

Criminal Liability For Disseminating Electronic Information Containing Violation Of Decency In The Perspective Of Justice

(Analysis of Supreme Court Decision Number 574 K/Pid.Sus/2018)

Abdul Kholik¹, Iman Imanudin²

Email : abdulkholikseno@gmail.com, imanimanudin@gmail.com

¹Student of Law Magister of Pamulang University, South Tangerang City, Indonesia

²Lecture of Law Magister of Pamulang University, South Tangerang City, Indonesia

ABSTRACT

Baiq Nuril was charged with distributing recordings of decency-containing telephone conversations, but he was acquitted by the Mataram District Court because he was not proven to have violated the article he was charged with. The Prosecutor's Office then filed an appeal, and the Supreme Court found Baiq Nuril guilty in its decision. The decision sparked a backlash, with many believing that Baiq Nuril was a victim of sexual harassment by his superiors, and that he should be protected rather than punished. As a result of the cassation decision, the public now considers law enforcement in this country for the poor to be extremely unfair. For this reason, this thesis discusses several issues related to the case and decision, which can be formulated by how the Panel of Judges considers in imposition of criminal liability for perpetrators of distributing electronic information that has been charged with violating decency in the decision Number 574 K/Pid.Sus/2018 and the form of criminal responsibility for perpetrators of distributing electronic information that has been charged with violating decency? The study's findings indicate that the Mataram District Court Judges actually blamed Baiq Nuril's actions on Haji Imam Mudawin during their deliberations. The decision was later reversed and strengthened at the review level by a cassation panel of judges, which stated in one of its considerations that Baiq Nuril's actions resulted in moral losses to Muslims and their families, as well as Landriati's family. Baiq Nuril's sentencing is primarily intended to protect the honor of Muslims and Landriati as Indonesian citizens, which includes ensuring justice for those harmed by Baiq Nuril's acts.

Keywords : Criminal Liability, Disseminating, Elektronik Information.

A. Introduction

The rapid advancement of information and communication technology (ICT) in the world today,¹ has brought tremendous benefits to the progress of human civilization. In the right way, information and communication technology has the power to improve the quality and reach of information and communication, which could have a big impact on people's lives. People who work with information systems have seen a huge change because computer and telecommunications technologies have come together. A lot of the work that used to take a long time now only takes a few seconds. This means that information can be sent to different parts of the world in minutes instead of days. People in Indonesia are still having a lot of problems because of information technology, even though it's becoming more and more popular. Its use has also grown to the point that it now affects almost every

part of daily life.² Along with the development of the use of information and communication technology, there is also abuse in the scope of electronic and telecommunications networks.³

Criminals can also use information and communication technology to carry out their crimes. This is in addition to the good things that technology can do for people's well-being, progress, and comfort. There is a strong argument that law enforcement against the use of information and communication technology by criminals can no longer be done only through a traditional legal system approach. This is because their activities can no longer be limited to the borders of a country.⁴ Although the ease of access from anywhere in the world has benefited internet users, it has also harmed those who have never interacted with them, as in bank account break-ins via electronic banking (e-banking).⁵ According to many experts, the use of information and communication technology is the primary alternative for conducting human business activities that have traditionally been conducted in the real world.

Following the evolution of the method by which crimes committed through electronic media are carried out, Indonesia has enacted Law No. 11 of 2008 as amended by Law No. 19 of 2016 regarding Information and Electronic Transactions, with the goal of utilizing information and communication technology in a manner that is more consistent with the provisions of the Act. It is the goal of these laws and regulations to protect individuals from various types of crimes that are being perpetrated in today's society, specifically through the use of electronic media to perpetrate criminal offenses. One of these crimes is the transmission of indecency through electronic media. Although the provisions governing decency have been codified in the Criminal Code (KUHP), there is no legislation governing the dissemination of decency-related content over the internet.

Article 282 paragraph (1) of the Criminal Code stipulates that:

"Whoever broadcasts, displays or puts up in public writings, pictures or objects whose contents are known to violate decency, or whoever with the intention of broadcasting, showing or affixing them in public, makes such writings, pictures or objects, imports them into the country, transmits them, removes it from the country, or has stock, or whoever openly or by circulating a letter without being asked, offers it or shows it as available, is threatened with a maximum imprisonment of one year and six months or a maximum fine of four thousand five hundred rupiahs."

Pornography is more specifically regulated in Law No. 44 of 2008 concerning Pornography, but because it does not contain modes of employing electronic media as a means of dissemination, it is governed under the Law No. 11 of 2008 as amended by Law

No. 19 of 2016 itself. The prevention and eradication of the transmission of pornography through computers and the internet is regulated in Article 27 Paragraph (1) with the danger of criminal punishment as regulated in Article 45 of Law No. 11 of 2008 as amended by Law No. 19 of 2016.

Article 27 paragraph (1):

“Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency.”

Article 45:

“Every person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).”

The purpose of this rule is to safeguard the general population from the criminal activity of pornography. Pornography is a crime that occurs frequently, and its dissemination through electronic media has become a widespread practice that is today extremely upsetting to the general public. Even among Indonesian musicians, pornography has grown commonplace (along with narcotics), despite the fact that the vast majority of them are role models and are frequently cited as such by young Indonesians. As an illustration, consider the instance of vocalist Nazril Irham or Ariel, who recorded a song while having sexual relations with the artist Luna Maya. Ariel also recorded himself having sex with the artist Cut Tari, which he later released. Neither recording was created until late in the year 2010.

A case of spreading decency-containing content in the community was brought to the attention of many people a short time ago. One of Mataram's former honorary teachers at a local high school was reported to the Mataram Police Department for allegedly violating Article 27 Paragraph 1, in conjunction with Article 45 of Law No. 11 of 2008, while distributing recorded telephone conversations that contained decency. After going through the entire investigation and prosecution process, according to the Mataram District Court Decision Number 265/Pid.Sus /2017/PN.Mtr, Baiq Nuril was found not guilty of violating Article 27 Paragraph 1 of Law No.11/2008 and was declared acquitted. The Public Prosecutor attempted to have this decision overturned through the legal system, but the Cassation Decision at the Supreme Court Number 574K/Pid.Sus/2018 was found to be correct, finding Baiq Nuril guilty of committing a crime as defined in Article 27 Paragraph

1 of Law No. 11 of 2008.

A heated debate erupted in response to the Supreme Court's decision, with the majority of people believing that Baiq Nuril had been the victim of Muslim sexual harassment and should therefore be protected rather than prosecuted and punished. Muslim was the one who reported Baiq Nuril to the Mataram Police, and he also served as Baiq Nuril's supervisor while she was employed as an honorary teacher at a high school in the area. Muslims frequently communicate with Baiq Nuril over the phone, sharing stories about his sexual relationships with other women (containing elements of decency). Baiq Nuril recorded her phone conversation with the Muslim, which turned out to contain pornographic content, and then disseminated the contents of the conversation until it became widely known to the general public under the pretext of wanting to prove that he had no affair with Muslims.

There have also been criticisms and demonstrations against the Supreme Court's decision to vacate Baiq Nuril's conviction and sentence of imprisonment. Another one came from National Commission Against Violence Against Women, which paid close attention to the sexual harassment that Baiq Nuril had endured, as well as her efforts to defend herself, during the course of the investigation. As an expert witness in this case, National Commission Against Violence Against Women testified before the Mataram District Court, which found Baiq Nuril not guilty of violating Law No.11/2008 and acquitted her of the charges against her. According to National Commission Against Violence Against Women, the Supreme Court's decision is not in accordance with the spirit of Supreme Court Regulation (Perma) Number 3 of 2017 concerning Guidelines for Judges to Adjudicate Cases of Women Facing the Law, which takes the gender dimension into consideration when attempting to resolve cases in the courtroom.

Because of the decision on cassation, the vast majority of people in this country have come to the conclusion that law enforcement for the weak is extremely unfair in this country. Because the mass media, both print and electronic, as well as the internet, were extremely aggressive in informing the public about how Baiq Nuril lost his job, while Muslim, his former boss, received a promotion, a variety of viewpoints emerged. The investigation into the Baiq Nuril case was conducted in an excessively thorough manner. Public was not provided with accurate information and understanding of this case from a legal standpoint. According to the reality that has emerged as a result of the emergence of this case, it appears that the public is increasingly viewing the law in a negative light, without having a complete understanding of the circumstances surrounding this case.

Various media outlets and activists took advantage of this situation, creating widespread belief in the community that Baiq Nuril was a victim of legal injustice in Indonesia. With all of the hoopla surrounding Baiq Nuril's injustice, it is possible that a different way of looking or perspective based on another legal goal that is no less important, namely legal certainty, will be drowned out. All facts were then ignored by his supporters, who instead focused on all of the concerns that Baiq Nuril had, in order to garner public sympathy and attack the criminal justice system under the guise of justice. When it all came down to it, law enforcement gained a negative reputation in the community, and activists claiming to be defenders of justice took to the streets with the slogan "sharp downward, blunt upward."

Until now, there has been no clear definition of what justice means in the judge's own decision, because the meaning of justice differs greatly depending on who is talking about it, such as victims versus perpetrators, and it is difficult to find common ground. Justice for victims represents justice felt by the entire community, or is it just for the victims only? To what extent is it necessary to sacrifice justice for victims or society in order to achieve the meaning of justice for perpetrators? To give you a sense of the context of the investigation into this particular case, it is as follows: It is unjustifiable if society always assumes based on justification from an extra-legal point of view, which is always provided by parties who, according to the author, are counter-productive to law enforcement efforts.

The public has recently expressed dissatisfaction with a number of law enforcement procedures and court decisions, and this has resulted in a decrease in public confidence in the criminal justice system. One of them was the defendant Baiq Nuril, who was sentenced in Cassation Decision Number 574 K/Pid.Sus/2018, which found her guilty of the crime. There are several questions that can be raised in relation to Baiq Nuril's case and decision, including why was Baiq Nuril sentenced to a criminal sentence by the Assembly, despite the fact that some parties believe that Baiq Nuril is a victim of sexual harassment by his superiors? When compared to the previous court's decision, which had acquitted her of all charges, why is the cassation court's decision different? Is it possible that the verdict against Baiq Nuril does not satisfy a sense of justice? But for whom is justice being sought? What about the victims of his dissemination of immoral content? Will there be any justice for them? If so, is the decision unfair as a result of legal uncertainty in the material of Law No.11/2008 as amended by Law No.19/2016? Or is it because there is a legal void? And one of the most important questions is whether justice for Baiq Nuril is far more important than legal certainty in and of itself. Using this problem as a guide, this research will look

more closely at what is written in the decision Number 574 K/Pid.Sus/2018 and how that decision affects the way that victims are treated.

B. Focus of Problem

Regarding to the above explanation the problems are formulated as follow :

1. How the Criminal Liability For Disseminating Electronic Information Containing Violation Of Decency In The Perspective Of Justice?
2. What is the consideration of Judge Decision regarding Decision of Supreme Court Decision Number 574 K/Pid.Sus/2018?

C. Research Methodology

1. Research Model

The data analysis method used a qualitative approach. According to Soerjono Soekanto, the qualitative research model is a research method based on post-positivist philosophy, used to examine the condition of natural objects where the researcher is the key instrument..¹

2. Types of research

The type of research used is descriptive analytical research from the point of view of its nature. This study aims to accurately describe a particular individual, condition, symptom or group, or to determine the frequency of a symptom..²

3. Research approach

The research approach uses three approaches, namely the statutory approach, the conceptual approach and the case approach..³

4. Research Data

The research data used is secondary data which consists of: (a) Primary legal materials, namely binding legal materials, namely statutory regulations related to research, (b) Secondary legal materials, namely those that explain primary legal materials in the form of results. research results, works from legal circles and others, (c) tertiary legal materials include materials that provide instructions or

¹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : 2007, Universitas Indonesia). Hlm 99

² Sri Mamudji, Et.Al. *Metode Penelitian dan Penulisan Hukum*. (Jakarta : 2005. Fakultas Hukum Universitas Indonesia). Hlm 30

³ Peter Mahmud Marzuki, *Penelitian Hukum*. (Surabaya: 2013, Prenada Media Group).Hlm 29

explanations for primary legal materials and secondary legal materials, namely dictionaries, web etc..⁴

D. Finding & Discussion.

1. Theory of Justice

Because people who want to get justice often talk about how justice works with the law, the theory of justice comes from the idea that people who want justice often talk about how justice works with the law. As a result, the law or some kind of statutory regulation applies, but people have a different view of the law. They think the law is fair, and they think the law is unfair.⁷ Criminal justice and civil or administrative law are two types of law that deal with real-world problems. When someone is complaining about a case, the plaintiff thinks the judge's factual assessment is unfair, but the judge draws conclusions instead. In his mind, this decision is logical because there is proof in the form of legal arrangements that backs it up. A person can only understand justice if it is a condition for the law to work. Legal justice is a complicated process that takes a lot of time. When it comes to making things happen, it's also often led by groups that work in general terms of the political order. Justice is thought of as an instinctive desire that is supposed to help the person. The idea of absolute justice is thought of as a problem that affects everyone, nature, and the environment. Monopoly can't exist for a few or a group of people whose definition of justice is based on what they think is best for them.

If so, what is the public's perception of justice in accordance with commonly accepted rules or laws controlling human relations in society or positive law (as is the case in Indonesia). To put it another way, law is a system of principles and norms that govern relationships between persons in society, including relationships between members of the same family and relationships between members of the same family inside a certain country's territory. They also organize their lives in accordance with the same values that exist in society as a whole (shared values), or they have similar ambitions.

Rights and freedoms, opportunities for power, riches, and prosperity are only a few of the conceptions of justice and a just society that exist. The gift of justice, in Aristotle's view was given to all people, but not all people were equal. All persons, or every citizen, is equal before the law, as can be deduced from this statement. Every

⁴ Sri Mamudji. Et.Al. Op.Cit

individual has the right to equal treatment based on their abilities and achievements under the principle of proportionate equality.¹⁰

Several conceptions of justice put presented by John Rawls at the end of the 20th century, including as *A Theory of Justice*, *Political Liberalism*, and *The Law of Peoples*, had a considerable impact on the discourse on the ideals of justice. Considered a "liberal-egalitarian perspective of social justice", John Rawls argues that fairness is the primary virtue of the existence of social institutions. However, virtue for society as a whole cannot overrule or contradict the sense of justice of everyone who has earned a sense of justice. Especially vulnerable people who seek justice.

In the event that they become victims of crime, Indonesian citizens are guaranteed legal protection. It is a fundamental human right for victims to seek restitution, protection, and fair treatment under the law. Everyone has the right to legal certainty and equality before the law, as well as recognition, protection, and guarantees. The right of all human beings to equal treatment before the law and equal protection in accordance with their human dignity is recognized, and all human beings are accorded this right. Pancasila is the ideological and philosophical foundation of the state, and it serves as the basis for the provision of legal protection to the people (in Indonesia).

The objective of criminal enforcement, which includes punishment by the state against perpetrators of criminal activities, is to improve the mentality of the perpetrator, make his actions miserable, and establish law and order in a society that has fallen into disarray. Keeping the public order (*dehandhaving van de maatschappelijke orde*), repairing the losses suffered by the community as a result of a criminal act (*herstel van het door de misdaad onstane maatschappelijke nadeel*), correcting criminals (*verbetering vande dader*), destroying criminals (*onschadelijk maken van de misdadiger*), and preventing crime are the primary objectives of punishment, *according* (*tervoorkonning van de misdaad*).

When a criminal event occurs, the rule of law sometimes concentrates on punishing the perpetrator of the crime, with the victim of the crime often being overlooked or overlooked entirely. Victims and losses are a result of the consequences of crime. The losses suffered can be felt directly by the victim or indirectly by other parties involved in the incident. The objective of punishment is to ensure that the offender does not repeat his crimes and is discouraged from returning to the community alone, while simultaneously ensuring that justice for the victim is not tipped in favor of the culprit.

Rather than being limited to individuals or groups of people, victims of crime may include communities or legal entities as well as entire countries and international organizations. Even if the state is able to bring justice to victims by punishing violators, the state will be unable to do so if the criminal offender is unable to carry out his or her sentence since the right to sue has been destroyed, as has the right to commit a crime itself.

2. Judgment of the Judges

Whether in civil law or common law countries, whether in parliamentary or presidential regimes, the judiciary is always separate from the executive and legislative branches of government. A mixture of legislative and executive tasks are performed in countries that operate under a parliamentary system. In the United Kingdom, for example, a minister must be a member of parliament. A vote of no confidence in the Cabinet can result in the dissolution of the government. Furthermore, the government has the authority to dissolve parliament by expediting the electoral process. Because the judiciary or judicial power is a separate branch of power from the other parts of government, it will continue to be independent of the others. The separation of powers and the independence of the judiciary are inextricably linked. In accordance with the idea of separation of powers, the jury must be free from the influence of the executive and legislative branches of the government. When it comes to interpreting and understanding the constitution and laws, judges must maintain their independence, even when the formulation is carried out based on the viewpoints and even the political will of the legislature. Members of parliament and the president who are directly chosen by the people demonstrate the people's sovereignty in determining the direction of the country's policy. Their significance, however, and how they should be administered are best understood by those who work in the judiciary.

When it comes to state-sponsored activities, judges have very precise roles to play. When it comes to the interests of the judge, he or she must be in the center of the triangle that includes the state, the market, and civil society. Additionally, in the connection between the state and its inhabitants, judges must maintain a sense of proportion in their actions. In a democratic rule of law (*demokratische rechtsstaat*) or constitutional democracy, the existence of an independent and impartial judicial power is considered to be one of the most distinguishing qualities of the state (constitutional democracy). It is essential that an independent and impartial judiciary be ensured in every constitutional democracy, regardless of the legal system in use or the nature of the

administration in place. A lot of people say that the two main principles of the judicial system can be summarized this way. Independence of the judiciary and impartiality of the judiciary are two things that make the judiciary. Two things are thought of as the foundation for modern law in every country, and they are: Separate thought must be shown in how judges' approach and decide cases. Separate arrangements are also seen when it comes to getting a job, getting a promotion, getting a raise, and getting fired from a job. Besides being impartial, there is another important rule. There are a lot of important things about the way justice is done that the impartiality of the judiciary is one of. According to the word "impartial," it is important for judges to be impartial not only when they make decisions but when they do their jobs as well (making impartial decisions).

The evidence system in Indonesia adheres to negative legal evidence or *negative-wettelijk bewijsstelsel*. The defendant can only be found guilty and sentenced based on this evidentiary system if proven guilty according to the law and as a result of the judge's conviction based on the evidence in the case. According to P.A.F Lamintang as quoted by Bambang Waluyo, there are two things that are needed in *negative-wettelijk bewijsstelsel*, namely: 1) *wettelijk* or according to the law, because for proof, the law determines the type and amount of evidence that must be present; and 2) negative, because of the types and quantities of evidence stipulated by the law, the judge must not impose a sentence on a defendant, if the types and quantities of evidence have not been able to generate confidence in the judge. that a crime has actually occurred and that the defendant is guilty of a criminal act. Therefore, judges may not use evidence other than those specified in the law, and judges are also bound by the procedures for using evidence in the law.

Simons, as stated by Andi Hamzah, believes that the law offers a negative system, and when the system is used to punishment, it is based on some proof (*dubbel en grondslag*), particularly on the rule of law and belief. judges, and according to the law, the basis of this judge's trust is based on statutory restrictions. The evidentiary system according to the law is negatively similar to the proof system based on the judge's conviction for logical reasons (*conviction-raisonnee*). This is similar to how in both evidentiary systems the defendant can receive a sentence if the judge conditions the sentence to prove that the alleged criminal event occurred. Court decisions must be accompanied by evidence of a series of reasons (logic). Therefore, a defendant cannot be sentenced without a guilty conviction from a judge.

This differs from the *conviction-raisonnee* method in that the judge's view must be backed by a logical (conclusive) conclusion that is not based on the law, but on provisions based on the judge's understanding of the law and other relevant elements, rather than on the law itself. That he believes what he believes is based on his own selection of evidence to justify it. Meanwhile, *negative-wettelijk bewijsstelsel* is based on rules of evidence that are limited by legal restrictions, but it must be supported by the judge's conviction in order to be considered valid.

The Criminal Procedure Code, in itself, belongs to a legal system that is negative (*negative-wettelijk bewijsstelsel*). The decision of a judge must be based on a minimum of two pieces of evidence, and the evidence must reinforce the judge's conviction in order to determine guilt. According to Article 183 of the Criminal Procedure Code, this is the case. Because Article 183 of the Criminal Procedure Code stipulates those two pieces of valid evidence must be presented in order for the judge to think that the defendant is guilty, if there is only one piece of evidence, it cannot be used to support the judge's conclusion.

In this case, there is also further evidence to take into consideration. According to Article 183 of the Criminal Procedure Code, it is the two legally admissible pieces of evidence that cause the judge to impose a sentence, not any other evidence, and the judge's conviction is determined by the two legally admissible pieces of evidence that he determines, not by any other evidence presented during the course of the trial. Regarding Article 183 of the Criminal Procedure Code which serves as a guide for the evidentiary system adopted in the Criminal Procedure Code, it should also be noted that Article 189 paragraph (4) stipulates that:

"Information alone is not sufficient to prove that he committed the act he is accused of, but must be accompanied by other evidence."

It is possible to conclude from an examination of the provisions of Article 189 paragraph (4) of the Criminal Procedure Code that the defendant's admission of guilt cannot be utilized as a legal foundation for the prosecution. In this instance, the defendant cannot be found guilty only on the basis of his admission of guilt without the addition of further evidence that establishes his guilt beyond a reasonable doubt. Article 183 of the Criminal Procedure Code is reaffirmed in this article, which defines the minimal amount of evidence that must be utilized in a criminal prosecution. This does not imply that the evidence of the defendant's statement is devoid of conclusive and binding proof; rather, this article will make it obvious that the mere existence of a

confession without supporting evidence is insufficient to justify a conviction.

The Mataram District Court's Panel of Judges, in decision Number 265/Pid.Sus/2017/PN.Mtr, acquitted Baiq Nuril of all accusations brought against her by the Public Prosecutor's Office. According to the panel of judges, Baiq Nuril's actions do not satisfy all of the elements of the perpetrators of the act and the main offense elements in the criminal provisions of Article 27 paragraph (1) and Article 45 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions, in particular the element "intentionally and without rights; distribute and/or transmit and/or make accessible electronic information and/or electronic transactions," and the element "make accessible electronic information and/or electronic transactions" in the criminal provisions.

The Supreme Court's cassation judgment Number 574 K/Pid.Sus/2018 nullified the Mataram District Court's Decision Number 265/Pid.Sus/2017/PN.Mtr dated July 26, 2017. The panel of judges at the cassation level believes that judges at the first level have a tendency to make decisions based on incorrect conclusions and considerations because these decisions are not in accordance with the legal facts revealed to the court and do not reflect the facts presented in court. As for the basis for consideration of the Panel of Judges at this level of cassation, on the Defendant's cellphone, the recorded contents of the conversation between Muslim and the Defendant were kept for more than 1 (one) year. Meanwhile, Haji Imam Mudawin repeatedly asked the defendant for the recording on the grounds that it had to be reported to the Mataram Regional People's Representative Assembly. Finally, the Defendant handed over his cellphone containing the recording. To retrieve the contents of the voice recording, the cellphone was connected to Haji Imam Mudawin's laptop, then the recording was transferred, sent, transferred to Haji Imam Mudawin's laptop.

Initially the Defendant did not want to hand over the recorded conversation to Haji Imam Mudawin, but in the end he was willing to do so knowing that whatever was transferred from his cell phone to another device, it was most likely and/or confirmed or at least Haji Imam Mudawin could distribute and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents in the form of recorded conversations containing moral violations. Not long ago, it was discovered that Haji Imam Mudawin had forwarded, sent and/or transferred the recorded conversation that violated decency to another party. The motivation for imposition of crime in Law No.11/2008 is in line with the government's goal to encourage technology development

through infrastructure and legal regulations. Technology can be used safely in Indonesia that does not exploit the religious, social and cultural values of the Indonesian people, because technology has proven to be a double-edged sword, indispensable for prosperity and progress, but also used to commit acts against the law. Based on these considerations, the imposition of a crime in this case is expected to be a lesson for the Defendant in particular and the Indonesian people in general to be more careful in using and utilizing electronic media. In addition, sensitive information such as personal data or communications must be handled with the consent of the person providing it.

In the Supreme Court Judicial Review Decision Number 83 PK/Pid.Sus/2019, the Panel of Judges rejected the Defendant Baiq Nuril's request for judicial review. As for the basis for the consideration of the Panel of Judges, the reason for the review of Baiq Nuril regarding the existence of a judge's oversight or a manifest error cannot be justified because the *Judex Juris* considerations have contained the substance of the elements of Article 27 Paragraph (1) in conjunction with Article 45 Paragraph (1) of the Law. No.11/2008 which was indicted, and contained in the verdict which stated that Baiq Nuril was proven legally and convincingly guilty of committing a criminal act without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents containing content. which violates decency. Baiq Nuril's actions were proven to provide electronic information to other people that contained moral content, namely intentionally without the permission of Muslims, recording conversations containing moral violations between Baiq Nuril and Muslims.

As an additional measure, only Baiq Nuril is aware of every conversation he recorded with Muslims, and has kept them for more than one (one) year. Regarding the recording of the conversation that contained decency, after Haji Imam Mudawin asked Baiq Nuril for the contents of the recording several times, although previously he always refused, in the end he still gave it so that it can be concluded that Baiq Nuril knows and is aware of the consequences if he gives it to someone else. It is also clearly stated by Haji Imam Mudawin that the recording will be reported as evidence to the Mataram City Regional People's Representative Council. Then the recording of Muslim's romantic conversation with Landriati was transferred from Baiq Nuril to Haji Imam Mudawin's laptop, without any pressure from anyone. As a result, it is evident that the content that is transmitted/diverted to other parties, as clearly and fully considered by *Judex Juris*, causes moral harm to Muslims, Landriati and their families.

Several legal professionals have expressed their disagreement with the Panel of

Judges at the Mataram District Court's decision to acquit the defendants in this case. Because Baiq Nuril's acts did not meet the elements alleged by the Public Prosecutor, namely breaking Article 27 paragraph (1) of Law No. 11/2008, the Assembly determined that his activities did not constitute a violation of the law. According to Lilik Mulyadi, there are numerous options for releasing information, including the following:²⁵

- a) Pure acquittal (*de zuivere vrijspraak*), in which no crime is proven at all;
- b) Improper acquittal (*de onzuivere vrijspraak*) in the case of (*gedekte nietigheid van dagvaarding*) or covert cancellation of the charge or acquittal which in reality is not based on unproven in the indictment;
- c) Release based on reasons for consideration of utility (*de vrijspraak op grond van doelmatigheid overwegingen*) that based on the considerations, a prosecution must be terminated which is certain there will be no result;
- d) Covered acquittal (*de bedekte vrispraak*) in which the judge has made a decision on *feiten* and rendered a acquittal decision from the lawsuit, even though according to the decision it contains a pure acquittal.

Thus, the acquittal depends on the opinion and judgment of the judge based on Article 183 of the Criminal Procedure Code which is linked to Article 191 paragraph (1), namely:

- a) In the defendant's case, the guilty charge was not proven legally and convincingly. At trial, the evidence presented, including: witness statements, expert statements, letters, and instructions, as well as the defendant's own confession, could not prove the defendant's guilt. According to the judge's assessment, all of the evidence submitted was insufficient or insufficient, meaning that the act that was charged against the defendant had not been legally and convincingly proven; or
- b) A guilty verdict cannot be supported by evidence that meets the minimum standards. For example, there is only one witness in the evidence presented. In this case the evidence does not meet the minimum standards but also contradicts Article 185 paragraph (2) of the Criminal Procedure Code which states that one witness is not a witness (*unus testis nullus testis*).

Conclusions and legal considerations should not be drawn from these descriptions on the basis of incorrect conclusions or unfounded legal considerations, because they are not based on legal facts that are legally relevant correctly and correctly, and they are

not in accordance with the facts revealed in the law. court. The consideration of the Panel of Judges at the Mataram District Court was incorrect in terms of applying the law because, based on the facts of the trial, it was evident that there was a match between the evidence provided and the statements of witnesses.

According to the Panel of Judges at the Mataram District Court's consideration, Baiq Nuril's acts were the fault of Haji Imam Mudawin, who the Panel of Judges stated in their consideration had requested and gave over the tape to another party. Furthermore, the Panel of Judges at the Mataram District Court overlooked the fact that Baiq Nuril only alerted his colleagues at work after keeping the recording for roughly 1 (one) year. What was Baiq Nuril's motivation for keeping the tape for 1 (one) year should have been investigated further by the Panel of Judges, and why did it take so long to inform anyone else of the situation?

3. Baiq Nuril's Criminal Liability

In order to have an impact on the decision-making process of a court, the definition of criminal culpability must be linked to the system that determines whether or not the creator can be prosecuted. It is necessary for judges to take into account all of these variables, regardless of whether they are deemed to be in their favor or against them. Although the Prosecutor has not provided evidence to support this, the court should take this into consideration. In contrast, defenses founded on reasons that clearly establish guilt are compelled by law to be scrutinized further by prosecutors and judges.

As a result, the defendant has requested that specific elements of the occurrence that he identifies as the reason for the defendant's exoneration from guilt must be investigated further by the court. Even if the defendant does not file an objection on the grounds of debt write-off, it should be emphasized that this is not the case in the case of the defendant in this particular instance. When doing a criminal offense. Additionally, the court has an obligation to ensure that the defendant has no legitimate basis for denying his or her own guilt, even if he or she does not assert that defense. The procedure of judicial review of a case will be significantly altered as a result.

It was necessary to conduct the prosecution at the Baiq Nuril trial in two stages: first, the case was examined at the first level by the Mataram District Court, which resulted in Baiq Nuril's release, and second, the case was examined at the cassation level by the Supreme Court, which resulted in a guilty verdict and a criminal sentence, as previously stated. Baiq Nuril was not wrongfully penalized by the judge at the cassation level, because the court had the authority to do so under the circumstances. Legal

positivism provides an explanation for this manner of thinking from a philosophical standpoint. This demonstrates that the cassation judge, Baiq Nurul, is an adherent of the sect in question. They investigate the nature of the law or the accuracy of its textual truth. This is the method by which a judge applies the truth of legal reality in accordance with his or her own mentality.

Legal positivism, which has been influenced by legalism, maintains that law can only be obtained through laws and that laws can only exist in written form; anything else is not a legal principle. Because the flow of legislation promotes written law, this school of thought holds that only positive law can govern community problems, and that written law should be able to resolve all issues. Written law is given a great degree of importance in legal positivism mainly because it is seen to have been formed by power, and thus power is regarded as the source of law as well as the source of law in and of itself.²⁶

Applying positivism to the field of law, it requires truth that is free of metaphysical prejudice, and as a result, law is no longer considered as an abstract meta-judicial moral principle in terms of justice, but rather as *ius*, which is presented as *lex*.²⁷ Given that justice is meta-judicial, it must be distinguished from law, which is defined as an expression of law that cannot be reduced to its simplest form, nothingness, by definition. In other words, justice refers only to the justice that is contained in the law; the notion of justice relates only to the justice that is contained in the legal system.

Due to the fact that legal positivism underpins modern legal ideology, the approach to the legal system is centralized. It is critical to acknowledge that our idea of law is in practice limited to what the state generates, and that the state thus plays a crucial role in the area of normative order and order creation. There are several non-state normative regimes that do not come inside the legal criteria and so are not included. Satjipto Rahardjo stated in this case that state law is the most essential legal stance, and that the majority of other legal positions are only auxiliary to state law.²⁸ According to the legal positivist paradigm, law or the rule of law is regarded to be something that encompasses all laws, and the role of judges is to apply legal provisions to community problems in a mechanical and linear manner, as decided by legal proceedings.

As a result, can a decision that is made only on the basis of the law be considered to be one that does not comport with the principles of justice? As a result of cassation judgment Number 574K/Pid.Sus/2018, the Supreme Court sentenced Baiq Nuril to life in prison without the possibility of parole. The ruling was also criticized by the general

public as being unfair to Baiq Nuril. In addition, the verdict was deemed to lack an element of justice because it assumed that Baiq Nuril was a victim of sexual harassment from Muslims, which was also stated in a previous decision of the Panel of Judges at the Mataram District Court, which was also deemed to lack an element of justice.

Many elements, including internal and external variables, influence judges' decision-making when they reach different conclusions from one another. In the case of the judges' decisions that differ from one another, there are several factors taken into consideration when a judge makes a decision, including various factors such as ethnicity, religion, and informal education, the influence of formal education and employment, as well as social and cultural factors that affect the lives of judges, such as their organizational environment. No judge is exempt from the effect of non-judicial elements on his or her decision-making process. When it comes to decision-making, logic plays a significant role, but it is also heavily influenced by other non-logical variables such as personal subjectivity and bias. Other variables and circumstances outside the realm of the law, such as political, economic and moral preconceptions, as well as feelings of compassion or aversion, can have an impact on a judge's decision.

The judge's decision is more significant than the judge's intelligence and quality of arguments for various legal considerations, because it also impacts human dignity (human fate), and decisions never adopt a middle ground in their findings. It is court judgements that endow her with the right to own the crown, and it is legal justifications that endow her with that right. The heart of legal considerations or considerations is critical to a decision because judges must make choices based on the reasons in their judgments. Legal reasoning and legal reasoning in general are covered in legal concerns. Numerous legal constructions and interpretations are used to investigate and assess the strength of the arguments offered in court. While the principles of truth and justice are followed, the verification test is conducted utilizing the legal facts presented during the trial.

A judge is responsible for clarifying obscure or poorly understood laws in order to ensure that they can be applied to specific occurrences. To be directly applicable to concrete and specific occurrences, the law must be explained, interpreted, and modified to those events. This enables the application of generally recognized and abstract laws to tangible and specific events. Law is interpreted in order to be applied following the elicitation of legal events from tangible events. Adhering to these legal standards is abstract and passive; abstract since the substance is broad, and passive because no

concrete repercussions will occur if events do not occur. The stimulus must be active in order to qualify as an abstract legal rule.³³

Following this explanation and in light of the conflicting decisions Number 265/Pid.Sus/2017/PN.Mtr and Decision Number 265/Pid.Sus/PN.Mtr and Decision Number 83 PK/Pid.Sus/2019, the author believes that the Panel of Judges at the Mataram District Court made an extremely serious error in applying the law. This is made feasible by the presence of a significant amount of subjectivity. As is well known, the Panel of Judges at the first level of court, often known as district court, is a judge who has direct contact with litigants. Baiq Nuril communicates with the Panel of Judges on a regular basis, whether directly or indirectly, throughout the course of every examination agenda at the Court. In addition, propaganda from outside parties, such as the media and non-governmental organizations (NGOs) that are very concerned about this case, by bringing up the topic of women's protection, is being spread. It is not so much an issue of whether Muslims abused them as it is about the conduct of Baiq Nuril Maknun, who made recordings of his conversations with Muslims and published them to the public. Consequently, the Panel of Judges at the Mataram District Court did not consider justice for the victims of Baiq Nuril's conduct, who were not only Muslim but also Landriati, a woman. As a result, the victims were denied justice.

In the following instance, the verdict was corrected by a panel of judges at the cassation level, who had never dealt directly with the litigants, yielding a ruling that was significantly more objective. When considering a case, the Panel of Judges at the Supreme Court considers only the data and facts of the trial at the lower court level that have been presented to it. This argument is based on one of the Panel of Judges' considerations, which claimed that Baiq Nuril's activities resulted in moral losses to Muslims and their families, as well as to Landriati's family, as a result of his actions. It is also worth noting that the Panel of Judges in this case has taken into account the justice for the victims, notably Muslim and Landriati, which was something that had previously not been considered by the Panel of Judges at the Mataram District Court.

Because Indonesian legal laws still rely on protection for perpetrators, as Lilik Mulyadi points out, the role of victims in the criminal justice system, as well as in judicial practice, is underestimated. Crime, from the perspectives of criminology and criminal law, is a confrontation between those who hurt the victim, society, and the perpetrator itself, in which the interests of the victim of crime are always at the forefront

of consideration. In Indonesia, the Public Prosecutor protects the interests of crime victims in the criminal justice system, in accordance with the social contract theory and the social solidarity theory. Therefore, while initiating accusations against a criminal suspect, the public prosecutor must take into consideration the pain and suffering endured by the victim as a ground for requesting a relatively severe penalty from the court. The *Veroordeling* (judge's ruling) must also include characteristics of humanism, education, and justice, as well as other components. As a result, moral justice incorporates components of social justice, legal justice, and social justice into its formulation.

It is not surprising that the criminal justice system does not give adequate attention to the interests of victims given the current development of criminal law, which places victims in isolation or does not pay them any attention at all. This is especially true given the increasing attention paid to the interests of prisoners, which is often interpreted as being unrelated with their own interests. Despite the fact that the punishment inflicted on a criminal does more than only provide protection to victims, it does not put an end to the suffering caused by the crime. The criminal justice system will also be able to equalize the quality and amount of suffering and losses incurred by victims by modifying the quality and quantity of suffering and losses suffered by victims. Consequently, victim protection must be a critical component of any effort to strike a balance between individual interests and the interests of society.

Given that empirical studies consistently demonstrate that court verdicts do not represent a feeling of justice for victims, the protection of victims' rights to pursue legal action against their continued existence becomes extremely vital to them. According to a different point of view, it is apparent that the victim herself will not be able to question the decision because she will not have the opportunity to file an appeal or a cassation under the procedural law. While victims confront hurdles in acquiring procedural rights for their protection, regulating the right to trial can be accomplished by developing a clear definition of the authority of the Public Prosecutor, who is responsible for representing the interests of all and each victim. The perspectives of victims must be taken into account while determining the most effective method of prosecuting perpetrators. When determining whether a court decision is founded on legal grounds or not, the opinion of the victim is also required; however, it must be obtained by the Public Prosecutor before the deadline for filing an appeal or a cassation action is reached. The problem is that the Indonesian legal system does not allow for such a

situation. The Public Prosecutor is the only avenue through which the victim can seek restitution for his or her losses.

Moreover, in this case, the cassation effort is carried out not only because it is required to be carried out if the court's decision acquits the defendant, but also because it is carried out to test the veracity of the first-degree decision and whether it has provided justice to the victim of Baiq Nuril's actions. The Public Prosecutor had previously considered the issue of justice for the victim while making a claim against Baiq Nuril, however it must be acknowledged that this was not the best course of action in this case. Notably, in this case, it is the Public Prosecutor's responsibility to establish that Baiq Nuril's acts met the requirements of Article 27 paragraph (1) of Law No.11/2008, rather than to establish that Baiq Nuril is a victim of sexual harassment. Furthermore, according to the Criminal Code, Baiq Nuril's claim that his acts were an attempt to defend herself because he was a victim of Muslim sexual harassment did not qualify as a valid justification or an excuse. According to the evidence presented at trial, Baiq Nuril has been recording his discussions with Muslims for approximately 1 (one) year, and this time span is regarded sufficient if Baiq Nuril first reports the behavior of Muslims to law enforcement.

After submitting a court review request in 2019, it was discovered that Baiq Nuril was the one who actually carried out this action, and the NTB Police finally stopped the case he reported because the criminal element had not been completed as claimed by the victim, as previously stated. Based on this evidence and other information available, the Public Prosecutor concludes that Baiq Nuril was actually aware of the recording of his conversation with Muslim and that he purposefully handed it over to Haji Imam Mudawin, who has stated on multiple occasions that he would hand it over to the Mataram Regional People's Representative Assembly. If it is true that he has been the victim of sexual harassment, Baiq Nuril should have reported it to the police or through a legal process first, rather than giving it over to a party who clearly does not have the authority.

The actions of the Public Prosecutor were correct and suitable in light of this explanation. The Public Prosecutor filed an appeal in this case because he was also conscious that he was representing the interests of those who had been victimized by Baiq Nuril's acts. It is essential that everyone understands that justice does not always belong to the suspect or the guilty. Victims of crime have the right to claim justice for themselves, and it is the responsibility of the Public Prosecutor to represent them so that

they must constantly attempt and fight to ensure that victims receive justice under the Indonesian legal system.

This is consistent with Rawls' approach to theory of justice, which is built on the notion of institutionalism as a foundation. The first sort of institutional justice proposed by Rawls is concerned with the establishment of just institutions. The second type of institutional justice places an emphasis on improving individual liberty. According to Rawls, justice is concerned with how public institutions should distribute rights and obligations, as well as how they should share benefits in an equitable manner.³⁷ When putting together this concept, Rawls asserts that it is necessary to constantly be objective and impartial in our thinking. As defined by the Public Prosecutor and the cassation panel of judges, an objective and unbiased mentality is one that does not have a propensity to adopt a partial or biased perspective, which is exactly what they have done in this case on behalf of the defendant Baiq Nuril.

Victims of crime cannot all be measured in the same way, hence there is no single metric for 'suffering'. Perpetrators may be sentenced to prison, but they may also be exonerated of all allegations if the court system rules in their favor. Final analysis reveals that the development of criminal law in Indonesia actually only protects the rights of all defendants and convicts, while failing to uphold the constitutional and legal rights that have already been established, such as the internationally agreed-upon justice for victims of crime. Obtaining justice for Baiq Nuril's activities is, in the opinion of the author, a form of respect for the constitutional rights of the victim, as demonstrated by the actions of the public prosecutor and the panel of judges at the cassation level of the appeals court process.

E. Conclusion

The Mataram District Court Panel of Judges, in their decision, acquitted Baiq Nuril of all charges because they believed that Baiq Nuril's actions did not satisfy all of the elements of perpetrators of acts and elements of offenses in the criminal provisions of Article 27 paragraph (1) and Article 45 paragraph (1) of Law No. 11 of 2008, as well as the elements of offenses in the criminal provisions of Article 27 paragraph (1) and Article 45 paragraph (1) of Law No. 11 of 2008. The prior Mataram District Court decision was subsequently reversed by a panel of judges at the cassation level, which is the highest level of appeal. As a result, according to the cassation level panel, judges at

the first level have a proclivity to make decisions that are based on incorrect conclusions and considerations because these decisions are not in accordance with legal facts revealed in court and do not reflect the facts that were presented in court. Muslim and his family suffered moral losses as a result of Baiq Nuril's actions, according to the Panel of Judges at the appellate level, which was later reinforced by the Panel of Judges at the review level, which found that Baiq Nuril's actions resulted in moral losses to Muslim and his family as well as Landriati's family, according to one of its considerations.

As one of the factors considered by the Panel of Judges at the cassation and review level, the sentencing of Baiq Nuril is primarily intended to safeguard the honor of Muslims and Landriatis as Indonesian nationals, according to the Panel of Judges' decision. In this case, the Panel of Judges considers whether justice should be served to Muslims and Landriati, who were both victims of Baiq Nuril's activities. As a result, the appeal made by the Public Prosecutor should be acknowledged and not even marginalized, as if the Public Prosecutor lacks a sense of fairness in carrying out his responsibilities as a prosecutor. In carrying out his responsibilities, the Public Prosecutor, in addition to representing the interests of the state, also represents the interests of the victims, who, according to the legal considerations of the Panel of Judges at the levels of cassation and review, are clearly identifiable and have clearly suffered moral losses in this case.

It is important for the judge to make decisions in the most objective manner possible when deciding on a case. Judges must be able to function without being influenced and must be able to overrule portions of a case that are subjective. Although it cannot be denied that the considerations provided by the Panel of Judges at the Mataram District Court contain significant amounts of subjectivity, the Panel's decisions are prone to taking sides out of sympathy for Baiq Nuril. Given the swift currents of rejection of the Panel of Judges' decision at the levels of cassation and review, both the Prosecutor's Office and the Supreme Court should issue counter-narratives formed by certain parties, who will stop at nothing to try to influence the law enforcement process, as quickly and carefully as they can. It is also necessary to provide the public with a narrative that is completely based on the law, so that it is not readily influenced by outsiders, including political interests that seek to corner the Public Prosecutors and the judiciary. For the sake of upholding justice, transparency and a straightforward legal explanation are required.

References / Bibliography :

There are two (two) aspects of data management, namely everything related to the creation, distribution, manipulation, and management of data and the means used to transfer and process data between devices. See: Rusman, et al, *Information and Communication Technology-Based Learning* (Jakarta: Raja Grafindo Persada, 2012), p. 87.

M. Arsyad Sanusi, *Law and Information Technology* (Jakarta: Tim Kemas Buku, 2005), p.3.

Budi Suhariyanto, *Information Technology (Cybercrime) Crime* (Jakarta: Rajawali Pers, 2014), p. 9.

The sovereignty of each state contains the right and power to determine the national legal rules of an event, including how the state's internal and external problems should be handled. State jurisdiction is also known as state authority in international law. As defined in law, jurisdiction refers to the right or ability of a state to enforce and enforce its constitutional laws and regulations over its citizens, objects and events. See: Huala Adolf, *Aspects of the State in International Law* (Jakarta: Raja Grafindo Persada, 2002), p. 71.

Online banking is a service provided electronically. There are various types of E-Banking services, including: ATM/debit cards, credit cards, telebanking, phone banking, SMS banking, mobile banking, and internet banking. See: Decky Hendarsyah, "Security of Internet Banking Services in Banking Transactions", *Iqtishaduna: Our Scientific Journal of Economics*, Vol. 1 No. 1 (2012): p. 13, <https://doi.org/10.46367/iqtishaduna.v1i1.2>

The virtual world has been created by advances in information technology. The virtual world has turned the various human activities that occur in the real world—political, economic, social, and cultural—into artificial substitutes, and everything that is possible in the real world can now be achieved through cyberspace. See: Yasraf Amir Piliang, "Information and Digital Society: Information Technology and Social Change", *Journal of Sociotechnology*, Ed. 27 Th. 11 (2012): 143-156, p. 145, <https://journals.itb.ac.id/index.php/sostek/article/download/1098/704>.

A. Hamid S. Attamimi, *Legislation: Types, Functions, and Contents* (Yogyakarta: Kanisius, 2007), p. 34.

Mochtar Kusumaatmadja and B. Arief Sidharta, *Introduction to Legal Studies: A First Introduction to the Scope of Applicability of Legal Studies* (Bandung: Alumni, 2000), p. 4.

Theo Huijbers, *Philosophy of Law in Historical Trajectory* (Yogyakarta: Kanisius, 1995), p. 196.

Pan Mohamad Faiz, "John Rawls Theory of Justice", *Journal of the Constitution*, Vol. 6 No. 1 (April 2009), p.135.

Koeswadiji, *The Development of Various Crimes in the Context of Developing Criminal Law* (Bandung: CitraAditya Bhakti, 1995), p. 12.

- Didik M. Arif Mansur and Elisatris Gultom, *The Urgency of Crime Victim Protection, Between Norms and Reality* (Jakarta: Raja Grafindo Persada, 2007), p. 45.
- Jimly Asshiddiqie, *Introduction to State Administration Volume 2* (Jakarta: Mahkamah Konstitusi, 2006), p. 45-46.
- Darwan Prints, *Criminal Procedure Code: An Introduction* (Jakarta: Djambatan, 1989), p. 106.
- Bambang Waluyo, *Evidence System in Indonesian Courts* (Jakarta: Sinar Grafika, 1992), p. 6.
- Djoko Prakoso, *Evidence and Power of Evidence in the Criminal Process* (Yogyakarta: Liberty, 1988), p. 43.
- Andi Hamzah, *Indonesian Criminal Procedure Code* (Jakarta: Sinar Grafika, 2001), p. 252.
- Djoko Prakoso, *Evidence and Power of Evidence in the Criminal Process, Loc. Cit.*
- Bambang Waluyo, *Evidence System in Indonesian Courts*, p. 28.
- Martiman Prodjohamidjojo, *Evidence Systems and Evidence Tools* (Jakarta: Ghalia Indonesia, 1983), p. 15.
- M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code (Court Trial Examination, Appeal, Cassation, and Review)* (Jakarta: Sinar Grafika, 2002), p. 301.
- Lilik Mulyadi, *Judge's Decision in the Criminal Procedure Code* (Bandung: Citra Aditya Bakti, 2007), p. 158-159.
- Riduan Syahrani, *Summary of the Essence of Legal Studies* (Bandung: Citra Aditya Bakti, 1999), p. 44.
- Otje Salman and Anton F. Susanto, *Legal Theory: Remembering, Collecting, and Re-Opening* (Bandung: Refika Aditama, 2005), p. 79-80.
- See: Satjipto Rahardjo, *Layers in Legal Studies* (Malang: Bayumedia Publishing, 2009), p. 6.
See also: Soetandyo Wignjosoebroto, *Law in Society: Developments and Problems* (Malang: Bayumedia Publishing, 2008), pp. 120-121.
- Pontang Moerad, *Formation of Law through Court Decisions in Criminal Cases* (Bandung: Alumni, 2005), p.117.
- Adi Sulistiyono, "Developing a Non-litigation Dispute Resolution Paradigm in the Framework of Utilizing Alternative Business Dispute Resolution", Dissertation, Doctoral Program in Law, Diponegoro University, 2002, p. 20. ³¹ Achmad Ali, *Revealing the Veil of the Law: A Study of Philosophy and Sociology* (Jakarta: Sinar Grafika, 2002), p. 104.
- By using the provisions of the legislation, judges examine and consider cases before making a decision. During the trial, a judge pronounces a decision at the end of the process to resolve the conflict between the two parties. See: Sudikno Mertokusumo, *Indonesian Civil Procedure Code* (Yogyakarta: Liberty, 1998), p. 167.

The laws are designed to be clear, so that an explanation of each law always appears in the Supplement to the State Gazette. It often happens that although the intent and name is an explanation, the explanation does not provide clarity, because it is only explained "clearly enough" even though the text of the law is not clear. Perhaps the legislators intended to give judges more freedom by giving them more power. See: Sudikno Mertokusumo and A. Pitlo, *Chapters on Legal Inventions* (Bandung: Citra Aditya Bakti, 1993), p. 12.

Lilik Mulyadi, "Legal Efforts Performed by Crime Victims Assessed from the Perspective of the Criminal Justice System in the Decision of the Supreme Court of the Republic of Indonesia", *Journal of Law and Justice*, Vol. 1 No. 1(2012): p. 3.

Muladi and Barda Nawawi Arief, *Anthology of Criminal Law* (Bandung: Alumni, 1992), p. 78.

Lilik Mulyadi, "Legal Efforts Performed by Crime Victims", p. 4.

John Rawls, *A Theory of Justice, Revised Edition* (Massachusetts: Harvard University Press, 1999), p. 6.