

# PROOF OF THE CRIMINAL ACTION AGAINST UNCONSCIOUS OR HELPLESS PERSON AT PADANG PANJANG DISTRICT COURT (Study of Decision Number 38/Pid.B/2018/PN. Padang Panjang)

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**Abstract:** *The judge uses valid evidence to determine whether an accused is guilty of the criminal act he is accused of. Evidence is regulated in a limitative manner in Article 184 paragraph (1) of the Criminal Procedure Code and at the time the judge makes a criminal decision based on the provisions of Article 183, namely that there must be at least two valid pieces of evidence plus the conviction of the judge. Through the ongoing trial process, the most convincing evidence for the judge was the result of a post-mortem conducted by the doctor who examined the victim at the hospital, as well as the directive evidence presented by the public prosecutor in his indictment related to the testimony of witnesses who were able to show that something had occurred the criminal act of intercourse against a person who is unconscious or helpless and the judge refers the evidence to the defendant's confession at trial, and finally the judge has the conviction that the defendant actually committed the crime in accordance with the information obtained in the trial. The basis for the judge's consideration in giving a decision on the criminal act of intercourse against a fainted or helpless person at the Padang Panjang District Court in Decision Number 38/Pid.B/2018/PN. Padang Panjang, namely the existence of Juridical Elements and Non-Juridical Elements. The juridical element is as contained in Article 286 of the Criminal Code that there are two elements of delict in this crime, namely the existence of an element of whoever is and the element of having intercourse with a woman outside of marriage even though it is known that the woman is unconscious or helpless. Meanwhile, the non-juridical element is the element of mitigating and burdening the defendant.*

**Key Words:** *Evidence, Crime, Intercourse*

## 1. INTRODUCTION:

The purpose of criminal procedural law is to search and obtain or at least approach material truth. Material truth is the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and precisely with the aim of finding out who the perpetrator can be accused of committing a violation of the law. Then ask for an examination and a decision from the court to find out whether it is proven that a criminal act has been committed and whether the person accused can be blamed.[1]

Before giving a verdict whether or not a defendant is guilty of a criminal act, the judge must examine the evidence according to the provisions of the law. This is limitedly regulated in the Criminal Procedure Code, so that the judge is also bound by the provisions contained in Article 183 Criminal Procedure Code which states: "A judge may not impose a sentence on a person, unless with at least two valid pieces of evidence he is convinced that an act crime actually happened and the defendant was guilty of doing it." The most important thing that needs to be considered in the criminal act of sexual intercourse is "proof". Article 184 paragraph (1) of the Criminal Procedure Code states that valid evidence is witness statements, expert statements, guidance letters, and statements of defendants. The case of intercourse with a person who is unconscious or helpless is being investigated by the Criminal Investigation Unit of the Padang Panjang Police. This fact happened on Mount Singgalang some time ago and caused a stir among the people. Based on the Police Report, it is suspected that there has been a criminal act of intercourse with a woman who is not his wife, while he is aware that the woman is unconscious or helpless which occurred on Monday September 17, 2018 at around 11.00 local time which is located in the Mount Singgalang Climbing Route, Kec. X Koto Tanah Datar Regency. The victim eventually died after being at the Padang Panjang Local Hospital. Proof made by the judge in Decision Number 38/Pid.B/2018/PN. Pdp finally sentenced him to seven years in prison. The evidentiary process must of course be in accordance with the provisions of the Criminal Procedure Code, which refers to the evidence as specified in Article 184 of the Criminal Procedure Code. During the investigation process up to the prosecution process, the defendant did not admit his actions. The victim's witness himself did not provide any information during the trial. The witnesses presented in the court were not witnesses who saw, felt and heard directly the incident of intercourse. Decision Number 38/Pid.B/2018/PN.Pdp may not fulfill the sense of justice for the defendant because from the legal procedure point of view, there is not sufficient and convincing evidence that the defendant is the perpetrator.

Judges in deciding a case must consider various facts in the trial and be connected with the articles that the public prosecutor is accused of based on evidence presented at trial, this is contained in Article 197 Paragraph (1) Letter d of the Criminal Procedure Code which states " Considerations drawn up briefly regarding the facts and circumstances along with the means of evidence obtained from the examination at trial which are the basis for determining the guilt of the defendant. The judge must be fair in the trial process because it involves the interests of the society, if the person guilty of committing a criminal act must be punished according to his mistake so as not to harm the defendant or the victim.

## 2. CONCEPTUAL FRAMEWORK:

- Proof  
Evidence in the Big Indonesian Dictionary is defined as something that states the truth of an event or real information.[2]
- Criminal Act  
A criminal act is an act that is prohibited by a legal rule, the prohibition which is accompanied by a threat (sanction) in the form of a certain crime, for whoever violates the prohibition.[3]
- Intercourse  
Intercourse is a combination of male and female genitalia which is usually carried out to have children, so male genitalia members must enter into female genitalia.[4]
- Unconscious or Helpless  
Helplessness means the absence of the ability to do something or the absence of the ability to act. Unconscious is a loss of consciousness due to impaired brain function.[5]

## 3. THEORITICAL FRAMEWORK:

- Theory Of Justice

Justice is the result or a decision obtained from the application or implementation of law. Justice is also defined as an ideal element, namely as an ideal or an idea that is contained in all laws.[6] The goal of justice is something that will be achieved in legal relations both among citizens, and between citizens and the state or relations between countries. The characteristics or characteristics inherent in justice are: fair, legal in nature, lawful, impartial, equal, worthy, morally reasonable and morally correct.

- Evidence Theory

According Martiman Prodjohamidjojo, proof contains the intention and effort to state the truth of an event, so that reason can accept the truth of the incident. In criminal procedural law, the procedure of proof is in the context of seeking material truth and the Criminal Procedure Code sets out the stages in finding the true truth, namely through investigation, prosecution, examination at trial, execution, observation and supervision. So that the evidentiary program is only one of the phases or procedures in the implementation of the overall criminal procedure law as regulated in the Criminal Procedure Code.[7]

## 4. LITERATURE REVIEW:

Evidence is the stage of completing a criminal case after an investigation which is a stage of "proving" an "event" which is considered or suspected to be a criminal act. According to Barda Nawawi, based on Article 183 of the Criminal Procedure Code regarding the proof system regulates how to determine whether a defendant is guilty or not and to impose a sentence on the accused, must:[8]

- a. The fault is proven by at least two valid pieces of evidence.
- b. After the guilt has been fulfilled with at least two valid pieces of evidence, the judge is convinced that the criminal act actually occurred and the defendant was guilty of committing it.

The principles of proof in the Criminal Procedure Code are as follows:

- What is generally known does not need to be proven. This principle is contained in Article 184 paragraph (2) of the Criminal Procedure Code which reads: "Things which are generally known do not need to be proven" or are referred to as *notoire feiten*.
- Being a witness is an obligation. The obligation of a person to become a witness is regulated in the elucidation of Article 159 paragraph (2) of the Criminal Procedure Code which states: "A person who becomes a witness after being summoned to a court session to give testimony but by refusing this obligation can be subject to punishment based on the applicable law. Likewise with experts. "
- One witness is not a witness (*unus testis nullus testis*). This principle is contained in Article 185 paragraph (2) of the Criminal Procedure Code, which reads: "The testimony of a witness is not sufficient to prove that the defendant is guilty of the act he is accused of".

- The statement of the defendant is only binding on himself. According to Article 189 paragraph (4) of the Criminal Procedure Code: "The statement of the defendant alone is not sufficient to prove that he is guilty of the act he is accused of, but must be accompanied by other evidence".

Article 183 Criminal Procedure Code has stipulated the requirements for a judge to punish a defendant, namely at least two valid pieces of evidence stipulated by law, accompanied by the conviction that the accused judge did so. Said that there are at least two valid pieces of evidence, providing a limit on the minimum evidence that must be used in proving a criminal act. Legitimate evidence contained in Article 184 of the Criminal Procedure Code are witness statements, expert statements, letters, instructions and statements of the accused.

The elements of criminal acts are distinguished from two points of view, namely a monistic view and a dualistic view, as follows:[9]

- Monistic view, the definition of a criminal act also includes criminal responsibility, thus a person who commits a criminal act is someone who is convicted in order to be accountable for his actions.
- Dualistic view, the definition of a criminal act does not include or be separated from criminal liability. This means that a person who commits a criminal act cannot necessarily be convicted, as the legal principle of *geen straf zonder schuld* states that there is no crime without any fault.

The elements contained in Article 286 of the Criminal Code explains that having a relationship with a woman who is unconscious or helpless. A woman who is in a unconscious state is a condition where the woman is not fully conscious, and what is meant by helplessness is being in a state of physical powerlessness that makes the woman powerless to fight back. A defendant can be declared proven to have deliberately committed the crime, so law enforcers must be able to prove:[10]

- Regarding the will, intention or intention of the defendant to have extramarital sex with a woman.
- Regarding the defendant's knowledge that the woman was unconscious or in a helpless state.

## 5. METHOD:

This research uses normative legal research. Normative legal research is library law research. In this normative study, the approaches used are:

- a. Statutory Approach, is carried out by examining the statutory regulations from the highest norm to the lowest,
- b. Case Approach, is carried out by examining cases related to the legal issues at hand. The cases examined are cases that have obtained a court decision of permanent legal force.

## 6. DISCUSSION:

Regarding Decision Number 38/Pid.B/2018/PN Padang Panjang District Court, Judges related to evidence in court using several evidence, namely:

### a. Witness Statement:

During the trial process, the parties presented witnesses to explain what was happening (an unlawful act that was happening). The witnesses presented by the public prosecutor included three friends of the victim who participated in climbing Mount Singgalang, two older siblings of the victim, the doctor who handled/treated the victim while he was at Padang Panjang Hospital (did a Visum on the victim), the doctor who handled the victim while he was in Padang Panjang Hospital Padang Panjang, the nurse who cared for the victim while at the Padang Panjang Hospital and the person who helped the victim came down from Mount Singgalang.

### b. Expert Statement:

In the trial process of this case, the public prosecutor proposes an expert who can explain and explain medically the victim's death, namely a doctor who is qualified in his field. In addition, the doctor who handled the victim also performed a Visum to prove whether the victim was really having intercourse with the victim while in a helpless state. The results of the post mortem stated that it was true and it was proven that there had been an intercourse with the victim when the victim was helpless or unconscious.

### c. Letter Evidence:

The documentary evidence used in the trial was Visum et reptum on September 20, 2018 Number 56/ER/IX/2018/Rs.Bhayangkara against the corpse on behalf of the victim. The power of this post mortem is the only documentary evidence that is used as documentary evidence in court, because this letter clearly and clearly explains the criminal act that is taking place.

### d. Clue Evidence:

The Clue evidence used by the Panel of Judges is the testimony of the witnesses which are related to each other, where the testimony of the witnesses is mutually reinforcing so that the Panel of Judges believes that a criminal act has been indicted by the Public Prosecutor in the trial.

### e. Defendant Statement:

The key evidence in this case is the statement of the defendant. The defendant acknowledged and was ready to be accountable for his actions. The defendant's statement reveals that what actually happened was that the defendant

actually had intercourse with the victim when the victim was unconscious / helpless. All statements given by witnesses, expert statements, instructions and letters are true after the Panel of Judges has directly heard the statement of the defendant at trial.

Padang Panjang District Court decision on criminal case Number 38/Pid.B/2019/PN.Pdp. As follows:

- Declare that the Defendant is not legally and convincingly proven guilty of committing a criminal act as stated in the primary indictment.
- Release the defendant from the primary charge.
- Declare that the defendant has been legally and convincingly proven guilty of committing the crime of having intercourse with a woman outside of marriage even though it is known that the woman is in a defenseless state as in the Subsidair indictment.
- To impose a sentence on the defendant by imprisonment for seven years.
- Determine that the entire period of arrest and detention that the accused has served is reduced from the sentence imposed
- Determine the defendant to be detained.
- Determine that the evidence (attached) is returned to the witness.
- Charged the defendant with a court fee of Rp. 2,500,000.00 (two million five hundred thousand rupiah).

In addition to imposing a sentence on the defendant, the judge also provides legal considerations regarding the situation that is burdensome and relieves the defendant, as for the following:

a. Burdensome Situation

- The act of the defendant which violates positive law, is also strictly prohibited by religion
- The act is committed against the person who should get help
- The defendant's actions caused immense grief to the victim's family.

b. Relieves Situation

- The defendant is still very young so it is hoped that his behavior can improve in the future;
- The defendant admitted his actions;
- The defendant had never been convicted before.

## 7. ANALYSIS:

The judge's decision is closely related to how the judge expresses his opinion or considerations based on facts and evidence in court as well as the judge's conviction on a case. Therefore, judges have a central role in making court decisions. In a court decision, there must be considerations regarding matters that are burdensome and mitigate the verdict, these considerations are used as an excuse by the judge in making his decision, whether in the form of other criminal decisions.[11].

A good judge's decision must fulfill two requirements, namely:

- Fulfilling theoretical needs, emphasizing legal facts and their considerations, then these decisions must be accountable from a legal point of view, not infrequently even with decisions that form jurisprudence that can determine new laws (a source of law).
- Fulfilling practical needs in their decisions, judges are expected to be able to resolve existing legal problems or disputes and as far as possible can be accepted by the disputing parties, as well as society in general because they are perceived as fair, correct and based on law.

This Judge's decision has met the requirements in the applicable law, where in taking the judge's decision the factors that should be considered. As for the judge's consideration in deciding this case, there are two, namely juridical and non-juridical in nature.

### A. Juridical Considerations:

During the trial the defendant confirmed the entire identity of the defendant so that the formulation of the first offense in Article 286 of the Criminal Code has been proven true, because this first element indicates that there has been no criminal intercourse against a woman outside of marriage even though it is known that the woman is unconscious or helpless. actually the defendants did it. In this connection, what is meant by the "whoever" element as stated in Article 286 of the Criminal Code is aimed at any person or legal subject who is suspected of being the perpetrator (*dader*) of a criminal act.

In the opinion of the Panel of Judges, based on the belief obtained from the existing evidence as described above, the element of having intercourse with a woman outside of marriage even though it is known that the woman is in a helpless state as regulated in Article 286 of the Criminal Code has been fulfilled. Based on the results of the Visum carried out by the hospital, there was damage to the victim's vital organs and the defendant also admitted his actions, the judge took an analysis that it was true that an intercourse had occurred against the victim in a helpless state.

## B. Non-Judicial Considerations:

In addition to judges' judicial considerations in making decisions, judges must also make non-judicial considerations. Because juridical considerations alone are not sufficient to determine the value of justice in a punishment, without being supported by non-judicial considerations of a sociological, psychological, criminological and philosophical nature. Non-judicial considerations by judges are needed. Therefore, the issue of legal responsibility carried out by an aged defendant is not sufficient if it is only based on a normative point of view, the vision of loss alone, but internal and external factors that are the background in committing a crime must also be considered wisely by judge who hears. The sociological aspect is useful for studying the social background of why a person commits a crime, the psychological aspect is useful for examining the psychological condition of the defendant at the time of committing a crime and after serving a crime, while the criminological aspect is needed to examine the reasons for a person to commit a crime and how his attitude is. as well as behavior that has committed a criminal act, thus the judge is expected to be able to give a fair decision.[12]. The reason for the non-judicial consideration of the judge in deciding this case is that there is a situation that is burdensome and mitigating. Regarding things that can alleviate the first defendant's sentence, namely the defendant has never been sentenced to a criminal or in other words the defendant is the first offender. However, if the criminal crime committed by the defendant is committed more than once. this is included in the things that can incriminate the defendant as already contained in Article 486 of the Criminal Code. This becomes the basis for the punishment to prove that such a person has an evil character, and therefore is a danger to society and public order. The thing that relieves the second defendant is being polite in court, the attitude and actions of the perpetrator are seen after committing the crime. The defendant being polite and straightforward during the trial is an obligation as a defendant as a guilty person in the trial and this polite condition may be based on pretense to get sympathy from the judge in order to get a reduced sentence. A defendant who openly admits his act is also a mitigating thing because Article 184 paragraph (1) number 4 of the Criminal Procedure Code states that the defendant's statement is one of the valid evidence. Recognition of the defendant as a reason for mitigation of crime is not necessary because other means of evidence have clearly shown that the defendant has committed a criminal offense as charged. It is different if the defendant commits the crime by submitting himself to the police. To be able to say that he regrets his actions, it should be supported by psychological test evidence that proves that the defendant is truly sorry and causes inner turmoil in the defendant so that remorse is not only stated verbally which can be a lie. Third, is that the defendant is still very young so it is hoped that his behavior can still improve in the future.

The verdict of the Panel of Judges who decided the case based on Article 286 of the Criminal Code, the judge decided the sentence for the defendant was seven years in prison. According to article 286 of the Criminal Code, the maximum sentence imposed on the defendant is 9 years in prison, considering that the criminal act committed by the defendant has fulfilled the elements in Article 286 of the Criminal Code, namely rape of a defenseless victim. Initially the demands of the public prosecutor sentenced him to two years in prison, the author argued that the judge had the right to increase or decrease, namely on the basis of aggravating and mitigating matters as mentioned above. Law enforcement officials, especially judges, can provide a sentence that is equal to the crime committed, and if necessary, maximum sentence is imposed if the crime brings great losses, especially for crime victims and society in general. The need for integrated cooperation to take forms of prevention that must be supported by enforcement efforts.

Judge's consideration is one of the most important aspects in realizing the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, besides that there are also benefits for the parties concerned so that the judge's consideration must be addressed carefully, both , and careful. If the judge's consideration is not thorough, good, and careful, the judge's decision that comes from the judge's consideration will be canceled by the High Court/Supreme Court.[13]

During case examination, judges must pay attention to evidence, because the results of such evidence will later be used as material for consideration in deciding cases. Proof is a very important stage in examination at trial. The purpose of proof is to obtain certainty that an event / fact being proposed actually occurred, in order to obtain a verdict from a judge that is true and fair. The judge will not be able to issue a decision until it becomes clear to him that the event / fact actually occurs, that is, it is proven true, so that there is a legal relationship between the parties.[14]. The judge in issuing the verdict also explained that the matters which mitigated and incriminated the defendant were regulated in Article 197 letter d and 197 letter f of the Criminal Procedure Code in Article 197 letter d, which reads "Considerations that are prepared briefly regarding the facts and circumstances along with the means of evidence obtained from the examination at trial. which is the basis for determining the guilt of the accused ". Whereas Article 197 letter f reads "Article of laws and regulations which are the basis for conviction or actions and statutory regulations which are the legal basis for the verdict, accompanied by conditions that incriminate and relieve the defendant"[15] As law enforcers, judges have duties in the judicial sector, namely receiving, examining, deciding and completing every case submitted to him. Justice seekers certainly really want that cases submitted to the court can be decided by a judge who is professional and has high moral integrity, so that decisions can be made in accordance with statutory regulations.[16]. As stated by Andi Hamzah, the criminal act committed must be in accordance with the Article that was violated by the perpetrator, in this case the article imposed on the defendant in terms of facts in the trial, the defendant

consciously acknowledged the act he had committed, so that The judge's decision is in accordance with the prevailing laws and regulations without prejudice to the rights of the convicted person. Providing legal considerations in deciding a case above reflects the sense of justice in society, because this consideration is not only based on juridical considerations but also sociological considerations, which point to the background of the crime. Judges are required to have conviction by linking that belief with valid means of evidence and, creating their own law based on justice which is certainly not against Pancasila as the source of all laws. The sentence imposed by the judge is carried out as a deterrent effect on the perpetrator from repeating his actions at a later date. The consideration in the judge's decision was correct because from the analysis it was concluded that the defendant and the victim had intercourse when the victim was helpless and the victim's relatives objected to this because his sister was still underage, therefore the perpetrator was reported and processed in accordance with the law. applicable and appropriate to account for his actions.

## 8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The evidence that most convinced the judge was the result of a post-mortem conducted by the doctor who examined the victim at the hospital, and the judge also referred to the evidence against the evidence provided by the public prosecutor in his indictment in relation to the testimony of witnesses who were able to show that a criminal act had occurred. Finally, the judge refers to the proof to the defendant's confession at trial, and finally the judge has the belief that the defendant actually committed the crime in accordance with the information obtained at trial.
- The basis for the judge's consideration in giving a decision on the criminal act of intercourse against a fainted or helpless person at the Padang Panjang District Court in Decision Number 38/Pid.B/2018/PN.Pdp, namely the existence of Juridical Elements and Non-Juridical Elements. The juridical element is that as contained in Article 286 of the Criminal Code, there are two elements of delict in this criminal act, namely the existence of an element of whoever is and the element of having intercourse with a woman outside of marriage even though it is known that the woman is in a truncated state or helpless. Meanwhile, the non-juridical element is the element of mitigating and burdening the defendant

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- When giving consideration to a judge in a criminal case decision, it is best to include intercourse with an unconscious or defenseless person and include the views of a legal expert (criminal) whose notes relate to the case currently being tried in court.
- The evidence that occurs in the trial should pay attention to all the evidence presented in the trial and all evidence is explained in the decision which has strong and weak legal force and cannot be used as valid evidence in the trial so that later when There are those who do research on this evidence that can be a reference for researchers.

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