

## **Social Justice in Indonesian Judges Decision-Making**

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### **Abstract**

A syllogism is a process of court decisions between the provisions of law in fact or value life in the community. It is influenced by the presiding judge's educational background. In legal education, there are several legal thoughts that are not only different, but also contradict each other. Contest and segregation between legal thought have an impact on the decision-making process of judges in cases. Indonesian Judges in drawing up legal considerations are required to adhere to the doctrine of complementary paradigm of legal thoughts, how its application in the field, this study outlines based on a study that has been done by doing the in-depth interviews some Judges and an analysis of the decisions that have been made.

Keywords: Law; Legal Thought; Judge; Judicial Decision.

### **Introduction**

As a means of seeking justice, the court places the judge as a central figure and this is accompanied by the latter's depiction as the noble profession representing God in deciding upon a lawsuit. A judge in the act of examining and disconnecting is not only required to be honest and impartial (Barak 2009: 101), but they must also have extensive knowledge in order to interpret and discover law. Judges are impartial decision-makers in the pursuit of justice. In the adversarial system of justice - legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts.

In the context of legal thinking and validity (Vargas 2000), judges are faced with the reality of such diverse thinking in jurisprudence. Lawyers in general have classified legal theories in several schools of legal thought. Naturalism is considered a pioneering concept that the rationality of the positive law of man must come from the mind and is derived from the Law of Nature, wherein sanctioned justice is derived from the Law of God and morality (George 2008; Corbett 2012; Dolhenty 2012). Next philosopher is positivism which believes that law is a closed

logical system (Hart 1958; Fuller 1969) that is to say, rules can be deduced from codified laws free from sociological, economic and even ethical and moral elements, thus making law an isolated field of interaction with society. As Posner (2008: 42) assert hypothesizes about legalism, considered a positive theory of judicial behavior that “judicial decisions are determined by ‘the law,’ conceived of as a body of preexisting rules found stated in canonical legal materials, such as constitutional and statutory texts or derivable from those materials by logical operations.”

The antithesis of positivism gives rise to the legal thinking of sociological jurisprudence which holds that good law must be law in accordance with the laws that live in society (Singh 2016). The principal argument of the matter of law is no longer a matter of formal legality, of the proper interpretation of the articles of statutory legislation, but of moving toward the use of the law as a means of contributing to the formation of the new order or in accordance with the conditions of the day. Furthermore, the Law of Realism (see Green 2005; Erlanger, et al 2005) flourished, the core idea being that law is a tool for achieving social goals and not believing in the assumption that the rules and legal concepts are sufficient to show what the court should do. Legal realists are opposed to natural law traditions. Legal realists regard these traditions as historical or social phenomena to be explained by making use of a variety of psychological and sociological hypotheses.

Moving from the presence of contesting legal thinking (van Klink 2006; MacCormick 2013: 1), it is important to see whether the contesting also affects or spreads in the real life of law enforcement, especially in judicial decision. The extent to which this contesting affects how judges apply existing legal concepts is a matter that needs to be examined in reality. What legal paradigm dominates the judge's thinking in deciding cases? What factors influence the application of the legal paradigm for judges? This paper is an extraction of research results undertaken to find out how the legal paradigm of judges in Indonesia underlying decision making. This research was conducted empirically through in-depth interviews with some judges and content analysis review of some decisions in court in Indonesia, which consists of District Court, High Court, and Supreme Court. The final conclusion of the research is expected to represent the general picture of how the legal thinking model that is applied by Indonesian judges in the decision-making process.

### **The Law Governing Judge's Behavior**

In legal theory, described by Richard A. Posner (2008: 19-56) that there are as many as nine theories of judicial behavior. They are: the attitudinal, the strategic, the sociological, the psychological, the economic, the organizational, the pragmatic, the phenomenological, and the legalistic. In this study, we did not elaborate the theories or comparing to result of study. This study also does not intend to classify

an attitude of the judge into one of the theories he put forward. Interviews and analysis were conducted to identify legal thinking used by judges in making a decision. If then there are similarities or can be categorized into one of the theories of behavior, then it is just a coincidence.

The study begins by describing the regulations in Indonesia that govern how the judges should behave. The Indonesian legal system requires a judge to possess the five traits described in the 'Panca Dharma Hakim' (Five Traits of Judges), as represented in 'Kartika, Chakra, Candra, Sari, and Tirta' (Mustofa 2013: 117). The 'Kartika' is the star symbolizing the One Supreme Deity, namely that in deciding case Judges must be accountable to God. 'Chakra', is symbolizing that the Judge must be able to unmask falsehood, exterminate falsehood, unrighteousness, that the judge must be able to uphold justice. 'Candra' is a full moon that illuminate nature when it is dark, i.e. Judge must be able to make darkness of heart to be light, meaning Judge must be wise and authoritative. 'Sari', is fragrant flowers filled the garden, Judge besides must behave impeccably, along with it able to give birth to plants derived from the essence and useful to humans. The last is 'Tirta' or water cleaning dirt, Judge must be honest, quench the hunger of justice seekers. As a religious Judge, or as a servant of God, in examining the case should be able to free themselves from certain interests or desires.

All of traits elaborated in the Code of Ethics and Code of Conduct set by the Supreme Court of the Republic of Indonesia (2012). The guidelines which are the moral guidelines of the judges in the act implicitly wishes that the judge's judgment must consider all aspects of juridical, philosophical, and sociological nature. Main keys are the justice will be achieved, realized and accounted in the judge's decision is justice, if is oriented towards legal justice, moral justice and social justice. The Codes which contains the ten principles of judicial conduct affirms that a judge should maintain honor and dignity. The honor of the judge is primarily seen in the decisions he makes, and the underlying considerations, or the whole process of decision making that is not only based on legislation, but also the sense of justice and wisdom in society. The ten principles of judicial behavior are: behave fair, honestly, wisely, independent, integrate high, responsible, upholding self-esteem, high discipline, humble, and being professional.

The Judge's Code of Conduct specifies that a judge should consider three aspects of decision making. Namely aspects of juridical, philosophical and sociological. The juridical aspect is the first and foremost aspect fulfilled by referring to the applicable law. The judge as the implementer of the law, must understand the law and look for the law relating to the case at hand. The judge should be able to assess whether the law is fair, giving legal benefit and certainty if enforced. The philosophical aspect is an aspect of truth and justice, while sociologists consider the cultural values that live in society. Philosophical and sociological aspects, its application requires extensive experience and knowledge and wisdom that is able to understand and follow the values that live in society that

may have been neglected. Although it is realized that such a difficult thing to do because it is not parallel to the principle of legality and not bound to the system. The inclusion of these three aspects is intended to make the judge's decision fair and acceptable to the public.

Normatively, Law Number 48 of 2009 on Judicial Power (hereinafter the Law on Judicial Power) is the parent of rules concerning the implementation of litigation in Indonesia, including the provision of rules on the conduct of judges. In analysis of its chapter by chapter, that is deemed a proposition can be stated that the Law on Judicial Power Law has a concept of complementary legal paradigm between all legal views. For example, in Article 50 paragraph (1) which provides that: "The court's decision other than to contain the reasons and grounds of the decision, also contains certain articles of the relevant legislation or source of the unwritten law as the basis for judgment." However, the duty of the judge to expressly state the articles on which the decision is based, is not limited to articles as the only source of law offered in the Law on Judicial Power Law.

Article 5 paragraph (1) has affirmed that: "Constitutional judges and judges are required to explore, follow, and understand the legal values and sense of justice living in the community." This legal phrase paragraph (1) can be interpreted to represent the ideas and values of sociologists, both in the context of sociological jurisprudence (often interpreted by the sociology of law), legal realism or progressive lawmakers moving from the basic assumption that law is for man and not vice versa by promoting substantive justice that emphasizes to precedence over procedural justice. This proposition is in line with the ideas reflected in Article 10 paragraph (1) which reads: "The court shall not refuse to examine, hear and adjudicate a case filed under the pretext that the law is absent or less clear, but obligatory to examine and adjudicate it."

Not only embracing the pattern of positivism and sociology, the phrase "understanding the values of law and sense of justice living in society" contained in Article 5 paragraph (1) of the Law on Judicial Power, also provides space for the existence of natural law. The creation of the idea of natural law in the Law on Judicial Power can also be found in Article 8 (2) which requires a judge to also implement the moral values contained in the idealist legalistic view which is done to consider and pay attention to the good and evil nature of a defendant. Unifying the moral elements or other elements outside the law is the opposite of legal positivism. Likewise, on the contrary, to decide a legal case only based on the formality of chapter by chapter is the antithesis of the view initiated by another legal thought. While considering morality and humanity are the main doctrines of idealist views. It is entirely integrated in the Law on Judicial Power, which means there should be no contesting between them. They complement each other or are complementary as a judicial act in law enforcement through a judge's decision.

Based on the whole of this normative description of the position of judges in the Indonesian legal system, the propositions constructed from the results of the

research indicate that indeed the judge's paradigm of law must be built with a multi-thought approach, in this context embracing a complementary legal paradigm. Every school of law contributing ideas or values in the judge's perspective using the law in deciding a case. Judges should not be oriented solely on formal law, regardless of values living in society or in any other recognized legal system. Similarly, a non-positivist and progressive decision does not necessarily straddle the formal aspects of law and the source of the law used. Essentially, between justice, legal certainty and expediency needs to be established into one unity that can be reflected from the judge's decision.

### **The Empirical View of Judges**

Empirically in the view of the judges who became the respondents of the study, it was found that the legal paradigmatic differences theoretically did not significantly affect the judge's behavior in decision making. Segregate paradigms can only be identified on judicial considerations and judicial methods in making decisions. And even then, it cannot be said that a judge is a follower of a particular legal thought only because of legal considerations and methods undertaken. As respondent the Vice Chairman of the *Makassar* District Court, has the view that:

If the judge's decision does not adequately consider matters of juridical and legal relevance as expressed by the parties at the hearing or found by the judge during the process of examining a case, there will be an awkwardness and a deadly sense of justice for the seeker justice.

Indeed, the decision must consider the merits of a particular case. If not doing so then, there is injustice. Even so, for a respondent as District Court Judge in deciding a case not only considers the written law, but they must also pay attention to values that live and fulfill the sense of justice of the community concerned. The same thing has been said by a High Court's Judge, and by some other respondents, who say that: judges not only see from the written or legislative point of view, but also from jurisprudence and values that are alive, preserved and followed by the community. Also implied in the statement of the Chairman of the *Makassar* District Court, stating that: "The court's verdict concerns the conscience of humanity and therefore as a result, illogical verdicts will be by the most ordinary people. Judges must uphold justice and truth based on legal norms and common sense."

Based on the results of the research, in the event of dissent, it was found that younger judges or those lower in rank often succumbed or followed the legal views of more senior judges or the presiding judges. Similarly, it is recognized that among the judges that effort is often made to equate perceptions in order to avoid differences of opinion. This is due to several factors, such as judges' lack of courage in maintaining their views and opinions towards their colleagues, especially senior, the strong culture of tolerance and tolerance, or feeling a lower legal understanding

compared to other judges. Especially the issue of seniority and position as a member compared to the position of chairman of the assembly, which is indeed a judge with rank and that supersedes other members. According to Posner (2008: 33), there is no uniform criteria to judge elections, the same way that court judges tend to vary in the background and ability, which is a source of tension as well as enriching experience and insight. Maintaining collegiality under such conditions requires continuous efforts to minimize sources of irritation.

Research shows that disagreements generally arise based on ideology, or because of personal or experiential backgrounds, emotional, or other factors are likely to arouse a disagreement that is difficult to resolve with a groundless argument. So far, we have explained that while ideology is an important influenced on decision making, it is but one of several factors. In this context, knowledge and legal paradigms also play an important role. They recognized that: the most important and influential and decisive insight is the judge's legal knowledge. The wider the scope of the judicial knowledge is the wiser in giving legal considerations. It is a very decisive and necessary part of the judges' consultative meeting of especially in determining the decision.

The interesting one, where there are cases that confiscate or attract public and media attention, usually the final decision also involves the Chief Justice in consultation. In consultation with the Chief Justice, majority assert that the motivation consult with the direct supervisor is specially to explain the result of examination in the form of actual facts in the court because usually the result of the verdict is different from what is expected, by the community group are that pay attention to the case. Thus, the head of the court has understood first before the verdict was delivered and arrived in the community.

In general, it is found that the way judges interpret a rule of law generally uses two interpretation patterns, namely the original intent or non-original intent, commonly referred to as textual meaning or contextual meaning, which is actually the embodiment of the pattern of contesting between legal thoughts each other. The main problem of interpretation in this case is how to justify he choice of among legally possible alternatives. It is dependent on standards by which validity is evaluated. External justification depends on norms and values to which one binds in the justification. So back to the legal knowledge of the judges in question, if each member of the assembly feels the argument's considerations are not strong enough then in the end the decision is made through voting. At a meeting of the judges' assembly, it is possible that one member of the council believes that the case must be decided on the basis of a particular legal view or with one legal method, while the other two differ. The most voting or voting mechanism is the final choice.

### **Factors Affecting Judges**

In this study, there is recognition that there are several factors that also

influence judicial decision making. These factors are educational, work experience, external supervision, integrity, economy and gender. All the respondents of this study homogeneously argued that the most important factor in the issue of the legal paradigm for a judge is education.

As acknowledged by the female Judge of *Pare-Pare* District Court, that the formal education of the judges is very important because the consultative meeting is determined by the number of references to be considered in judging a legal fact presented by the parties on trial. The same thing is described Chairman of *Makassar* District Court, stated:

Judges' consideration is highly dependent on the judge's own personality, if the judge has adequate knowledge and skills, then the judge will decide a case with consideration of course to be better. Judge's legal knowledge is very much determined or influenced by both formal education (especially master and doctorate), special education (candidate education and other special education), attending adequate seminars and experience.

The acknowledgment of judges who responded in this study indicates that the level of formal education also influences in shaping the judge's legal paradigm. It is natural to remember that teaching materials in Indonesian legal education system have different substance, explanation and analysis between undergraduate, master and doctoral degree. The results of the research indicate that the existing judicial education and training process is conducted by the Supreme Court in stages, both on the candidate of judges and for career judges, is still oriented towards the provision of technical competence of the judiciary and does not hone the critical thinking of the judges.

If the main education given to the judge is only concerned with administrative matters and the management of the case, then it is fair that there are many accusations that the courts in Indonesia tend to adhere to the positivist legal paradigm because it prioritizes procedural aspects and legal formalities. So, to develop a judge's mindset, to answer the demands of justice and paradigmatic law development, the formal education of judges needs to be improved. A simple analysis suggests that the depth of formal educational teaching substance differs according to the level of legal education, so the higher the judge's education should affect the judge's judicial paradigm.

The next factor considered influential in shaping the legal paradigm for a judge is work experience. The period of work or duration of the judge's profession as well as the number of cases handled are the elements that affect the work experience of a judge. Respondents of this study said that work experience contributes to the courage of judges in making decisions, including the perspective or paradigm of judges on the legal review of the cases it faces. As has been pointed out in the previous section that work experience also influences the process of judicial consultation meetings in decision making. Often the junior judges are

incapable of doing much when disagreeing with more senior judges let alone the chairman of the panel of judges.

In the research conducted it was found that work experience and decision making have interrelations that affect each other. It was found that the quality of a judgment was influenced by the experience or career of a judge, but vice versa, the quality of the judge's decision also affected the career of the judge. As the respondent acknowledges that when a verdict is annulled by a higher court ruling then it actually embarrasses and influences the career of a judge. As a result, many judges avoid taking decisions that are judged to be wrong, they only make normative decisions that are routines and standard without any effort to explore the values that live in society. The judges' concerns, if they make a legal breakthrough and, then progressive legal proceedings do not correspond to the judge's judicial paradigm at a higher level, then it can be expected that their verdict will be disallowed.

Improper legal considerations can occur due to various possibilities. Among other things the Judge does not have sufficient legal knowledge of the matter being handled, the Judge deliberately uses unlawful or improper law mechanisms because of other factors such as the presence of pressure from certain parties, bribery, and other factors affecting the relevant judge's independence. The Judge did not have enough time to write down all the good legal arguments caused by too many cases having to be resolved in a relatively short period of time. Or perhaps the Judge is too lazy to increase his knowledge and insight, so that it affects the quality of the decisions he made. This factor is a factor that influences indirectly, but enough to determine the quality of the decision.

The next factor affecting the judge's legal paradigm in the settlement of cases, is external supervision. In this context, external supervision can be done by an authorized institution, in this case the Judicial Commission, supervision can also be done through a social organization, as well as mass media or the press. The commission works to maintain the honor, dignity and behavior of judges and formerly held the power to propose candidates for the Supreme Court. External supervision actually provides psychological influence for judges in making decisions. Concerns about the impact or reaction to the verdict also contributed to the formation of judge behavior that only prioritizes the positivist paradigm. The judges seem to declare that they have done is appropriate under the applicable legal system. Legal justice is fulfilled due to legal certainty. According to one judge in this study the direct supervision of the Judicial Commission, including contributing to the judges' concerns about making progressive or breakthrough decisions.

Although the results of the study indicate that the presence of the Judicial Commission provides psychological influence on judges who may be the triggers of positive paradigm judges in punishment, the concerns are in fact unfounded. In addition to the independence factor, there is no direct link between the judge's method or paradigm in the legal considerations of an issue with the duties and



authority of the Judicial Commission. It is clear that the Judicial Commission is more likely to be the supervisor of the Code of Ethics and Judicial Conduct Guidelines, not overseeing all judges' considerations in deciding cases. If a judge has decided upon a legal consideration that he or she understands, whether the consideration has a positivist or non-positivist paradigm, then the Judicial Commission has no authority to execute the verdict. The role of this commission is only exercised when there are decisions deliberately use faulty legal sources or apply rules that are suspected to be false, whether intentional or otherwise, so as not to provide justice.

This is similar to the Honor Board of Judges (Hatta 2008: 106; Mustofa 2013: 51). As a tool established by the Supreme Court and the Judicial Commission, it's only duty is to examine and decide alleged violations of the Judicial Code of Conduct. In the context of ethics, sanctions will only be granted if, inter alia, the judge is not fair to any litigant party or may withdraw from cases involving family members. Criminal sanctions will be granted when a judge is indicted for corruption or accepting a bribe. However, when a judge has a positive legal view by deciding cases only by law or perhaps very progressively by applying the principles of law that live in society, is it then also sanctioned? It is interesting to compare it with the statements of former judge Binsar Gultom (2011), according to which:

We should be proud of the discovery of a legal fact that frees or releases the defendant for the sake of law and justice, even if the judge concerned is to be examined by the Supreme Court and Judicial Commission Supervisory Board to prove whether there is a violation of law or code of ethics during the trial process.

The external supervision by the public against judges is primarily concerned with cases of interest. For example, the case of Prita Mulyasari (Yogaswara, 2010: 28) who was sentenced for defamation of a hospital by electronic mail, where the public viewed that Prita is a part of consumer protection. *Tangerang* District Court acquitted Prita Mulyasari from all charges, but the case continued to the Supreme Court. Although in the end the Supreme Court granted the request for a review and released Prita from defamation charges, but the High Court's decision and the Supreme Court's first ruling that Prita was guilty, was eventually affected by external influences from the public. There are judges who tend not to go against the flow or respond to social justice voiced by the public. There is also a different type of judge who use their own paradigm through the application of the law which is appropriate by their standards.

The judge's paradigm being unaffected by the public response was also expressed by the respondents in the research conducted. Even not only the public view, the media spotlight might not necessarily affect the judge. Various views state that the media today have provided a collective awareness to the public that the judicial mafia is a fact or reality that has undermined Indonesian law enforcement agencies. Therefore, it is not wrong to say that the media plays a significant role in

providing access to justice for the public by conducting supervision of every stage of the judicial process as it happens lately. In other words, the media can become the guardian of public interest by providing opportunities for the community and all relevant parties, including the police and prosecutors, to argue and prove that they are on the right path in an open and fair trial process. Consequently, court proceedings are open to the public in order to have public scrutiny of the judicial process.

The following factors are indicated to influence the judge's legal paradigm is a matter of integrity (ethos) which includes honesty and trustworthiness. Based on Code of Conduct, a high level of integrity essentially means having an unshakeable whole personality, embodied in a loyal and resilient attitude that holds to the values or norms applicable in carrying out the task. High integrity will encourage the formation of a person who dares to resist temptation and all forms of intervention, by promoting the demands of the conscience to uphold truth and justice, and to always strive to do the job in all the best ways to achieve the best goal.

The question of integrity, especially when it comes to economics, does not seem to have a direct connection to the legal paradigm of a judge since the economic question is not correlated with the cognitive aspects of knowledge. In many cases, however, the results of the research indicate that the behavior of a judge who is dishonest or does not have good integrity, in the application of the law to the consideration of a case often seeks to find a legal loophole that benefits a person or a party with a certain relationship. The modes include the free verdict and the verdict "off all lawsuits" or a verdict lighter than the maximum sentence.

When judges enact judgments or sanctions lighter than the maximum penalty for cases of public interest, such as cases of corruption, the judgments are often judged as being unreflective of a sense of community justice. The allegations that judges are positivist are inevitable. However, this does not mean that these judges are in a position to be blamed, especially if the judge is confident that his decision has gone through the proper mechanism. For example, as procedural formal law, applying the right rules, has explored the values that live in society and consider the aspect of morality, then if it has all formed a "judge's conviction" then whatever the verdict is in accordance with that should.

In addition, economic issues are also influenced by gender issues. This statement seems surprising, but it becomes very logical in the explanation of *Makassar* District Court Chairman obtained in this study. According to them, a married female judge will tend to be more idealistic and easy to make legal breakthrough because they not burdened by the pressure factor on the economic basis because of their lives is provided for by their husbands. In contrast, to the married men rely more heavily on the judge's profession as his sole source of income, so that whenever unexpected things happen with regard to the decisions taken they could be influenced by career choices.

## Legal Consideration of Judicial Decision

In all the civil cases under study, it is generally found that judges' judgmental considerations in a decision rigidly consider the articles referred to. In addition to being based on statutory provisions, most of the decisions examined contain other elements of judgment. As *Sungguminasa* District Court Decision Number: *06/Pdt.G/2007* in a civil case, which is actually a case of land dispute, but since the case relates to land dispute in the context of joint property in marriage, the judges' consideration is not only sourced from land law alone. Interesting is that the marriage law argument and inheritance law are built with the approach of religious law to solve the problem. The way punishment negates the positive law of values that lives in society is an indication of the validity of the sociological law paradigm. Taking into account the religious norms as the basis of the verdict is the implementation of God's law enforcement in accordance with the natural law paradigm. It is a complementary approach if the legal aspects of marriage and inheritance law form the basis of legal considerations analysis.

Another court ruling that deserves to be presented as a verdict which holds the complementary paradigm is what has been decided by the *Makassar* High Court through the decision of Number: *103/PID/2009* that appeals against illegal logging that has been decided by the *Makassar* District Court Decision Number: *35/Pid.B/2007*. In the ruling, the District Court claimed the defendant was guilty and sentenced him to imprisonment for one year and ten months. In the appeals hearing, the panel of judges of the High Court precisely increased the weight of punishment imposed on the defendant by changing the sentence of imprisonment to two years. The basic legal considerations used by the judges of appeal are not sourced from legislation, legal principles or jurisprudence. In its judgment, the panel of judges stated that: "Today's illegal logging crime is increasingly widespread, has caused great harm to the State, so that the defendant must be sentenced to a more severe penalty to cause a deterrent."

In the paradigm of legal positivism, the law or the whole legislation is thought to be something that contains the law completely. So that the duties of justices are to apply the provisions of the law mechanically and linearly to solve the problems of society, according to the law. However, the paradigm of classical legal positivism that places the judge as a prisoner of the law, does not allow the court to become an institution that can encourage the development of society. On the contrary, taking into account other aspects outside the law, the *Makassar* High Court Judges have represented the influence of the non-positivist legal paradigm, in this case the sociology of law, in its verdict. Considering that illegal logging is an act that is happening is a view that reflects the social fact that is happening in society. Similar to the clauses protecting against the loss of the State, it is a punitive goal to create social justice. Sociologically, the structure of the court and its judges cannot be separated from the social fabric of its society and the courts are not isolated

institutions of their society. Courts should not turn away from the sense of justice and the values of the living and developing law. Diametrically to the famous teachings of Montesquieu (1748) that the judge is "*Le juge est la bouche de la loi*" or judge only as the 'mouth' of law.

The judgment, which is considered to embrace the sociological law paradigm similar to the previous decision also can be found in the decision of the *Makassar* High Court Number: 278/PID/2010 which reinforces the decision of *Pangkajene* District Court Number: 06/Pid.Khusus/2010 against a corruption case. In legal considerations both the legal council, at the first level and the appellate provides a sociological argument that the basis of a criminal sanction against the defendant not only aims to educate the defendant himself, but also to give deterrent effect to the defendants not to repeat their actions. In addition, judges' considerations also take into account that: "Criminal sanctions imposed will serve as an example for the public, especially the Civil Servants not to be easy to commit criminal as the defendants and they do not support the Government's program in eradicating corruption."

The next case this research considers to have a complementary legal paradigm related to morality considerations is the Decision of the *Makassar* High Court Number: 114/PID/2010, towards a case of narcotics circulation. The panel of judges of the District Court has sentenced the limits of criminal punishment far under the threat of a minimum sentence. Whereas regarding the sentences handed down by the Panel of Judges of the First Level under the limitative sanction, the Panel of Judges of the Court of Appeal held that "from the weight of the methamphetamine is less than one gram, the sentence sent to the Defendant is correct because the decision is based on justice". The Appellate Panel of Judges is of the opinion that "is it possible for a defendant who has less than one gram of narcotics to be equal to a person who has narcotics weighing 100 kg with the threat of punishment of at least four years, therein lies the justice". Furthermore, the Panel of Judges stated that:

the sentence handed down to the Defendant is not a revenge but is a lesson for the Defendant in which the detainee will be deterred and will not commit any crime in any future form. In addition, the punishment should be taken into account the situation of the Defendant, a woman, a housewife who has a husband and children who need to be noticed and the responsibility of the Defendant against the family.

The judges' consideration that incorporates other elements outside the law is also a non-positivist punishment that is judged to contain the concept of a progressive legal paradigm that humanity as the core of the law. The law is not only seen partially as a normative provision in written rules, but also comprehensively viewed to the aspect of the reality of punishment that must be faithful to justice and humanity as the main orientation of the existence and operation of the law.

## Conclusion

Contesting in the scientific level has allegedly classified jurists into various schools of legal thought and creating falsification between schools. However, the study found that both on the normative level, the articles stipulated in the Law on Judicial Power and the behavior of judges, as well as the empirical findings of the analysis of the way judges are punished, the judges' judicial paradigm should be built with a multi-faceted approach, in the context of the paradigm of complementary law. Every school of law should be contributing ideas or values in the judge's perspective using the law in deciding a case. Judges should not be oriented solely on formal law, regardless of values living in a society or in any other recognized legal system. Similarly, a non-positivist and progressive decision does not necessarily straddle the formal aspects of law and the source of the law used. Essentially, between justice, legal certainty and expediency needs to be established into one unity that can be reflected from the judge's decision.

In various judicial decisions that make up research material, it can be stated that there are decisions on the rules that tend to use the positivist paradigm approach of law since the ruling is built only on the approach of the law and question procedural requirements. This is partly due to the legal system that requires judges to always include the articles on which their legal considerations are based. This obligation has established the judge's paradigm to always prioritize the searching of articles in the legislation relating to the case being handled. However, there are still some court decisions that have tried to make legal considerations that reflect the efforts of judges to explore norms other than those contained in the law, according to the order of the rule that judges are required to explore, follow and understand the values of law and sense of justice living in community. \*\*\*

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