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Juridical Analysis of the Difference in Judges' Considerations in First-Instance Decisions and Cassation Against Persecution Resulting in Death Based on the Principle of Justice (Study of Decision Number 1466 K/Pid/2024 jo. Decision Number 454/Pid.B/2024/PN. Sby)

Abstract

The significant differences in judges' decisions reflect a serious challenge to the principle of equality before the law and public trust in the justice system. In general, this difference occurs due to a variety of factors. This study examines the difference in judges' considerations in "Decision Number 454/Pid.B/2024/PN Surabaya" (first level) and "Cassation Decision Number 1466/K/Pid/2024 Supreme Court" in cases of persecution resulting in death. The focus of the research is the trajectory of the shift from a free verdict to a guilty verdict, by assessing the application of the principles of justice and legal certainty (Radbruch theory). The research method is normative juridical, based on document studies. The results of the study showed that at the first level, the panel of judges focused on CCTV footage and traffic expert testimony, using the principle of *in dubio pro reo*, but ignoring key evidence such as visum and vehicle tracks. As a result, the verdict tends to only meet procedural certainty without substantive justice. On the other hand, the Supreme Court in cassation developed a comprehensive analysis of the assessment of evidence which included medical, visual, forensic, and chronological evidence, so that the element of conditional intentionality and a complete causal relationship were found. Thus, cassation decisions display a harmonized approach between legal certainty, utility, and substantive justice, in accordance with the Radbruch principle that prioritizes justice when formal law causes injustice. The researcher suggests that judicial guidelines be made in the assessment of evidence and intensive training in criminal law theory, so that judges' considerations at the initial level are more consistent, transparent, and able to reach the dimension of substantive justice, while increasing the legitimacy of criminal justice in Indonesia.

Keywords: The Principle of Justice, Legal Certainty, Differences in Judgment

A. Introduction

The Supreme Court is the highest institution in the constitutional system of the Republic of Indonesia that holds judicial power and acts as the final court. Constitutionally, the Supreme Court is guaranteed independence in the performance of its duties. In accordance with "Article 24A of the 1945 Constitution", this institution has the authority to adjudicate at the cassation level, examine laws and regulations, and carry out other functions set by law. In its role as *judex juris*, the Supreme Court determines what is considered to be the correct and relevant law to be used as the basis for decisions. According to M.H. Tirtaamidjaja's opinion, persecution is a deliberate act that causes pain or injury to others. However, if the action is carried out to protect personal safety, it cannot be categorized as persecution (Adde Pramana

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Putra & Aprima Suar, 2023). Wahyu Ramadan classifies persecution into six categories: ordinary, mild, severe, planned, planned severe, and serious persecution of certain groups with methods that aggravate the situation (Assidik, Dzakiyah Ogawa, Ahmad, Sholihat, & Najmudin, 2023).

In the Criminal Code (KUHP), persecution includes acts of physical and mental harm that can lead to the death of the victim. Articles 351 to 358 of the Criminal Code govern various forms of persecution, from minor injuries to cases that cause coma or death, while Article 170 of the Criminal Code threatens a criminal sentence of up to 5 years and 6 months for anyone who commits overt violence against people or goods (Laia, Hulu, & Laia, 2023). Because victims in persecution cases lose their basic rights to life and physical security, substantive justice for them becomes a must in the judicial process (Mahendra Kusuma Jati Gumilang & Gunarto, 2020). By integrating an understanding of the Supreme Court's authority and the urgency of criminal law enforcement against persecution, law enforcers are expected to apply the completeness of delicacy elements, valid evidence, and the principle of substantive justice, so that the justice system is not only seen as legally legitimate, but also perceived as fair (Anjarwati, Lesmana, & Lestari, 2023) and socially dignified (Tiessa, Lesmana, & Indayatun, 2025).

The researcher focuses on decisions that are considered irrelevant and not in accordance with applicable regulations. The incident occurred in "Decision Number 1466 K/Pid/2024" jo. "Decision Number 454/Pid.B/2024/PN. Sby" stated that the perpetrator was not legally proven and found guilty of committing a criminal act in the first degree, but stated that the perpetrator was legally proven and found guilty of committing a criminal act of persecution. To prove the Defendant guilty of his actions, there are at least two valid evidence, the provisions of valid evidence are in "Article 184 paragraph 1 of Law Number 8 of 1981" which includes witness statements, expert statements, letters, instructions, and defendant statements. In that case, the defendant was charged with the first charge of "Article 338 of the Criminal Code concerning murder" and "Article 351 of the Criminal Code concerning persecution" and the second charge of "Article 359 of the Criminal Code concerning intentionality". In this case, the judge of first instance chose to acquit the perpetrator based on the judge's consideration contained in the decision of the first instance, which stated that the defendant was considered not proven to have committed murder or persecution that caused the victim's death, the judge reasoned that the defendant was still trying to help the victim at a critical time.

In this study, the author examines in depth the differences in the approach to judge's consideration at two levels of justice in cases of persecution resulting in death, namely between "Decision Number 454/Pid.B/2024/PN Surabaya" at the first level and "Cassation Decision Number 1466/K/Pid/2024 of the Supreme Court". The main focus is how the principles of justice and legal certainty are applied in every consideration of the judge's decision. To support the originality of this research, the author refers to several previous studies as a conceptual framework, including the research of Hasdiwanti and Syamsuddin Radjab in their study of "Decision Number 34/Pid.B/2019/PN Sinjai" highlights that although the panel of judges determined the defendant guilty based on evidence such as visum et repertum and witness statements, subjective considerations of the perpetrator, such as motives and psychological conditions, is less put forward in the verdict, even when the verdict is in accordance with the norms of the Criminal Code for the crime of persecution resulting in death (Hasdiwanti & Radjab, 2022).

Meanwhile, Elvia and Satyanegara, through "case study Number 281/Pid.B/2024/PN Kotabumi", emphasized that the judge in his case not only looked at the elements of intentionality and evidence, but also took into account the psychological, physical, and social impact of the case. This study shows that similar rulings have consistently upheld substantive justice, while providing protection of victims' rights through a holistic juridical approach (Elvia

& Satyanegara, 2025). Furthermore, in the research "Juridical Analysis Regarding the Difference in Consideration of the Decision of the Court of First Instance and the Cassation Level on the Crime of Forgery of Customs Documents (Case Study of Decision Number 185/PID. SUS/2016/PN. JAK. UTR and Decision Number 294 K/PID. SUS/2018)" (Triantari & Gregorius, 2025), this study and the research conducted by the researcher both highlight the disparity in sentencing considerations between the two levels of justice, which arises due to differences in focus on evidence, whether it is only a technical formality or comprehensive and substantive. However, persecution cases have a more complex moral and humanitarian dimension, encouraging the use of justice theory in the interpretation of the perpetrator's intentions. Meanwhile, in the case of falsification of customs documents, considerations are more influenced by the technical validity of the evidence and administrative legal norms.

These studies reinforce this research by showing that judges' considerations should not only be juridical-formal, but also substantive. However, this study adds a new dimension: directly comparing judges' considerations between levels of court in a single case. This approach reinforces originality, as it seeks to understand how the judge of first instance can make a decision that contrasts with the cassation judge, especially from the point of view of the value of justice and legal certainty. In addition, theoretical platforms such as Gustav Radbruch's theory of justice and the concept of *dolus eventualis* are used to provide a framework for understanding the gaps in legal considerations between levels, an attempt to dig beyond mere formalities, but affirm the integration of legal ethics and juridical norms in criminal justice practice.

B. Method

This study employs a normative juridical methodology, primarily drawing on secondary data gathered through comprehensive literature review, consistent with Marzuki's definition of legal research as a process for identifying legal rules, principles, and doctrines to address legal issues (Sudrajat, 2022; Tambunan, Panjaitan, & Siahaan, 2023). The research is descriptive, aiming to depict the existing legal framework and judicial reasoning in detail. The researcher sources secondary information, including statutes, court decisions, journal articles, scholarly books, and relevant regulations, and then organizes and interprets these materials to build an understanding of the legal issues at hand. Finally, the analysis culminates in drawing well-supported conclusions. Such an approach aligns with academic definitions that characterize normative legal research as the examination of library and doctrinal materials to analyze legal norms, concepts, and systems qualitatively.

C. Results and Discussion

1. Analysis of Differences in Decisions in Decisions Number 1466 K/PID/2024 Jo. Decision Number 454/Pid.B/2024/Pn.Sby

A judge is someone who has the power in the court to be in charge of adjudicating. In the criminal sentencing process, the judge is needed to prove in the process of examining the case in court. Evidentiary is a provision that contains outlines and guidelines on the means by which the law can prove the offence charged against the accused. Proof is also a provision that regulates evidence that is justified by law and can be used by judges to prove the offense charged (Harahap, 2007). In examining and deciding a case, the judge must be based on the indictment in accordance with the provisions of Article 182 paragraphs (3) and (4) of the Criminal Code, which emphasizes that the judge's consideration must be limited to the indictment filed. The indictment was prepared by the Public Prosecutor (JPU) and must meet the conditions stipulated in Article 143 paragraph (2) of the Criminal Code, including the identity of the defendant, a description of the time, place, and facts of the crime in a careful, clear, and complete manner (Pratama, 2020).

In “Decision Number 454/Pid.B/2024/PN. Sby”, the prosecutor charged the defendant in an alternative cumulative manner with “Article 338 of the Criminal Code or Article 351 paragraph (3) of the Criminal Code” or “Article 359 of the Criminal Code and Article 351 paragraph (1) of the Criminal Code”. This alternative indictment model provides an exception between articles, with the aim of allowing the judge to choose a single legally proven basis of the indictment (Hapsari & Santoso, 2024). According to P.A.F. Lamintang, alternative charges are usually used when the prosecutor is still in doubt about which article formulation is most appropriate to apply (Lamintang, 1984), so that several articles are included as an option, but the judge can only decide on one of the proven charges (Aprilianti, Darmika, & Suprijatna, 2024). In the evidentiary process, the judge must look at the defendant's guilt based on the evidence obtained. With this in the evidentiary process, the judge usually uses a negative or negative evidentiary system, this evidentiary system the judge in making a decision about whether or not a defendant is guilty based on the evidence determined by the law and the conviction obtained by the judge himself.

Evidence outside the five types mentioned in Article 184 of the Criminal Procedure Code does not have a valid probative value and does not have binding evidentiary provisions in the trial process (Lamintang, 1984). The article explicitly stipulates five types of valid evidence, namely: “(a) witness statements; (b) expert testimony; (c) letters; (d) Stubbornness; and (e) the defendant's testimony” (Destiana & Yulianti, 2021). Thus, only evidence that falls into that category can be considered by the judge to establish a conviction. The judge, according to Article 183 of the Criminal Code, can only impose a criminal sentence if he has at least two valid pieces of evidence and already believes that the defendant is indeed guilty (Tifoni & Michael, 2025). The evidence must be thoroughly examined to confirm every element of the criminal act accused. In “Decision Number 454/Pid.B/2024/PN. Sby”, the public prosecutor charged the defendant with the first charge of “Article 338 of the Criminal Code concerning murder”; or the second indictment of “Article 351 paragraph (3) of the Criminal Code concerning persecution causing death”; or the third indictment of “Article 359 of the Criminal Code concerning negligence causing death” and “Article 351 paragraph (1) concerning persecution”.

The panel of judges stated that the defendant was not legally and convincingly proven guilty, thus giving an independent verdict. The judge was of the opinion that the evidence submitted, namely CCTV, visum, and witness statements, did not meet the standard of two valid evidence and the judge's conviction had not been achieved, so that the free verdict was considered in accordance with the principle of *in dubio pro reo* in “Article 191 of the Criminal Code” (Nasera, Zahra, & Adzaningjagat, 2025). Therefore, the taking of the independent verdict is a logical consequence of the non-fulfillment of the evidentiary requirements stipulated in the Criminal Code, namely the inability to obtain the judge's conviction of the defendant's guilt based on two valid pieces of evidence (Husein, 1991).

Meanwhile, if we look again, based on the chronology of events that began from the time the defendant and the victim were in the elevator until they arrived at the basement parking lot of Lenmarc Mall as a crime scene, the judge recorded the following series of actions. In the BAP, the defendant admitted to beating and kicking the victim in the elevator, which was then continued in the parking area. At the crime scene, the defendant was proven to have consciously committed conditional intentionality (*dolus eventualis*), namely he dragged the victim's body leaning on the front left side of the car, then ran over the victim's body with the rear wheel of the vehicle he was driving. After running over, the victim was left lying down and whimpering for about 30 minutes, from 00.25 to 01.05 WIB, without getting medical help. Instead of taking the victim to the hospital, the defendant instead moved her body into the trunk of the car and took her to the Orchard Tanglin Apartment.

The evidence of visum et repertum of Dr. Soetomo Hospital (Number KF. 23.0465), issued by dr. Renny Sumino, Sp.F.M., M.H., stated that the victim's death was caused by multiple lacerations to the liver organs due to the impact of a blunt object that caused severe bleeding, conditions that were in accordance with the victim's body which was run over and dragged by the defendant's vehicle. In addition, traces of car tires were found on the victim's upper arm which had the exact same pattern and shape as the defendant's vehicle tires. This finding further strengthens that the victim was indeed run over by the defendant's car. From all these facts and evidence, it can be concluded that the defendant failed to meet the element of direct intent, but clearly showed conditional intentionality (*dolus eventualis*): that is, because he was aware of the possibility of fatality due to his act, but still continued the act. This is in accordance with the theory of *dolus eventualis* in the criminal justice system, and is supported by the medical and forensic conditions of the fatal victims.

This was not previously considered by the panel of judges in the consideration of “Decision Number 454/Pid.B/2024/PN. Sby” is about intentionality. The denial of forensic evidence and chronology of events becomes materially flawed in legal considerations, resulting in a verdict that is controversial and contradictory to the available objective evidence. Based on the position case and from the entire series of legal facts that have been described in the verdict, the panel of judges concluded that the Defendant's actions met all the elements of the criminal act in the second alternative indictment of Article 351 paragraph (3) of the Criminal Code, namely persecution resulting in death. This includes:

- a. Acts of persecution, as defined in “Article 351 of the Criminal Code”, are acts that cause pain or injury;
- b. As a result of death, where medical evidence (visum et repertum) stated that the Victim's vital organs were blunt and run over by the Defendant's car;
- c. Conditional intentionality (*dolus eventualis*), as evidenced by the behavior of the Defendant who was aware of the possible fatal consequences of his actions when dragging and running over the Victim with a vehicle;
- d. The direct link between the Victim's actions and death is strengthened by the presence of car tire traces on the Victim's body and the suitability of the Defendant's car tire pattern.

With the fulfillment of all the criminal elements, the panel of judges declared that the Defendant was proven guilty and sentenced him in accordance with the provisions applicable in Article 351 paragraph (3) of the Criminal Code. In this case, the researcher argues that the factors that caused the difference in the decision of “Decision Number 454/Pid.B/2024/PN. Sby” and “Decision Number 1466 K/Pid/2024” are as follows.

- a. Differences in Evidence Assessment

The panel of judges of the Surabaya District Court focused on the consideration of CCTV footage and the testimony of traffic experts, then applied the principle of *in dubio pro reo*, thus concluding that the evidence was not convincing enough and acquitted the defendant (Munawaroh, 2025). On the contrary, the Supreme Court reassessed by adding visum et repertum, vehicle tire traces, and witness suitability, which strengthened the element of persecution resulting in death in accordance with “Article 351 paragraph (3) of the Criminal Code”, to change the verdict to guilty.

- b. Judges' Discretion in the Civil Law System

Indonesia, which adheres to the civil law system, gives discretion to judges in sentencing them. Without strong judicial guidelines, this discretion is prone to inconsistent decisions: some judges emphasize procedural formality, while others emphasize substantive justice.

- c. Absence of Judicial Guidelines and Formal Jurisprudence

The legal system in Indonesia does not recognize formal binding jurisprudence, so it is difficult for first-instance judges to use previous rulings as a guideline. Meanwhile,

the Supreme Court can interpret norms and evidence independently, resulting in different decisions (Fachreza, 2016).

d. Internal Factors of Judges

Differences in educational backgrounds, personalities, ideologies, and even punishment theories adopted by judges also influence the considerations. This includes the perspective of the *dolus eventualis*, the weight of the visum, and other factors in the proof.

2. Application of the Principles of Justice and Legal Certainty in Amendments to the Decision in Decision Number 1466 K/PID/2024 Jo. Decision Number 454/Pid.B/2024/PN. Sby

Crime is a suffering that is deliberately imposed on people who commit acts that meet certain conditions (Sudarto, 2007). A person who commits an act that is prohibited by law will be sentenced to a criminal offense according to existing regulations. One of the criminal acts that often occurs is persecution that causes death, as in “Decision Number 1466 K/Pid/2024 jo. Decision Number 454/Pid.B/2024/PN. Sby”. Each perpetrator is responsible for his actions and must be held accountable according to the law. If it is associated with the purpose of law in general, laws are made to achieve an orderly, safe, peaceful, and balanced community (Lesmana, 2024). C.S.T. Kansil explained that the law not only guarantees legal certainty, but must also be based on justice so that it is accepted by the community. The main function of law is to maintain a balance in human relations and prevent people from taking their own actions (*eigenrichting*) (Lesmana, 2019), so that dispute resolution occurs through a formal judicial process. In addition, the function of law includes social control, producing public order and justice in order to create a safe and harmonious order in society.

Functionally, law is not only used as an instrument of community control, but also as a series of social engineering tools that are able to change collective behavior and habits according to the values desired by society (Alam, Lesmana, & Asmarawati, 2023; Lesmana & Ristiyana, 2025). This conception is in line with Sudikno Mertokusumo's view that the main goal of law is to form an orderly and balanced society. In the context of criminalization, such as in the case of persecution leading to death, the purpose of the law is not only to punish the perpetrator, but also to protect society, enforce legal certainty, and promote substantive justice. Thus, the application of criminal penalties to law violators aims to maintain social order and uphold a sense of security and justice for victims, while preventing arbitrary actions outside the formal legal process.

In the court of first instance, “Decision Number 454/Pid.B/2024/PN. Sby” acquitted the defendant on the consideration that the driving safety expert's testimony and CCTV footage showed that the victim was not run over by the defendant's vehicle. However, this decision is considered to weaken the principle of legal certainty, because it ignores medical evidence, such as visum et repertum and raises doubts about substantive justice, because medical facts that show serious injuries are not taken into account. This decision is also considered to violate the rules of the Criminal Procedure Code evidentiary system and is less objective, so it is suspected that it can damage public trust in the judiciary. On the contrary, the cassation through “Decision Number 1466 K/Pid/2024” led to the confession of the defendant's guilt who was then sentenced to 5 (five) years in prison. This verdict is based on a thorough assessment of medical evidence, visum et repertum which shows lacerations in the organs and the presence of tire traces on the victim's body, as well as witness statements and chronology of events, showing the fulfillment of the elements of “Article 351 paragraph (3) of the Criminal Code”. This approach reflects a harmonization between the principles of justice, by giving due respect to the victim's right to life, and legal certainty, by ensuring that every relevant piece of evidence is taken into account consistently.

Juridically, the cassation judge strengthened the *ratio decidendi* on the basis of comprehensive legal facts and in harmony with the evidentiary system in Indonesia, correcting the shortcomings in the previous decision. From a philosophical and sociological point of view, this change in the decision affirms the function of law as an instrument of justice, provides a deterrent effect, and rebuilds public trust in the judiciary. Thus, “Decision Number 1466/K/Pid/2024” succeeded in meeting the expectations of the principles of justice and legal certainty contained in modern legal theory, while correcting the inequities that occurred in the courts of first instance.

It should be noted that differences in the imposition of judges' decisions can be a bad precedent that erodes the sense of justice and legal certainty (Lesmana, Lesmana, Indayatun, & Mofea, 2025). The judge is considered not to reflect the attitude of justice and legal certainty. This is because the principle of equality before the law requires that the parties in similar cases be treated equally in the eyes of the law. This inconsistency violates “Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution”, as well as the principles stated in Article 7 of the Universal Declaration of Human Rights (DUHAM) and “Article 26 of the International Covenant on Civil and Political Rights (ICCPR)” which have been ratified in Indonesia (Oktavira, 2022). When rulings are inconsistent, people tend to believe that law enforcement relies on judges' "tastes," not on the basic principles of fair and consistent law.

This phenomenon often occurs due to the discretion of judges given in the civil law system, but without adequate guidance, such as judicial guidelines or written jurisprudence. Discretion can turn into a hidden practice that is difficult to account. Without transparency in the judge's line of thought, the verdict can appear arbitrary and manipulative, undermining the predictability of the legal system. Furthermore, differences in criminal verdicts severely undermine public trust in the integrity of the judiciary. When there is a drastic difference between one court and another, the public considers that the law no longer functions as a means of justice, but rather becomes a limited tool that can be influenced by non-legal factors (Mulya, Lesmana, & Lestari, 2024). The researcher argues that to minimize the occurrence of differences in verdicts, several concrete steps need to be taken in an integrated manner:

- a. Clear judicial guidelines, the Supreme Court needs to issue detailed judicial guidelines, such as “Perma Number 1 of 2020” for corruption cases, and extend these guidelines to other types of criminal acts to create uniformity of judges' considerations.
- b. Strengthening jurisprudence as a reference, Developing a more formal and consistent jurisprudence system so that high-level judgments can be a persuasive reference for judges at the first level and appeals. This is important to foster predictability and consistency of decisions.
- c. Education and training of judges (Fikri, Fahmi, Firdiyani, & Lesmana, 2025), the need for regular training programs on judge ethics (Lesmana, 2025), criminal theory, and the importance of considering substantive justice in every judicial process. This will help judges avoid arbitrary decisions and are more in line with the legal values of society. By combining judicial guidelines, stronger jurisprudence, and increased professional capacity of judges, differences in verdicts can be minimized, so that the law truly functions as an instrument of the state to maintain public order, justice, and trust.

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D. Conclusion

Based on the discussion, this study concluded that at the first level “(Decision No. 454/Pid.B/2024/PN Surabaya)”, the judge focused more on procedural certainty aspects in the form of CCTV footage and traffic expert testimony, but ignored important evidence such as

medical visum and tire traces, as a result of which the defendant was declared free. On the contrary, the Supreme Court in its cassation decision “(No. 1466/K/Pid/2024)” adopted a thorough assessment of all evidence, both medical, forensic, visual, and chronological, so as to convict him of five years in prison. This approach reflects the harmonization between legal certainty, legal utility, and substantive justice as suggested in Radbruch's theory of legal purpose, which asserts that substantive justice must take precedence when procedural certainty gives rise to injustice. As a follow-up, the Supreme Court needs to develop special judicial guidelines that determine the criteria for assessing evidence such as visum, vehicle traces, and the existence of *dolus eventualis*, in the hope that the judge's discretion is more directed and well-reasoned. In addition, intensive training for judges on criminal theory, ethics, and moral values is necessary for first-instance judgments to balance formal and substantive aspects, enhancing the legitimacy of the verdict from the start.

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