare evidence (one) wood-handled machete blade with a length of 38 cm, 1 (one) silver knife blade with a length of 26 cm, 1 (one) piece of T lethal stick 56 cm long, 1 (one) strand of black parachute jacket brand *Lands end*, 1 (one) strand of striped patterned shorts, 1 (one) strand of dark blue T-shirt *Quik silver brand*, used in this case. Eko Sulistiyono Bin Suraji Pgl. Eko; and Burden the Defendant to pay the cost of the case in the amount of Rp. 2,000,- (two thousand rupiah).

According to the theory of Criminal and Penalties, the provision of crime or punishment is a journey or steps taken to establish a crime on violators of the rules. The measures have also been recognized as official by the state. In other words, punishment talks about the process while criminal is the form, process of giving or ways of giving punishment and the form of punishment given. The purpose of providing crime can be seen from various aspects such as making a deterrent, preventing crime, and guiding perpetrators to live a more decent life in the future (not repeating their actions).

From the two contents of the verdict described above, it can be seen that convictions have been carried out on both defendants. Each defendant was equally sentenced to imprisonment. The prison sentences given to both verdicts are not large enough, only 1.5 years and 4.5 years. According to the author, the purpose of sentencing the two defendants is to provide a deterrent effect so that the defendants are more careful in their duties. From the verdict given by the panel of judges in this case, it is illustrated that there is no exception to the punishment for security guards. Even if the security guard persecutes the alleged thief victim, the punishment must still be enforced. Taking the lives of others is still taking lives. No reason can justify such actions.

If discussed further, the judge's decision must be accompanied by legal considerations as an accountability to the community, stating the judge's reasons for taking the decision, so that it has objective value. Considerations in deciding a case must be based on considerations that can be seen both in juridical and non-juridical terms. As explained earlier, juridical considerations relate to several matters such as the Public Prosecutor's Indictment, Witness Statements, Defendant's Statements, Evidence of Suspects or Defendants' Objects, and the Articles Indicted while non-juridical considerations are considerations given by the judge related to the background of the accused.

Therefore, both judgments have also drawn juridical and non-juridical considerations. In this decision, juridical considerations refer to the judge's considerations related to proving the elements of the article charged by the JPU while non-juridical considerations are given by the judge related to the background of the accused. In both cases, the defendant's background has made the judge ease the law or become mitigating matters. An example is consideration of the fact that the defendant is the backbone of the family.

In addition, if it is related to Article 183 of the Code of Criminal Procedure, the judge sentences the defendant and cannot impose a crime unless there are at least two valid pieces of evidence that the judge believes that a crime has occurred and the defendant is guilty of committing it. In these two decisions, it can be seen that the evidence that has been considered by the judge has been more than two or meets the provisions of Article 183 of the Code of Criminal Procedure.

Then, according to Article 185 Paragraph (2) of the Code of Criminal Procedure, witness testimony alone is not sufficient to prove that the accused is guilty of the act charged, while Paragraph (3) states that this provision does not apply if accompanied by other valid evidence (*Unus Testis Nullus Testis*). The victim witness is also qualified as a witness, so that if there is other evidence as referred to in Paragraph (3), it is sufficient to prosecute the perpetrator of the crime. In connection with the above provisions, the evidence used in these two cases is more witness statements, defendant statements and letters. Thus, there is no reason that a judgment that has been handed down by a judge can be refuted (legally flawed).

However, according to the author, there is still a weakness of this ruling is the fact that the panel of judges ruled out the factor of demanding the work of a security guard which was the reason for the defendant to commit acts of persecution that led to the death of the victim. Based on the testimony of the accused and witnesses, the fact that the victim entered the forbidden area where the defendant served has been clearly revealed. Evidence or statements of the accused in connection with the reasons of self-defense or carrying out duties cannot be used as a basis by the panel of judges to decide the defendant acquittal in this case. However, according to the author, this should be used as a reason to further reduce the defendant's sentence. Then, the difference in the amount of crime that is quite different for the two defendants is also a matter that can be debated. The testimony given by the defendant does not dispute the fact that the victim entered the prohibited area and the victim resisted the defendant at the time of arrest by the defendant should also be used as a reason to further commute the sentence.

## CONCLUSIONS

The judge's consideration of the defendant's statement in imposing a sentence against the Security Guard While on Duty in Decision Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg has included juridical and non-juridical considerations. Second, that the judge's decision based on consideration of the defendant's statement in imposing a conviction by the security guard while serving in Decision Number: 372/Pid.B/2020/PN.Pdg and Number: 373/Pid.B/2020/PN.Pdg is based on the evidence of the defendant's statement and adjusted to other evidence such as witness statements and letters.

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