

The Nomenclature of Judicial Reasoning Steps to Determine Mistakes and the Act of Videotron's Procurement Corruption in the Ministry of Cooperatives and SMEs of the Republic of Indonesia

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Differences in nomenclature, regarding the legal reasoning of *judex facti* and *judex juris* decisions, occur in determining the act of taking part in a criminal act. This is due to different reasoning methods. The legal consideration approach to *judex facti* decisions, in verifying facts as norms, is performed lexically. The way the judge's logic works is by using deductive logic and verifying the facts of the defendant's actions to normalise elements that are merely restrictive. The *judex juris* decisions of judges and the *judex facti* legal judgments understand the act of participation in corruption case by using an inductive reasoning method. *Judex juris* decisions examine *judex facti* legal considerations by determining the major premise more extensively. Judges search for the legal principles underlying norms to verify the facts of the defendant's condition. The results of the verification and the conclusion of *judex juris* state that the defendant's actions are proven but there are no faults. Thus, *judex facti* decisions are cancelled and it is decided that the defendant is free from all legal charges.

Key words: *legal reasoning, judge decision, corruption crime.*

Background

The judicial reasoning steps in prosecuting corruption (in the case of Videotron's procurement at the Office of the Ministry of Cooperatives and SMEs of the Republic of Indonesia), become a theoretical problem. This is so when a fundamental difference in the reasoning of the judge determines the ontological error of the defendants' participation. The three defendants in this case were tried separately with different case numbers. However, the defendants were charged with the same subsidiarity charge, namely the provisions of Art. 2 (1), jo Art.18 (1b), Art. 3 Corruption Act and provisions Art. 55 (1), the 1st Criminal Code. Hendra Saputra, Kasiyadi and Riefan Avrian were indicted and prosecuted in separate trials. The position of the cases was that Defendant Hendra Saputrayang has an elementary school education and is an Office Boy in the Office of PT. Rifuel. The defendant was then appointed as Director of PT Imaji Media by Riefan Avrian President Director of PT. Rifuel.

Defendant Kasiyadi is the Chairperson of the Goods and Services Inspection Committee at the Office of the Ministry of Cooperatives and SMEs. The defendant has the task of examining, researching, evaluating and accepting the results of the procurement of goods and services in the Budget Implementation of the Ministry of Cooperatives and SMEs.

From the fact examination at the evidence stage of the trial, the judge at the Central Jakarta Corruption Court believed that the act of taking part in the crime of the three defendants had fulfilled every element of the Public Prosecutor's indictment. The legal consideration of the panel of judges of the three case decisions, in its ruling that fulfilled the elements of the indictment article, found the mistakes of each defendant were proven. In the first instance of considerations, the legal decisions of the three judges were taken over by the appellate court judges. They first and upheld the court decisions. However, the *judex juris* judge tried to appeal to the defendant Hendra Saputra P.T. An image, in legal considerations, assessed the act of the defendant, who accepted and carried out the project work on the procurement of Videotron. They could not be charged with criminal liability based on the act of participation because the act proved to not meet the element of error.

In the search for authors, there are three previous authors who have conducted research with the object of inclusion of criminal acts. First: Research on application teachings of inclusion in Indonesian criminal justice was conducted by Surastini Fitriasih (Fitriasih, 2006). Second: Research on the problem of legal reasoning patterns in the study of customary land case decisions was examined by Shidarta (Shidarta, 2010). Third: A research report on the responsibility of the perpetrators included in criminal acts was conducted by Agnes Susanty Sambulele (Susanty, 2013). These three studies have a fundamental difference from the authors'. The focus of this study is related to the legal ratios of reasoning (Sunggono, 1998). Legal considerations of *judex facti* and *judex juris* in court decisions result in differences in

final decisions. The difference in the legal determination of the element of misconduct and error between *judex facti* and *judex juris* judges, in this case, is a picture of the discrepancy of the normal reasoning method of facts in the *judex facti* judge's decision. This is the object of the *judex juris* judge's examination. The principles of differences in judges' decisions regarding the determination of errors stem from the reasoning of norms and facts. In this case, it is a discourse that is scientifically feasible in finding the location of differences in the principle of determining the error of the accused. This found the judge's adjudication decision.

Problem Formulation

As the background explanation of the issues raised above, there are two interesting issues to be formulated as problems related to the judge's reasoning:

1. How does legal consideration, regarding the nomenclature of the *judex facti* judge's reasoning, determine the actions and misconduct of participation in the criminal act of Videotron's procurement projects at the Office of the Ministry of Cooperatives and SMEs of the Republic of Indonesia?
2. Why is there a difference in the *judex juris* and *judex facti* judge's legal considerations in determining the conduct and misconduct of participation in the criminal offense?

Method

The research presented in this paper is classified as normative legal research. This is because the focus of this study is the application of judges to the provisions of positive law in prosecuting corruption. The type of data examined is secondary data. It is the main data, which consists of primary legal material in the form of a criminal act of corruption and Article 55 of the Criminal Code. Secondary legal material consists of *judex facti* and *judex juris*' court decision documents, the writings of legal experts who write about legal reasoning and legal argumentation as well as print law journals (mainstream) and online material. The analysis of the data in this study relates to the legal material in the form of *judex facti* and *judex juris*' decisions. There are qualitative descriptive analysis techniques of judges' legal considerations, which are then linked to statutory provisions and expert opinions to draw conclusions from the results of the study.

Results and Discussion

1. The nomenclature of the *judex facti* judge's reasoning regarding the act and error of participation in the criminal act.

In carrying out penalties in the examination process, several known nomenclatures cannot be ignored. The procedural stages of the process of hearing in a court is determined by court procedural law. This becomes a strict facility for determining the nomenclature of the correct sentencing measures. Consequences of wrong sentencing steps will make the penalty a fallacy and lead to the wrong conclusions as well. The object of the research into the Videotron procurement corruption case is to consider the punishment of the judges. This is done by determining actions and problems related to aid and crime. In a simple way, it can be seen in each party's involvement in the indictment of this corruption act. It can be mapped in the table below.

Rationale 1

The reasoning of the judges of the judex facti court and judex juris in determining the element of the criminal acts of the defendant

No.	Case	Proven Law of Corruption and the Criminal Code	Considerations
1	Hendra Saputra:	Article 2, section (1), in conjunction with Article 18, section (1) b, Law of Corruption, in conjunction with Article 55, section (1), of the criminal law	Considerations: the defendant was proven to have participated in a criminal offense although only as a tool for the defendant Riefan. Prison criminal deviations are minimal limits.
	District court decision:	Criminal elements that are fulfilled: 1. everyone; 2. unlawfully; 3. enriching oneself, another person or a corporation; 4. harming the country's finances or the country's economy; and 5. those who do, who order to do or who take part in the deeds.	
		<i>Dissenting Judge Adhoc's Opinion:</i> The element of an unlawful act was charged. The premier charge was not fulfilled and the element of unlawfulness in the subsidiary indictment was not fulfilled. Judge Adhoc's seat against the defendant <i>onslag</i> .	1 judge handed down the ouncelag verdict.
	Decision of the High Court:	The decision was to take over consideration and substantiation of elements of the Criminal Act of the Judge's Decision of the District Court.	Strengthen the District Court's Decision.

	Decision Cassation:	The defendant's actions are proven, however they are not a crime.	Not proven against the law
2	Kasiyadi:	Article 3, in conjunction with article 18 of the law of corruption, in conjunction with article 55, section (1), in conjunction with article 65 section (1) of the criminal code	Substantive considerations of rulership is that the defendant is proved to have committed criminal acts several times. This results in imprisonment for 3 years and a fine of 50 million.
	District court decision:	Criminal Elements: 1. Everyone; 2. are done with the aim of benefiting oneself, another person or a corporation; 3. abuse the authority, opportunity or means available to him or her because of his or her position; 4. can be detrimental to the state's finances or the state's economy; 5. involve people who do or participate in doing; and 6. involve some criminal deeds that must be seen as stand-alone acts so that they are several crimes.	
		This takes over the legal considerations of the District Court.	

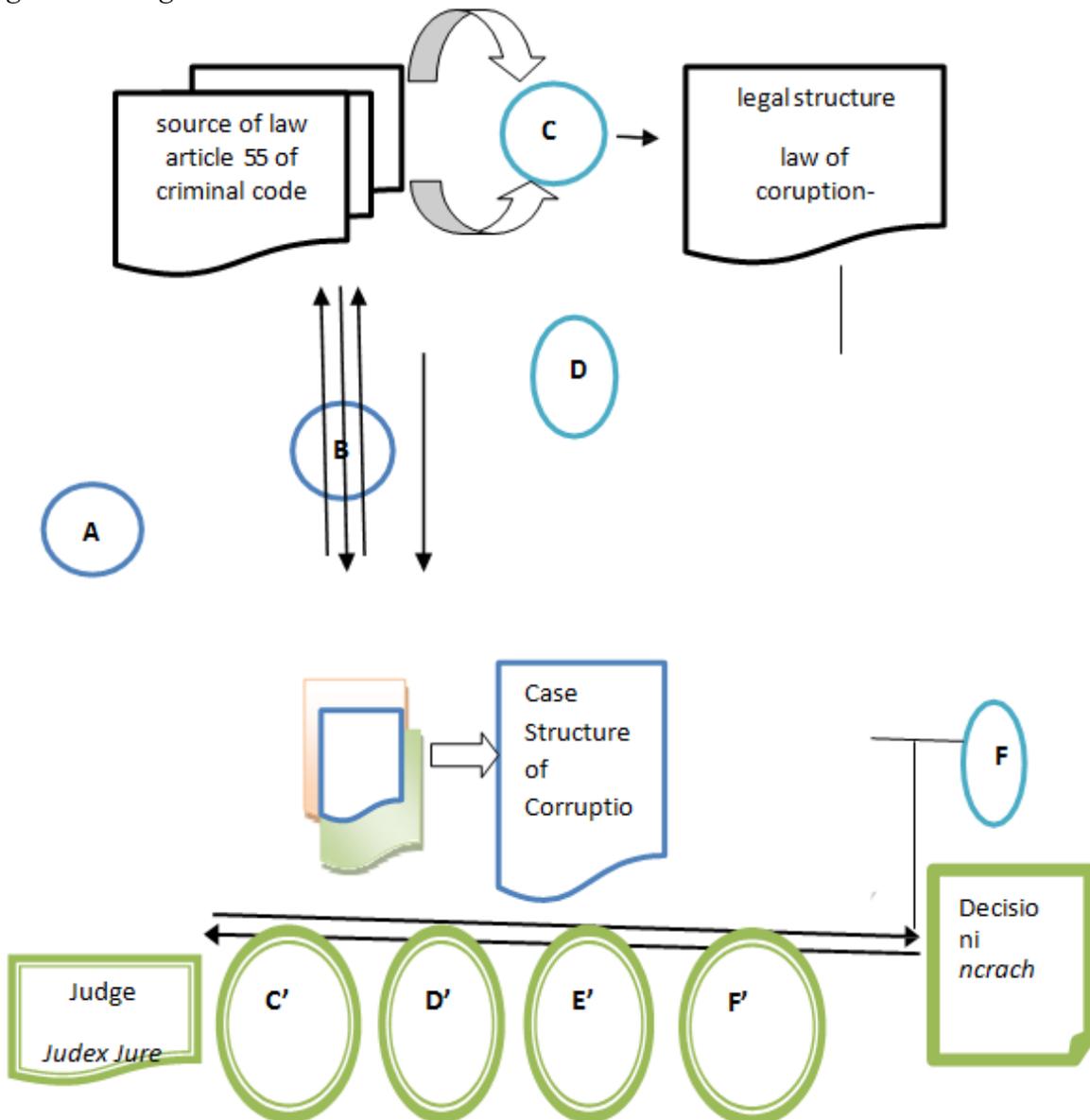
Data source: processed data from the Indonesian Supreme Court Decision Directory.

Based on the facts and legal considerations obtained in the *judex facti* and *judex juris* (Wikipedia) decisions in the table above, the logic of the syllogistic flow of the judges' minds in judging the corruption of the Videotron procurement can be academically explained. The case of Hendra Saputra, as a participant, is a single theme that is questioned in this paper. It involves the three corruption cases that were submitted to the Central Jakarta District Court. Legal reasoning steps are used by judges in legal considerations and conclusions. This is so in the Hendra Saputra Case, number: 36/Pid.Sus/TPK/2014/PN.Jkt and Case Number: 55/PID-/TPK/2014/PT. DKI, if compared with the judicial jury's reasoning steps, can be used in a logical debate to enrich the derivation of juridical nomenclature regarding the meaning of acts and mistakes in corruption.

The steps of reasoning the *judex facti* and *judex jury* decisions, which adjudicate the case (Loqman, 1996) of the accused, Hendra Saputra, can be demonstrated as follows:

Rationale 2

Legal reasoning scheme



From the placement of the judge's position in the raga, it can be explained that the first-level judge who tried Case No. 36/Pid.Sus/TPK/2014/PN.Jkt., carried out the steps of the inspection and verification process. The judge assesses the legal facts with legal norms assumptively. If the evidence is sufficient and the judge is convinced of the truth, the judge must impose a criminal sentence. (Widodo, 2011).

This step is based on the indictment of the Public Prosecutor, whose author symbolises the letter (A). In the shading of the three layers of the emblem of the box (A), the content is in the form of assumptions about the fact of Hendra Saputra's involvement and the state of being. It becomes the judge's obligation to identify the events in the indictment as real facts (facts of reality). The letter (B) shows the steps of qualifying and determining the judge. This regards the ontological structure of the case, the actual facts of Hendra Saputra's actions, the juridical terminology (legal terms), the form of terminology in the nomenclature of criminal acts and errors as well as criminal acts involving Videotron's corrupt procurement.

The letter (C), regards the judge who checks the evidence after translating the legal terms. The next step is for the judge to select the relevant legal rules of the articles of the indictment that apply to the facts. In this stage, the judge comes to the obligation of searching meta-theories about ontological and substance elements contained in the rule of law. This is like digging substantially in the norm variable nomenclature of the indictment article, namely Article 2, paragraph (1), jo. Ps. 18 (1) b UUTPK jo Ps.55 (1), the 1st KUHP. This is done before stating if the elements of the article are proven. According to Shidarta, in this third step, there are three levels of judge activity, namely; Selecting given legal resources, selecting the rule of law in a given source of law and looking for policies in the rule of law. (Shidarta, 2010) Furthermore, according to Shidarta, if a number of rules (norms) from the source of the selected law were found to be imperfect, the judge must carefully select the rules.

Concerning the letters (D) and (E), as the fourth and fifth steps in the above exercise, the author wants to explain the next step of the *judex facti* judge's reasoning (i.e. the reasoning of the first-level judge's ruling, which is upheld by the appeal-level decision). Judges in cases have tried to link the structure of rules to the structure of cases involving criminal acts. In this stage, the judge has determined that establishing the legal structure is a major premise to label juridical facts. In attempts to label this minor premise, the aim is to create a legal conclusion about the presence or absence of an element of crime and error in the accused. In cases of complex acts, such as criminal corruption involving several perpetrators, judges are required to be more thorough and more careful in searching for vocabulary in nomenclature. Juridical meaning (legal terms) from the fact structure and legal structure contain the norm to be translated. Cases of corruption in Videotron's procurement were charged separately with subsidiarity charges. Alternative legal structures have chosen more than one judge to place in the structure of cases taking part. Thus, the judge can open up and have possible alternative answers to the problem of the case being tried. The accuracy of the choices (alternatives) is very much determined

by the scientific integrity and morality of the judge. Hence, the conclusion of a decision becomes quality and fair (symbol F).

In carefully studying the legal considerations of the *judex facti* decision No. 36/Pid.Sus/TPK/2014/PN.Jkt, it can be determined that the attitude of such a ruling shows that there are ambiguities in the role of (Robbins, 2003) reasoning in the content of legal considerations. This is expressed by the two career judges:

1. On one side of the consideration, the judge has positioned the defendant, Hendra Saputra, as a scenario tool for witness Riefan Avrian to realise his evil intentions. This is done to win the procurement of Videotron and confine them, which is not legally justified.
2. On the other side, in the judges' legal considerations, the defendant Hendra Saputra was present when the legal action did not have an element of coercion but was carried out with full awareness of conviction, even for the victim.

Judge (II) Adhoc, in Case Decision No.36/Pid.Sus/TPK/2014/PN.Jkt, made separate considerations with the two panels of judges to determine the criteria of conduct and error. The essence of legal considerations can be described as follows:

Some elements of the article regarding the primary indictment and subsidiary indictment, as described in table 1 above, are not fulfilled:

1. The actions of the accused, in the primary indictment, did not qualify as acts against the law. In the core of his consideration, that defendant Hendra Saputra started from the appointment of the Director of PT Imaji Media to the award of PT Imaji Media as the executor of the Videotron' Procurement Project. This had been arranged in such a way by witness Riefan Avrian in the interests of evil deeds and in his favour. Unlawful elements, committed by the defendant, were not fulfilled and were not proven. Hence, the defendant must be acquitted of the primary indictment (Dimiyati, 2014).
2. In the subsidiary indictment, the element abused the authority, opportunity or means available to him because the position was not proven. In fact, the defendant, as the Managing Director of PT Imaji Media, did not do the work as agreed in the contract. The work was surrendered entirely and carried out by Riefan Avrian as the President Director of PT Rifuel. The defendant was told to sign for the absolute power of the attorney. This was made by Riefan in order for himself to do all the management of PT.IM's rights and obligations. Other proven facts are that the down payment, as well as the final payment in full, were done with the power of attorney. This was received by Riefan Avrian, who turned out to have been fully disbursed by the person

- concerned (Court Ruling).
3. The defendant does not have the skills and ability to assume the position of Main Director of PT. IM. This is based on the fact the defendant did not finish elementary school and only worked as an Office Boy at PT. Refuel. By not fulfilling these elements, the defendant must also be acquitted of the Subsidiary Indictment (Court Ruling).
 4. Differences exist in the logic of the legal reasoning of the *judex facti*'s and *judex juris*' decisions regarding the nomenclature of the act and the mistake of participation in the crime.

In the Supreme Court Judge's legal considerations deciding on the case of the cassation applicant (involving the defendant Hendra Saputra in the Decision Number: 980 K/Pid. Sus/2015), the writer reflects on the letter accents. These are the letters (C), (D), (E) and (F). They act pendulums for legal reasoning in deciding cases. The rationalisation of the letter can be seen again in table 1 above. From this raga, the author demonstrates the message regarding the reasoning of the Supreme Court judge. It is limited only to steps that determine the nomenclature of criminal acts and errors in stages:

- a. selecting relevant legal sources and legal rules to then find out the policies contained in the legal rules (the policies underlying those rules), so that a coherent rule structure (map) is produced;
- b. linking the rule structure with the case structure;
- c. looking for possible settlement alternatives; and
- d. applying the choice of one alternative and then formulating it as the final decision.

These four indicators show that the cassation judge did not conduct an examination of the facts that have been examined at the *judex facti* level. The focus on these four stages is because the stages of the cassation judge delves into and extracts the subject regarding the accuracy or erroneous content of the *judex facti* decision. This consideration is in order to verify and falsify (*panjikeris*). The meaning of nomenclature (regarding actions and errors in legal considerations Case No. 36/Pid.Sus/TPK/2014/PN.Jkt and Number: 55/PID-/TPK/2014/PT.DKI), in the judge's judgment, is an error of reasoning towards the major premise of the contents involving the norms and principles regarding the minor premise. The mistake of reasoning, according to Philipus M. Hajon, is that there is no logical connection between the premise and the conclusion. This is called misguided relevance of reasoning material. (Djatmiati, 2005).

Rationale 3

The logical sources of the legal considerations of judge's decisions

<i>Judex facti</i>		<i>Judex juris</i>	
Premise	Logic sources	Logic sources	Premise
Major premise: article norms	Sourced from norms	Sourced from the norm principle	Major premise: article norms
Minor premise: Fact			Minor premise: Fact
Conclusion: criminalisation		Conclusion of decisions: Onslag	

The legal logic that was built by the *judex juris*' decision (when applying the norms of the law to Hendra Saputra's participating actions), was seen to be independent of three things. These are upholding the law in the provisions of the law by adhering to its principles, upholding the law with justice and remaining civilised.

Conclusion

1. The method of deductive legal reasoning, used by *judex facti* judges in making legal considerations of the defendant's participation, causes the conclusion of the relation of norms to facts to be limited by the textual terminology of elements of the article of the law. As a result of the restriction to the nomenclature of the juridical terminology, the conclusion of the decision is only to find the conformity of the facts of the act to the provisions of the general norms. This is done to determine the conviction sentence.
2. The *judex juris*' legal considerations determine the act of participation based on the *judex facti*'s legal considerations. This starts with the fact of the subjectivity of the defendant who committed the act of participation. From this fact, the *judex juris* seeks the provisions of the legal principles, which are the background of the content of the applied norms, in order to determine the legal considerations inductively and to conclude decisions.

BIBLIOGRAPHY

- (n.d.). Retrieved Januari 19, 2019, from Wikipedia: <https://id.m.wikipedia.org>
- (n.d.). Retrieved januari 16, 2019, from panjikeris: <https://panjikeris.wordpress.com>
- Court Ruling, No36/Pid.Sus/TPK/2014/PN.Jkt.Pst (Pengadilan Negeri).
- Dimiyati, K. (2014). *Pemikiran Hukum Konstruksi Epistemologi Berbasis Budaya Hukum Indonesia*. Yogyakarta: Genta Publishing.
- Djatmiati, P. M. (2005). *Argumentasi Hukum*. Yogyakarta: Gajah Mada University Press.
- Fitriasih, S. (2006). *Penerapan Ajaran Penyertaan dalam Peradilan Pidana Indonesia (Studi Kasus Tindak Pidana Korupsi, Pelanggaran HAM Berat dan Terorisme)*. Jakarta: Universitas Indonesia.
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.
- Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.
- Loqman, L. (1996). *Percobaan, Penyertaan dan Gabungan Tindak Pidana*. Jakarta: Universitas Taruma Negara.
- Robbins, S. (2003). *Prilaku Organisasi” Jilid 1 dan 2*. Jakarta: P.T. Indeks Kelompok Gramedia.
- Shidarta. (2010). Peragaan Pola Penalaran Hukum Dalam Kajian Putusan Kasus Tanah Adat. *Jurnal Yudisial* , 208.
- Sunggono, B. (1998). *Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada.
- Susanty, A. S. (2013). Tanggung Jawab Pelaku Penyertaan Dalam Tindak Pidana (Pasal 55 dan 56 KUHP). *Jurnal Lex Crimen* , 89.



Widodo, F. (2011). Penalaran Hukum Dalam Proses Mengadili Perkara Pidana Dalam Kerangka Kebebasan Hakim. *Pranata Hukum* , 154.