Legal Brief, Volume 12, No 3, (2023), pp. 327-337
ISSN 1979-522X (Print)| 2722-4643 (Online)
Published by IHSA Institute (Institut Hukum Sumberdaya Alam)
DOI: 10.35335/legal.

The Role of Judges in Criminal Case Trials as Modification and Reform of Criminal Law

Septatinus Hia[1], Felianis Ndruru[2], Zetria Erma[3]
[1,2] Faculty of Law, Universitas Pembinaan Masyarakat Indonesia (UPMI) Medan

ARTICLE INFO

Article history:

Received Jun 28, 2023
Revised Jul 05, 2023
Accepted Aug 29, 2023

Keywords:

Case;
Criminal;
Judge;
Justice;
Law.

ABSTRACT

Judges as modifiers and reformers of law mean that judges act as law inventors (recht vinding), in accordance with cultural values that live in society, especially Five pillars values. The aim of this research is to find out the role of judges as modifiers and law reformers who can be a reference for justice seekers and as jurisprudence for law enforcers. The type of research in this paper is normative with a statutory and conceptual approach. Meanwhile, the specification of this research is analytical descriptive. The data used is secondary data consisting of primary legal materials in the form of the 1945 Constitution, Law no. 48 of 2009 concerning judicial power, and secondary legal materials such as books, journals, and writings related to research titles. The role of judges in deciding criminal cases is expected to fulfill a sense of justice for society. In deciding a case, judges have freedom and power, therefore, apart from paying attention to the provisions written in the law, judges also use instinct, namely based on the judge's beliefs and the sense of justice in society. This is in line with the idea of a progressive type of law enforcement. For this reason, it is suggested that judges and constitutional judges must explore, follow, and understand legal values and a sense of justice that live in society and pay attention to the principles of justice and legal certainty.

ABSTRAK

Hakim sebagai pengubah dan pembaharu hukum artinya hakim berperan sebagai penemu hukum (recht vinding), sesuai dengan nilai-nilai budaya yang hidup di masyarakat terutama nilai-nilai pancasila. Tujuan penelitian adalah untuk mengetahui peranan hakim sebagai pengubah dan pembaharu hukum yang bisa menjadi acuan pencari keadian dan sebagai yuresprudensi bagi penegak hukum. Jenis penelitian dalam tulisan ini adalah normatif dengan pendekatan undang-undang dan konseptual. Sedangkan spesifikasi penelitian ini adalah deskriptif analitis. Data yang digunakan adalah data skunder terdiri dari bahan-bahan hukum primer berupa UUD Tahun 1945, UU No. 48 Tahun 2009 tentang kekuasaan kehakiman, dan bahan hukum skunder seperti buku-buku, jurnal, dan tulisan yang berhubungan dengan judul penelitian. Peranan hakim dalam memutus perkara pidana diharapkan dapat memenuhi rasa keadilan bagi masyarakat. Dalam hal memutus suatu perkara hakim mempunyai kebebasan dan kekuasaan, oleh karenanya hakim selain memperhatikan ketentuan yang tertulis dalam undang-undang juga menggunakan naluri yaitu berdasarkan keyakinan hakim dan rasa keadilan masyarakat Hal ini sejalan dengan gagasan tipe penegakan hukum progresif. Untuk itu disarankan kepada Hakim dan hakim konstitusi wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat dan memperhatikan asas keadilan serta kepastian hukum.

Corresponding Author:

Septatinus Hia, Felianis Ndruru
Faculty of Law,
Universitas Pembinaan Masyarakat Indonesia (UPMI),
Jl. Teladan No.15, Teladan Bar., Kec. Medan Kota, Kota Medan, Sumatera Utara 20214

Email: septatinushia@gmail.com, felianis99@gmail.com

I. INTRODUCTION

Judges are required to uphold law and justice, not to win cases which are oriented to economic values, are pragmatic, so that they can distort moral, ethical values, texts Laws, deflection on the value of truth, the logic of rationality that is based on legal reasoning on the principle of formal legality where the judge is free to decide anything decision without any interference or interference from other parties. A very free judge, impartial in carrying out the task of deciding a case in court "within the exercise of the judicial function" (Anshori, 2018) (Razaq, 2020). The freedom of the judge is important powers attached to individual judges where judges function as an application the text of the law into concrete events, not only substantively, but also provide the right interpretation of the law in order to rectify the legal events that concrete so that judges can freely provide judgments and interpretations law. There are almost no legal experts who disagree that the law (always) requires update. This happens because society is always changing, not static. According to Satjipto Rahardjo said the changes that occur in people's lives can be classified into two categories (Rahardjo, 1998) are: (a) Changes, incremental ones, add up little by little; and (b) Change on a grand scale, revolutionary change

Against slow changes, adaptation between law and society is sufficient make small changes to the existing regulatory framework, either by changing nor add to it. Methods of legal interpretation and legal construction are also included equipment to adapt to changes that do not scale big. Legal reform in the art of legal reform is intended for a society where law is only as a subsystem and functions as a mere tool of social engineering. law only becomes part of a political process that may also be progressive and reformative. Legal updates here then only meant as an update of the law. As a political process Soetandyo clearly states that legal reform only involves the thoughts of politicians or also a small elite of professionals who have lobby access. In this concept law is a product the political activities of the sovereign people, driven by the interests of the sovereign people it may be inspired by economic needs, social norms, or ideal values of the people's culture alone. Soetandyo Wignjosoebroto's understanding of law reform is not strange if it is related with Article 5 paragraph Law Number 48 of 2009 concerning judicial power. (Indonesia, 2009)

Abdul Manan explained that there are two dominant views related to change (of course in the sense of renewal) the laws that apply in the life of people in a country, namely traditional view and modern view. In the traditional view, society should change first then the law comes to regulate it. On the other hand, in a modern view, in order law can accommodate all new developments, the law must coincide with events that happened. Abdul Manan also explained that change is neutral in the field of law must be aimed at giving birth to a legal certainty, on the contrary in the field of life personal law garus serves as a means of social control in people's lives.(Manan, 2005)

Changes and reforms made by judges in the context of criminal law when sitting in court may include the following: (Mulkan, 2021) (Petannase, 2020) 1) Interpretation of law: Judges have the authority to carry out criminal prosecutions that apply in a country. In the trial process, the judge will place findings that are in accordance with the circumstances and context of the problem he is facing. In this case, the judge can update or change the interpretation of the criminal law which was previously no longer relevant or considered unfair; 2) Development of law: Judges also have a role in developing criminal law through decisions taken in court. Through the application of criminal law principles, judges can fill in the strengths or weaknesses in existing criminal law, as well as provide new interpretations of cases that have never been faced before; 3) Setting precedents: Judges' decisions in criminal trials can serve as precedents or references for similar cases in the future. This can change and update the criminal law by establishing a new precedent that can become the basis for future law enforcement.

The country of Indonesia is a rule of law country, provisions regarding a rule of law can be found in Article 1 paragraph (3) of the 1945 Constitution after the amendment (hereinafter referred to as the amendment Constitution). Different from the 1945 Constitution before the amendment (hereinafter referred to as the 1945 Constitution), that concerning the rule of law is not explicitly stated in the body. If polluted in the 1945 Constitution, that the sentence regarding "law" can be read in Article 27 paragraph (1) of the Constitution 1945 which reads "All citizens have the same position before the law and government and is obliged to uphold the law and government without exception. Article 27 paragraph (1) of the 1945 Constitution is a provision that regulates equality in law and government, not governing the rule of law. As described above, that the rule of law in the 1945 Constitution is not regulated in the body, but is regulated in the elucidation of the 1945 Constitution (Umar, 2007) (Mulkan, 2021). Very ironic if the provisions are very fundamental regarding the constitutional state is only made in the elucidation of the 1945 Constitution. In fact, when viewed in history of the formulation of the 1945 Constitution, that BPUPKI has never provided an explanation in the Constitution 1945. The existence of an explanation in the 1945 Constitution is doubtful. so that it is not wrong if during the reign of the new order the power to be commander in chief, whereas law was used as a tool of power to legitimize the actions of the authorities at that time. After the amendment of the Constitution, provisions regarding the rule of law were included in the body, this meaning that in the order of legal reform, it becomes the commander in chief and occupies the top priority (Kusumaatmadja, 2002) (Indonesia, 1945)

Talking about law, it cannot be separated from understanding the rule of law which requires it there are three basic principles, namely:Supremacy of law, that is, all actions of the state and citizens must be carried out based on Law or not against the law; Equality before the law, that is, everyone has the same position before the law and therefore must be treated equally; Due process of law, namely the process of law enforcement must be perpetuated not solely for the sake of upholding the law, but for the sake of upholding justice and legal certainty. Therefore the process of law enforcement should not be carried out in ways that are precisely contradictory with the law but must heed the dignity and human dignity along with the rights attached to it.\

Law in a broad sense includes all the normative rules that govern and become guidelines for behavior in social and state life supported by a system of sanctions specific to any deviation from it. The more advanced and complex one's life society, the more developed the demand for order in the patterns of behavior in life that society. The more advanced a society, the more developed tendencies society to bind themselves in an orderly organizational system. In system This regular organization will in turn create a separate mechanism with regard to the process of making law, applying the law, and adjudicating against legal deviations in an increasingly organized society (Efendi, 2011) (Petannase, 2020).

The freedom of judges can be tested in two ways, namely: impartiality and relationship decisions with political actors who have no interest relationship with the case, while principles Disconnection with political actors will be reflected in the effectiveness of fair and acceptable decisions justice seekers. The freedom of judges in interpreting the law is an activity that individual. There are several requirements to guarantee the competence and integrity of judges to remain trusted by the public; First, how far can judges work objectively? judges who are constructed as free human beings are not ordinary or one-sided, and whether always side with the truth. (Widiatama, 2020)

So the role of the judge in criminal case trials as a modifier and reformer of criminal law will reveal the important role of judges in criminal case trials as agents of change and reformer in criminal law. So that judges have a significant role in influencing and changing criminal law through the decisions they make.

II. RESEARCH METHOD

The type of research in this paper is normative with a statutory and conceptual approach. Meanwhile, the specification of this research is analytical descriptive. The data used is secondary data consisting of primary legal materials in the form of the 1945 Constitution, Law no. 48 of 2009

concerning judicial power, and secondary legal materials such as books, journals, and writings related to research titles.

The analytical method used is qualitative, in which this method manages data that has been systematically arranged from documents, observations, and literatures.

The technique of collecting legal material is done by studying library books to obtain secondary legal material which is done by taking an inventory and studying and quoting from books, articles and related laws and regulations. After the legal material is collected, it is recorded, summarized and reviewed according to the problem. Then, when legal material is collected, a qualitative analysis is carried out, namely a discussion that is carried out by combining literature research as well as interpreting and discussing.(Purwati, 2020)

III. RESULT AND DISCUSSION

1. Factors Influencing Criminal Law Reform

To find the right understanding of the meaning of "judgment according to law" it is very necessary to understand the development of some of the underlying concepts. Definition of "law", The word law in the principle of "deciding according to law" is interpreted very broadly, namely written law as well as unwritten law, including law that was born from an agreement (as party law). Even more broadly, namely the obligation to pay attention to propriety (Article 1339 BW), Decency and public order "Article 1337 BW" (Hiariej, 2009). The principle of judging according to the law is the embodiment of the principle of legality as one of the main elements understanding of the state based on the principle of law. The principle of legality implies that every decision judges or decisions of state administrators other than judges or government administrators must base on legal provisions that existed before the decision or decision was made.

In Arabic the update is a translation of the words tajdid. Abdul Manan, professor and the chief justice in his book the aspect of changing the law explained at length about the meaning of *tajdid* is based on accurate sources. The meaning of the terminology tajdid is based on Muhammadiyah views were also explained at length by Rifyal Ka`bah, professor and supreme judge in his book "Islamic Law in Indonesia" (Ehrlijk, 1975). Base on understanding given by Muhammadiyah, Rifyal Ka`bah concluded that legal reform according to *Muhammadiyah* is a combination of *tajdid* and *ijtihad.*

According to the 2005-2025 national RPJP, legal development is carried out through: renewal legal material while taking into account the plurality of the prevailing legal system and the influence of globalization as an effort to increase legal certainty and protection, law enforcement and human rights, legal awareness, and legal services with the core of justice and truth, order and prosperity in the framework of administration a country that is more orderly, orderly, smooth, and globally competitive." In another part of the statement like this appears again with a few word changes (marked in bold) as below this: Legal development is carried out through legal renewal with due regard the plurality of the prevailing legal order and the influence of globalization as an effort to increase legal certainty and protection, law enforcement and human rights, legal awareness, as well as legal services with the core of justice and truth, order and justice welfare in the context of a more orderly and orderly administration of the state, so that the implementation of national development will run more smoothly'. (Zaidan, 2022)

So based on the explanation above, the factors that influences the renewals of criminal law are: (Hiariej, 2009). (a) There is the influence of the times, We know that the Criminal Code was drafted at the time of the classical wing of criminal law, which focused on individual interests. Even though we know that extraordinary developments have occurred up to now, and (the Criminal Code) must be adapted to the times, (b) More oriented towards modern criminal law, The influence of criminal law reform is more oriented towards modern criminal law, namely corrective justice, restorative justice, and rehabilitative justice. (c) he expected direction guarantees more legal certainty, The

current Criminal Code does not guarantee legal certainty. This is because the Criminal Code is interpreted differently by legal experts, so there are many disagreements between law enforcement officers and one another.

The quotations above illustrate that the 2005-2025 National RPJP requires this legal renewal, especially in the form of updating legal material, which means nothing else is the renewal of laws and regulations. This is evidenced by the frequent appearance a new law that revises the previous law. However, borrow term Soetandyo Wignjosoebroto legal reform guided by the National RPJP 2005-2025 still included in the category of legal reform the only hope for legal reform in a sense Law reform is in the hands of the judges, because it is based on Article 5 paragraph (1) of Law Number 48 of the Year 2009 judges are given absolute authority to explore, follow, and understand values law and a sense of justice that lives in society. (Chazaw, 2002)

Criminal law enforcement in fact cannot improve, but with sanctions Crime as one of its goals is expected to create a deterrent effect for the perpetrators (Rahardjo, 1998). The imposition of criminal sanctions aims to save society from a violation of a prohibited act, a required action or an obligatory obligation must be carried out by any person or legal entity regulated by law. Role criminal law in law enforcement efforts is increasingly important. Even in criminal cases heavy, its nature as "primum remedy" is increasingly visible. Even so, its effectiveness will depend a lot on the mental and intellectual qualities of the enforcers law, especially to understand the spirit and substance of criminal law which is quite complex (Brama, 2016)

2. The Role of Judges in Criminal Case Trials as Modifiers and Reformers Law

Indonesia's legal system adheres to Continental Europe or Civil Law as Rechtsstaat, the legal form is written and codified. In the codification system it will not able to accommodate all the problems that occur in society, especially in the era of globalization nowadays, where changes and developments are so fast, so no matter how fast the legislature (DPR) works to form laws, the problems that occur in people who need legal certainty (Legal Regulations) turned out to be faster. In addition, it is impossible for legislators to formulate legal regulations in individual concrete rules explicitly. Hence the laws and regulations constructed in the form of general and abstract behavior. Internal problems often occur in a society where there are no regulations governing it, there is a legal vacuum. (Kartadinata, 2023) (Yudianto, 2016)

Article 10 paragraph (1) Law no. 48 of 2009 concerning judicial power, determines: "The court is prohibited from refusing to examine, explore, and decide on a case that submitted on the pretext that the law does not exist or is unclear, but it is mandatory to examine and judge him." Because of that then Article 5 paragraph (1) of Law no. 48 of 2009 concerning power the judiciary stipulates that "judges and judges of the constitution are obliged to explore, follow and understand the legal values and sense of justice that live in society. Charging Legal vacuum in the formal legal system is carried out by judges when there is a case submitted to the Court are not regulated in the applicable laws and regulations or existing legislation is not possible to apply (semantics) thoughinterpretation is carried out. Based on the existing judicial powers, namely the powers that exercised through the judiciary and this power consists in establishing regulations is in concreto, meaning that it forms special regulations regarding a certain matter and is binding and applies only to parties related to the judge's activities to fill in the vacancies law in the legal system in Indonesia can be implemented by means of reform law. Efforts to carry out legal reforms can be in the form of: Law Discovery (Rechts vinding) and 2. Law Creation (Rechts schepping).(Nonet & Selznick, 2019) (Badriyah, 2016).

Forms of laws and regulations constructed in the general form and abstract, the law must be sought by the judge. Judges must make legal discoveries (Rechts vinding) law enforcement and law enforcement are often legal discoveries and not just the application of law'. Legal discovery is commonly interpreted as a process establishment of law by judges or other law enforcement officials who are given the task implementing the law against concrete legal actions. Such activities are a process of contectization and individualization of general legal regulations and the abstract in

concrete action. The term law formation is more appropriate to use than the term legal discovery, because the term legal discovery gives the impression as if the law it already exists. Intellectual attempts to express the listed forms of behavior and a provision of laws and regulations and determine their meaning to stipulate its application to a set of facts in making concrete by establishing what the law is for this act, it is called legal discovery. (Jatmika, 2020).

In providing a settlement of legal disputes before him, the judge gives a definitive settlement whose results are formulated in the form of a decision called vonnis. The judge's decision is the application of general and abstract law to actions concrete (in concerto). For this reason, the judge must choose the legal regulations that will be applied, interpret it to determine (find) the forms of behavior listed in the regulation, and determine its meaning in order to determine its application and interpret all the facts to determine whether the facts are included in the meaning application of these laws. Through the settlement of deep concrete cases judicial process can occur also the formation of law ". There is nothing which cannot be resolved and there is no problem that has no law. Legal discovery and the creation of the law is carried out by the judge. Thus the result of the discovery of the law and the creation of law is more meaningful in the world of justice. This is understandable, because Supreme Court justices are the highest judges and their decisions are the final decisions permanent legal force to be implemented, let alone the decisions of the Supreme Court justices exemplified and used as a reference as a source of formal law in the form of jurisprudence. In order to realize a clean court, it is necessary to make efforts to reorganize the justice system integrated, so as to produce dignified and moral judges. (Mashudi, 2014) (Bahmid & Syarhruddin, 2020).

Based on article 5 paragraph (1) of Law Number 48 of 2009 concerning judicial power, the biggest role and opportunity for legal reform is in the hands of judges. Associated with the judge in religious justice, the task of exploring, following, and understanding legal values and a sense of justice who live in society becomes not simple but very interesting. There are at least two things that indicate this: First, because the biggest legal material is the authority religious court is Islamic law as contained in the books of *fiqh,* then every step updates will be constrained by Wahbah Zuhaili's justification above, because of the five methods that Yes, only one is allowed. Second, there is still a school of thought among judicial judges religion that was not prepared for legal reforms that were really needed in family law. There is an irony that is apprehensive, while the people of Islam criticized the secular law that separates law from morals. They forgot that the preparation of *fiqh* is also only guided by *muhkamat* verses, and not a few do not care towards morals which are widely found in *mutasyabihat* verses. (Mabrur, 2017) (Huda, 2022) (Qoyyimah & Mu'iz, 2021)

Base on Article 20 AB "Judges must judge based on the law" and Article 22 AB + Article 14 law no. 14 of 1970 requires "Judges not to refuse adjudicate cases submitted to him with incomplete or unclear reasons law that regulates it but is obliged to bring it to trial". If there is a void in the rule of law or the rules are not clear, then to overcome them is regulated in article 27 of Law no. 14 of 1970 states: "Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that live in society. It means a judge must have the ability and liveliness to find the law (Recht vinding). What is meant by rechtvinding is the process of forming a law by a judge/apparatus other law enforcers in the application of general regulations to concrete legal event sand legal findings become the basis for making decisions.

Van Apeldoorn stated, a judge in his duty to form law must paying attention to and firmly based on the principles of: Adjusting the Law with concrete facts, Can also add to the Law if necessary.

Judges make laws because laws lag behind developments public. Judges as enforcers of law and justice also function as inventors can determine what is law and what is not law. As if the judgehaving the position as the holder of legislative power, namely the legislative body forming invitation. Article 21 AB states that a judge cannot give a decision that will applies as a general rule. The law produced by the judge is not the same legislative product. Laws produced by judges

are not promulgated in state gazettes. The judge's decision does not apply to the general public but only applies to the parties litigation. In accordance with article 1917 (2) of the Civil Code which stipulates "that power the judge's decision only applies to matters decided in the decision. (Van Apeldorn, 2021).

But jurists know that laws are never complete. Therein lies the role of the judge to adjust the statutory regulations to the actual reality apply in society in order to make legal decisions that are truly fair according to legal purposes. In making legal discoveries, judges use the method of interpretation of laws such as interpretation according to language, historical interpretation, systematic interpretation, teleological/sociological interpretation, authentic interpretation, interpretation extensively, restrictive interpretation, analogical interpretation, interpretation as *argumentus a contrario*. (Armia, 2021)

a. Law Making Institution

According to Montesquie's theory, that state power is divided into 3, namely: Legislative (People's Representative Council), Executive (Government), Judicative (Court)

b. People's Representative Council

The People's Representative Council is a legislative body that holds the power to make laws the authority of the House of Representatives as such is regulated in article 20 paragraph (1) of the Amended Constitution which reads. "The People's Representative Council holds the power to form laws". Authority The House of Representatives is different from the authority of the House of Representatives before the amendments to the 1945 Constitution. If you look at it In the 1945 Constitution, the DPR is not given the authority to make laws, but only given the authority to give approval to the draft law made by the government. This means that the initiative for the formation of laws is in the government. However, after the amendment of the Constitution, the House of Representatives was given legislative authority (to form Constitution). By being given legislative authority to the House of Representatives, the Amended Constitution has Place the House of Representatives as a legislative body in general. (Mulkan, 2021) (Petannase, 2020)(Kosasih, 2019).

c. Government

In the 1945 Constitution, the President is given the authority to form laws make government regulations. The government before the amendment to the 1945 Constitution was a producer Greatest law in history. To avoid concentration of power in the hands of the organization Government, the idea emerged to hold a separation of powers and division. The emergence of the ideas of constitutionalism, the idea of a legal state is basically trying limit the power of government so that it is not too dominant. (Mulkan, 2021) (Petannase, 2020)

d. Court

In the civil law system, the role of the government and parliament is very dominant in making it Law, but in a «common law» system, it is the courts that are more dominant Influence. In «civil law» systems such as in Europe and Indonesia, court decisions are also recognized as a source of law, which is called jurisprudence. But, in the future, on the influence of the legal system Anglo-Americans in the international world, the appreciation of this «judge-made law» system is increasing Also in countries with a system of civil law. (Mulkan, 2021) (Petannase, 2020)

The background of the court as a law maker is based on article 22 AB which on in essence, it states that judges are prohibited from rejecting cases with no reason the law. Judges are required to seek the law by digging into the law. The provisions of Article 22 AB are then set forth in article 14 paragraph (1) of the law Number 14 of 1970 concerning the main provisions of judicial power as has been amended by law No. 4 of 2004 concerning judicial power. This meaning that the judge is not a mouthpiece for the law, but a judge as an organ of the court deemed to understand the law. Justice seekers come to him to beg for justice. I wish he does not find a written law, he is obliged to explore the unwritten law to decide according to the law as a wise man and fully responsible to God the Almighty, yourself, society, nation and state. (Mulkan, 2021) (Petannase, 2020)

2. The Law Making Process

Each of the institutions mentioned above, has its own way of forming law. In the Indonesian legal system based on the 1945 Constitution, the process of establishing a law can Described as follows.

a. Formation of Statutory Law

In the Indonesian national legal system based on the 1945 Constitution, laws and regulate Law Invitations include the UUD, TAP MPR, UU, PP, Presidential Decree, Ministerial Decree, Director General Decree and so on. The Constitution and TAP MPR are determined by the MPR, while laws are formed by the People's Representative Council. Perpu stipulated by the President, but within one year the approval of the House of Representatives must be sought. If the Perpu is approved, the status will become law, and if it is rejected by the House of Representatives, then the Perpu must be revoked and can no longer be submitted to the People's Representative. Government regulations are stipulated by the Government itself without having to be approved by the House of Representatives. Regulation Government is usually made by order of law or to implement a law act. Therefore, government regulations cannot stand alone without material delegation from existing laws. Presidential Decree, formed by the President without the need to be associated with material delegation from the law. (Putra & Akbar, 2021) (Mulkan, 2021)

b. Formation of Jurisprudence Law

Jurisprudence is formed on the basis of a judge's decision that has the force of law fixed. Such a judge's decision can be used as a basis for the next judge in the trial resolve similar legal cases in the future by considering the facts new facts, both due to differences in space and time as well as differences in legal subjects involved. Principles and legal principles that can be found in cases thatresolved can be taken as a legal basis for deciding the case at hand. The judges are required to act actively and proactively in interpreting legal principles and principles contained in previous decisions, both by the judge concerned or other judges in different places. In Indonesia, there is no requirement for a judge following the verdict has become jurisprudence (Talli, 2014).

3. Law Changing Institution

As described above, the House of Representatives and the President have duties, among others make laws and regulations, it's just that the difference is that the House of Representatives makes laws, while the President makes regulations under the law. If the two institutions as the authority to form laws and or regulations, then he also has the authority to amend or revise and/or revoke laws and these Regulations. Revision and/or repeal of laws and regulations is carried out by reasons as follows (Wantu, 2021): (a) These laws and regulations are no longer appropriate to the current situation and conditions (out of dated); (b) These laws and regulations conflict with higher regulations level.

To repeal the laws and regulations that for the reasons mentioned above, can be done in two ways, namely: (a) If the laws and regulations are no longer in accordance with the times, they can be revoked by those who make the laws and regulations, either to make revisions or to make new laws and regulations. (b) If laws and regulations conflict with higher laws, they can be revoked by the institutions that make them, but this rarely happens and usually the institutions that make regulations are reluctant to repeal them. (Principle: as long as no one questions the regulation, the said regulation is deemed valid)

The authority of the Constitutional Court is regulated in Article 24C of the 1945 Constitution in conjunction with Article 10 Law Number 24 of 2003 concerning the Constitutional Court which reads: (a) The Constitutional Court has the authority to adjudicate at the first and final level the verdict is final for: Examine the law against the Constitution of the Republic of Indonesia Year 1945; Deciding disputes over the authority of state institutions whose powers are granted by law The 1945 Constitution of the Republic of Indonesia; Deciding the dissolution of political parties; and Deciding disputes about election results. (b) The Constitutional Court is obligated to render a decision on the opinion of the DPR that the President and/or the vice President is suspected of having carried out the law in the form of betrayal of the state, corruption, bribery, other serious

criminal acts, or disgraceful acts, and/or no longer fulfill the requirements as President and/or Vice President as referred to in the Constitution Republic of Indonesia in 1945. (Indonesia, 1945)

Renewal of criminal law is related to determining actions as part of the system punishment. The law for imposing this action is not based on existing threats in the criminal act, but based on the circumstances and conditions of the offender. There are two groups of actors who can be subject to action, namely actors who are unable responsible or less able to be responsible and perpetrators who are able to be responsible responsible for the crime he committed. Judge in actualizing the idea of justice requires a conducive situation, both from external and internal factors from withina judge himself. Judges will be independent and impartial in deciding disputes, and in situationsconducive environment, judges will be free to transform ideas into considerations judgment consideration. while the judge's belief in the judge's decision is based on belief to a certain extent supported by clear juridical arguments.

IV. CONCLUSSION

Criminal law renewal must pay attention to legal substance, legal structure, and put more emphasis on legal culture to raise public awareness of their rights and obligations as citizens in the context of upholding law and justice. Criminal law reform is closely related to the existence of criminal procedural law. Indonesia already has legislation that regulates criminal law which is characterized and has a national character. However, over time changes and updates certainly need to be made by judges in the context of criminal law when sitting in court so that they are in accordance with the changing times and legal certainty starting from the interpretation of applicable law in a country, developing law through decisions taken in court, setting precedents or reference for similar matters in the future. The factors that influence the renewal of criminal law are due to the influence of the times, more oriented towards modern criminal law, and the expected direction is to guarantee legal certainty. This can change and update the criminal law by establishing a new precedent that can become the basis for future law enforcement. Through the use of criminal law principles, judges can fill gaps or weaknesses in existing criminal law, as well as provide new interpretations of cases that have never been faced before. Judges in actualizing the idea of justice require a conducive situation, both from external and internal factors from within a judge. Judges will be independent and impartial in deciding disputes, and in such a conducive situation, judges will be free to transform ideas into considerations for decisions. Meanwhile, the judge's belief in the judge's decision is based on belief to a certain extent which is supported by clear juridical arguments. For this reason, it is suggested to judges that in considering and deciding a case with due regard to the principles of justice, legal certainty and expediency so that the decision issued becomes an ideal decision.

References

Anshori, A. G. (2018). *Filsafat Hukum, Sejarah, Aliran dan Pemaknaannya* (Gajah Mada University Press (ed.)).

Armia, M. S. (2021). Paradigma Penemuan Hukum Dalam Bingkai Yurisprudensi Indonesia.

Badriyah, S. M. (2011). Penemuan Hukum (Rechtsvinding) dan Penciptaan Hukum (Rechtsschepping) oleh Hakim untuk Mewujudkan Keadilan. *Masalah-Masalah Hukum*, *40*(3), 384-392.

Bahmid, F. H., & Syarhruddin, E. (2021). Makna Pengisian Jabatan Hakim Agung yang Dapat Menuju Kualifikasi Peradilan pada Mahkamah Agung Republik Indonesia yang Kompeten dan Berintegritas. *Palar (Pakuan Law Review) Vol*, *7*, 487-504.

Brama, M. (2016). Model Sistem Peradilan Pidana Dalam Perkembangan. *Jurnal Ilmu Hukum*, *III*(8), 10–15.

Chazaw, A. (2002). *Pelajaran Hukum Pidana*. Raja Grafindo Persada.

Efendi, E. (2011). *Hukum Pidana Indonesia*. PT Refika Aditama.

Ehrlijk, E. (1975). *Fundamental Principles of The Sociology of Law*. Russel & Russel . Inc.

Hiariej, E. O. (2009). *Asas legalitas & penemuan hukum dalam hukum pidana.*

Huda, K. (2022). *Implementasi Kemandirian Hakim Dalam Proses Penyelenggaraan Peradilan Dalam Perspektif Hukum Islam* (Doctoral dissertation, Universitas Islam Sultan Agung (Indonesia)).

Jatmika, B. J. (2020). Asas Hukum Sebagai Pengobat Hukum; Implikasi Penerapan Omnibus Law. *JAAKFE UNTAN (Jurnal Audit Dan Akuntansi Fakultas Ekonomi Universitas Tanjungpura)*, *9*(1).

Kartadinata, A. (2023). PEMBAHARUAN HUKUM PIDANA TERHADAP PERTIMBANGAN HAKIM PRAPERADILAN. *Viva Themis: Jurnal Ilmu Hukum dan Humaniora*, *6*(1), 54-72.

Kosasih, A. (2019). Hubungan Kewenangan Antara Dpd Dan Dpr Menurut UUD NRI Tahun 1945. *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan*, *3*(2).

Kusumaatmadja, M. (2002). *Konsep - Konsep Hukum Dalam Pembangunan*. Pusat Studi Wawasan Nusantara, Hukum dan Pembangunan & Alumni.

Mabrur, M. (2017). Moderasi al-Qur'an dan Penafsiran Kontemporer: Analisis Pemikiran Wahbah Zuhaili dan Relevansinya dalam Konteks Indonesia Modern. *Mumtaz: Jurnal Studi Al-Quran dan Keislaman*, *1*(2), 31-50.

Manan, A. (2005). *Aspek-aspek Pengubah Hukum*. Kencana Prenada Media.

Martins, A. B. S. (2022). *KEBEBASAN HAKIM DALAM PENJATUHAN PIDANA YANG DITERIMA OLEH TERPIDANA* (Doctoral dissertation, Universitas Atma Jaya Yogyakarta).

Marzuki, P. M. (2010). *Penelitian Hukum* (Issue Cet 6). Kencana Prenada Media Group.

Mashudi, M. (2014). Peran Hakim Agung Sebagai Pembaharu Hukum Untuk Mewujudkan Pengadilan Yang Bersih. *Jurnal Hukum Prioris*, *4*(2), 143-156.

Muhammad, R. (2006). *Potret Lembaga Pengadilan Indonesia*. Raja Grafindo Persada.

Mulkan, H. (2021). Peranan Hakim Dalam Persidangan Perkara Pidana Sebagai Upaya Penegakan Hukum Pidana. *Jurnal Hukum Samudra Keadilan*, *16*(2), 2021.

Nonet, P., & Selznick, P. (2019). *Hukum responsif*. Nusamedia.

Nugroho, R. D., & Suteki, S. (2020). Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi). *Pembangunan Hukum Indonesia*, *2*(3), 291–304. https://all3dp.com/2/fused-deposition-modeling-fdm-3d-printing-simply-explained/

Petannase, I. (2020). PERANAN HAKIM SEBAGAI PENGUBAH DAN PEMBAHARU HUKUM. *Doctrinal*, *5*(1), 1-142.

Purwati, A. (2020). *Metode Penelitian Hukum Teori dan Praktek* (T. Lestari (ed.); Kedua). CV. Jakad Media Publishing.

Putra, B. M., & Akbar, M. I. (2022). Implikasi Peniadaan Peraturan Pemerintah Terhadap Undang-Undang Ekonomi Kreatif. *JAPHTN-HAN*, *1*(2), 290-308.

Qoyyimah, A., & Mu'iz, A. (2021). Tipologi Moderasi Keagamaan: Tinjauan Tafsir al-Munir Karya Wahbah Az-Zuhaili. *Jurnal Ilmiah AL-Jauhari: Jurnal Studi Islam dan Interdisipliner*, *6*(1), 22-49.

Rahardjo, S. (1998). Sistem Peradilan Pidana Dalam Wacana Kontrol Sosial. *Jurnal Hukum Pidana Dan Kriminologi*, *I*(1), 1998.

Razaq, A. N. (2020). Legalitas Persidangan Perkara Pidana Secara Elektronik Di Masa Pandemi Covid – 19 Dalam Pespektif Hukum Pidana. *Jurnal Inovasi Penelitian*, *1*(3), 1227–1230. https://all3dp.com/2/fused-deposition-modeling-fdm-3d-printing-simply-explained/

Soekanto, S. (2007). *Penelitian Hukum Normatif, Suatu tinjauan singkat.* Rajawali Press.

Talli, A. H. (2014). Integritas dan Sikap Aktif Argumentatif Hakim. *Jurnal Al- Daulati*, *3*(1), 2–3.

Umar, A. (2007). *Rencana Pembangunan Jangka Panjang Nasional Tahun 2005- 2025* (6th ed.). Citra Utama.

Van Apeldoorn, B. (2004). Theorizing the transnational: a historical materialist approach. *Journal of international relations and development*, *7*, 142-176.

Van Apeldoorn, L. (2021). Hobbes on Property: Between Legal Certainty and Sovereign Discretion. *Hobbes Studies*, *34*(1), 58-79.

Wantu, M. F. (2021). Kendala Hakim dalam Menciptakan Kepastian Hukum , Keadilan dan Kemanfaatan di Peradilan Pidana. *Jurnal Mimbar Hukum*, *25*(2), 209–216.

Widiatama, A. R. (2020). *Persidangan Perkara Pidana Secara Elektronik Di Masa Pandemi Covid-19* (Doctoral dissertation, UNIVERTSITAS AIRLANGGA).

Yudianto, O. (2016). Karakter Hukum Pancasila Dalam Pembaharuan Hukum Pidana Indonesia. *DIH: Jurnal Ilmu Hukum*, *12*(23), 240055.

Zaidan, M. A. (2022). *Menuju pembaruan hukum pidana*. Sinar Grafika.