



Research Article

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# Taxation and the Criminal Law: The Imposition of Conditional Sentence of Excise Crime

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**Abstract:** *In criminal law reform, the alternative of the criminal revocation of independence has always been the main issue in the system of criminal sanctions. This further attracted the interest of researchers to then examine the nature of justice in imposing conditional sentences for excise crimes. The research is empirical and normative juridical research, examining secondary data in the legal field as library data using the deductive-thinking method. The research approach used is a philosophical, statute, and conceptual approach. The results show that the judge's discretionary and responsibilities in imposing conditional sentence for excise crimes where the decision imposing in the excise case is based on the analysis carried out to create justice, expediency and legal certainty. All of these things encourage judges to make decisions that simply lead to what they want to achieve to realize the law's goals. In conditional criminal decisions on excise crimes, judges are responsible for carrying out their legal duties by respecting the principle of the presumption of innocence, without expecting anything in return, being accountable for impartiality, both inside and outside the court, and maintaining and growing public trust as justice seekers.*

**Keywords:** *Criminal Law; Conditional Sentence; Excise Crime; Taxation*

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## 1. Introduction

Like many countries, Indonesia experienced rising crime as a by-product of increased urbanization and the social and economic dislocations associated with national development.<sup>1</sup> The law must still fulfil ideal values and must also be upheld by all elements of society.<sup>2</sup> In fact, law as a study of science that is always changing, where the meaning of the change requires the law to always exist and adapt itself to a paradigm shift or view of human life.

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<sup>1</sup> Laurensius, S., Situngkir, D., Putri, R., & Fauzi, R. (2018). Cyber Bullying Against Children In Indonesia. In *International Conference on Social Sciences, Humanities, Economics and Law*. European Alliance for Innovation (EAI), p. 24.

<sup>2</sup> Irwin-Rogers, Keir, and Julian V. Roberts. (2019). "Swimming Against the Tide: The Suspended Sentence Order in England and Wales, 2000-2017." *Law & Contemporary Probs.* 82: 137.

Likewise, in reality, the law (statutory regulations) in its development is always and constantly changing along with the needs of human life itself. Legal studies develop based on the mindset, meaning that each legal subject always makes arrangements, finds formulations, explores various human thoughts that are embodied in the norms of human life and the natural surroundings in order to achieve harmony and balance.<sup>3</sup>

Regarding justice in law, one of them can be seen from the extent to which the law is able to reform the law in practice. Because many things are main issues where the law is considered no longer able to solve various cases of human life effectively without any changes in the law itself. Law norm with the times and human needs, one of which is Act No. 11 of 1995 concerning excise, which was later amended to Act No. 39 of 2007 concerning excise, hereinafter referred to as the Excise Law. Even if it is seen from the considerations, especially regarding the issue of considering the excise law, it is explained that in an effort to provide more legal certainty and justice as well as explore the potential for excise revenues, it is necessary to make changes to several provisions in the excise law.<sup>4</sup>

Referring to the amendment to the excise law, one of the norms that was later included in the Excise Law was the provision on criminal charges against excise. The criminal provisions underwent fundamental changes, some were even abolished, and there were also criminal provisions that were inserted as regulated in the Excise Law and one of the norms that is then applied in the criminal act of excise is the imposition of conditional sentence in the excise law. This further attracted the interest of researchers to then examine the nature of justice in imposing conditional sentence for excise crimes.

In criminal law reform, the alternative of the criminal revocation of independence has always been the main issue in the system of criminal sanctions, in addition to the criminal revocation of independence which turns out to be difficult to just get rid of. essence The function of prisons often results in dehumanization of criminals which in turn causes losses for prisoners who are in prison for too long, this makes the inmates incapable to continue their lives productively in society<sup>5</sup>. Stigmatization of perpetrators of criminal acts can encourage them to be pessimistic in living their future life because they feel humiliated and isolated from the community, so they feel frustrated and at a later stage will have the potential to commit crimes again.

Until now, conditional sentence has not been regulated as a separate main crime and there is no unity of opinion on the general principles of applying conditional punishment for law enforcement, so that prosecutors and judges are still very selective and limit themselves in prosecuting or imposing conditional sentences, especially the imposition of conditional sentence in excise crimes. Although in fact the Criminal Code and the Excise Law provide the possibility to apply it more broadly. This can be seen in the judge' decision which applies conditional sentence and does not apply conditional sentence.

This phenomenon is very interesting to study to elaborates the basic considerations of judges so that it must be imposing a conditional sentence (*voowaardelijke veroordeling*) against excise crime, the absence of these guidelines causes unfounded considerations to arise on the

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<sup>3</sup> Ilhami Bisri, (2007). *Sistem Hukum Indonesia Prinsip-Prinsip dan Implementasi*, Komputindo, Jakarta. p.23.

<sup>4</sup> Surachmad Winarno, (2016). *Modul Pengawasan dan Penindakan di Bidang Cukai*, Customs and Excise Education and Training Center, Finance Education and Training Agency, Ministry of Finance of the Republic of Indonesia, Jakarta, p.34.

<sup>5</sup> Barda Nawawi Arief, (2010). *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Prenada Media Group, Jakarta, p. 193.

form of the judge' subjectivity in adjudicating a case. The guidelines for the application of the conditional sentence are very important because they are related to justice in the excise sector. Hence, the imposition of conditional sentence by judges is a legal breakthrough because in this case it can provide a change of opinion in the community that not all criminal acts will receive prison sanctions, a conditional sentence is an alternative to punishment but does not eliminate the purpose of punishment itself, which is to provide a deterrent effect to the perpetrator.

## 2. Method of Research

The research is a combination of empirical and normative juridical research, namely examining secondary data in the legal field that exist as library data by using deductive-thinking method.<sup>6</sup> The research approach used is a philosophical, statute and conceptual approaches. The statutory approach is conducted to examine the provisions governing the imposition of conditional sentence in judge decisions in excise crimes, in their regulation there are still important things that are not regulated explicitly and clearly. While, the conceptual approach is used to understand the concepts of imposing conditional sentence in judge's decisions on excise crimes, in their formulation and regulation.

## 3. Discretionary and Responsibilities of Judges in Imposing Conditional Sentences of Excise Crimes

In the excise law, there are 2 (two) instruments for law enforcement, including supervision and enforcement of sanctions. Supervision is a preventive measure and sanction as a repressive measure to enforce compliance. As a fiscal law, the main function of implementing the excise law is how to make taxpayers comply with all regulated provisions and conducts their obligations through excise payments in order to achieve maximum state revenue. Seeing that the importance of state revenues from the excise revenue sector in order to move the economy, then as a hard effort in enforcing the excise law, criminal sanctions are used to provide maximum coercion for people who are obliged to excise. However, the criminal provisions contained in the excise law are the last resort used to enforce compliance when administrative sanctions no longer work optimally.<sup>7</sup>

In addition, in the excise law, it has been regulated on acts that are categorized as administrative violations as well as acts that are categorized as criminal acts. In general, violations in the Excise Law are classified as *mala prohibita* or *malum prohibitum*, which means that the act is classified as a crime because it is so regulated by the law. As a *mala prohibita*, the act must be clearly formulated in the law so that it can be well understood by the general public.<sup>8</sup>

In principle, administrative violation is a form of violation related to formality or procedural, where in principle the excise duty has been fulfilled or is in the process of fulfilling the obligation, but has not or has not fulfilled the formal or procedural requirements related to the

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<sup>6</sup> Deductive reasoning is a way of thinking in which conclusions are drawn from something general that has been proven to be true and the conclusion is aimed at something specific. See further in Irwansyah. (2020). *Penelitian Hukum; Pilihan Metode dan Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta, p. 113-115.

<sup>7</sup> Naibaho, Nathalina, Harkristuti Harkrisnowo, Suharyono, and Andri G. Wibisana. (2021). "Criministrative Law: Development and Challenges in Indonesia." *Indonesia Law Rev.* 11(2): 43-52.

<sup>8</sup> Widiyati, Dian, Riyan Harbi Valdiansyah, M. Meidijati, and H. Hendra. (2021). "The Role of Public Accountants in Fraud Prevention and Detection in the Taxation Sector during Covid-19." *Golden Ratio of Auditing Research* 1, no. 2: 70-82.,13.

use of excise facilities, reporting, bookkeeping, recording, issuing, importation, and transportation. Meanwhile, a criminal act is a form of material violation that is related to the legality of the excise tax itself. This means an act that is solely carried out to avoid paying excise in any way or pretext which ultimately results in non-collection of excise which causes state losses. If examined in depth, it can be found that among the articles that regulate administrative violations and the articles that regulate criminal acts have a very close relationship with each other.<sup>9</sup>

The excise law makes punishment as a way to enforce compliance for the excise-paying community to do their obligations properly. Therefore, crime in the field of excise is an economic crime that is always motivated by an economic or profit-oriented motive. So in line with economist Gary Becker, the economic approach is a very good way of preventing and as an effort to provide appropriate sanctions. According to Gary Becker, criminals are rational people who always carry out an analysis of costs and benefits in determining whether or not they will commit a crime. If the costs incurred are smaller than the benefits or risks they may face, then they will commit the offense or crime.<sup>10</sup>

In terms of applying the law, judges must seek to find or create laws, and provide legal solutions in disputes or cases they handle. Thus, it can be understood that in the process of examining, adjudicating and deciding cases, criminal judges are obliged to apply the law, find the law and at the same time be able to bridge between legal justice and community justice (in this case the perpetrators, victims, and the general public) and moral justice in order to create justice because actually the meaning of "to judge" in the context of a judge, means to create something that is just or fair.<sup>11</sup> Likewise, in the application of conditional sentences for excise crimes which are intended to provide justice not only for victims or injured parties but also for inmates or perpetrators of criminal acts.

In practice, the judge in resolving a case, in the process of making his/her decision, must be made independently and free from the influence of any party, and from anyone's intervention<sup>12</sup>. Because it is essentially in making decisions, judges are only bound to relevant facts accompanied by legal rules that become or are used as legal foundations in their decisions. However, the determination which includes the relevant facts and the choice of the rule of law is decided by the judge concerned himself independently.

In essence, talking about the principle of discretionary of judges or judicial power, it intends to prevent interference or intervention from any party and solely the judge's decision is only formulated for justice, benefit and legal certainty as the purpose of the law itself without ignoring the facts revealed in inspection. An independent judicial power is an independence or independence possessed by a judicial institution which of course is a continuity with the decisions made by judges, namely a decision that is objective and impartial.

The characteristics of decision objectively is in the process of making decision, the judge must have an honest opinion, have the right view or view in accordance with the actual situation by referring to generally accepted objective criteria or criteria, while the purpose of an

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<sup>9</sup> Achmad Ali and Wiwie Haryani. (2014). *Sosiologi Hukum: Kajian Empiris Terhadap Pengadilan*. Jakarta: Kencana, p. 37.

<sup>10</sup> De Hert, Paul, and Julia Muraszkiwicz. "Gary Becker and the economics of trafficking in human beings." *New Journal of European Criminal Law* 5, no. 2 (2014): 116-120.

<sup>11</sup> Sutatiek, S., (2013). *Menyoal Akuntabilitas Moral Hakim Pidana Dalam Memeriksa, Mengadili, dan Memutus Perkara*. Aswaja Pressindo, Yogyakarta, p. 31.

<sup>12</sup> Abdul Manan, (2004), *Etika Hakim dalam Penyelenggaraan Peradilan; Suatu Kajian dalam Sistem Peradilan Islam*, Prenada Media Grup, Jakarta. p. 28

impartial decision is that the decision made by a judge does not take sides with either party causing a sense of injustice from the litigating or disputing parties. In addition, the decisions given directly provide legal certainty in the community. So it can be concluded that an independent judiciary must ensure the implementation of an honest and fair trial and fulfill legal certainty in society based on applicable law.

According to Sudikno Mertokusumo<sup>13</sup>, the judge has authority to judge according to his conscience/beliefs without being influenced by anyone. Judges are free to examine, prove and decide matters based on their conscience. In addition, it is also free from extra judicial interference. This concept essentially explicitly states all interventions within judicial dealings by other parties outside the jurisdiction of the judiciary are prohibited, but in practice the provision is not infrequently violated. As the context of sentencing a judge verdict resulting in a conditional sentence, of course, the verdict has previously gone through a comprehensive examination process and analysis of evidence and is linked to the indicted article with other considerations of course that affect the judge's conviction in sentencing. This also applies to the sentencing of a conditional judge's decision on an excise crime.<sup>14</sup>

Concerning excise crimes, in the latest amendment to the excise law, several articles were abolished and criminal provisions were inserted. The criminal provisions imposed on perpetrators of excise crimes are within the scope of the excise law. The criminal provisions in the excise law are basically bound by the legal principle of "*Ultimum Remedium*" and one of the norms that was later applied in the latest Excise Law was regarding the imposition of conditional criminal sanctions in excise crimes. Basically, in the context of the responsibility of judges in conditional criminal decisions on excise cases, it really depends on how the examination process is carried out in court with considerations that lead to the process of proving the case because in fact the criminal articles regulated in the Excise Law are articles that provide sanctions for at least one year against several criminal provisions, for example in decision No. 179/Pid.Sus/2018/PN Mnd in decision the defendant Siegfried Ferdinand Pontoh was charged with violating the provisions of Article 52 of Act No. 39 of 2007.

Factory or storage entrepreneur who removes excisable goods from factory or storage place without heeding the provisions as referred to in article 25 paragraph (1) with the intention of evading payment of excise shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years. ) years and a fine of at least 2 (two) times the value of the excise duty and a maximum of 10 (ten) times the value of the excise that should be paid.

In the verdict the defendant was declared legally and convincingly violating the provisions of article 52 of Act No. 39 of 2007 and the defendant's actions were given a one year prison sentence and determined that the defendant did not need to serve the prison sentence unless within 2 (two) years there was a judge's decision that determined otherwise because the convict committed a crime before the probationary period ended.

The decision of *in casu*, the author sees that the judge in the *a quo case* looks legal justice not just formal-procedural justice, justice based on rigid normative rules that are far from morality and human values. Instead, look at the case from the side of substantive justice, namely justice whose size is not quantitative as appears in formal justice, but qualitative justice which is based on morality and human values and is able to provide satisfaction and happiness.<sup>15</sup>To obtain substantive justice, judges are not just mouthpieces of the law, but are required to find

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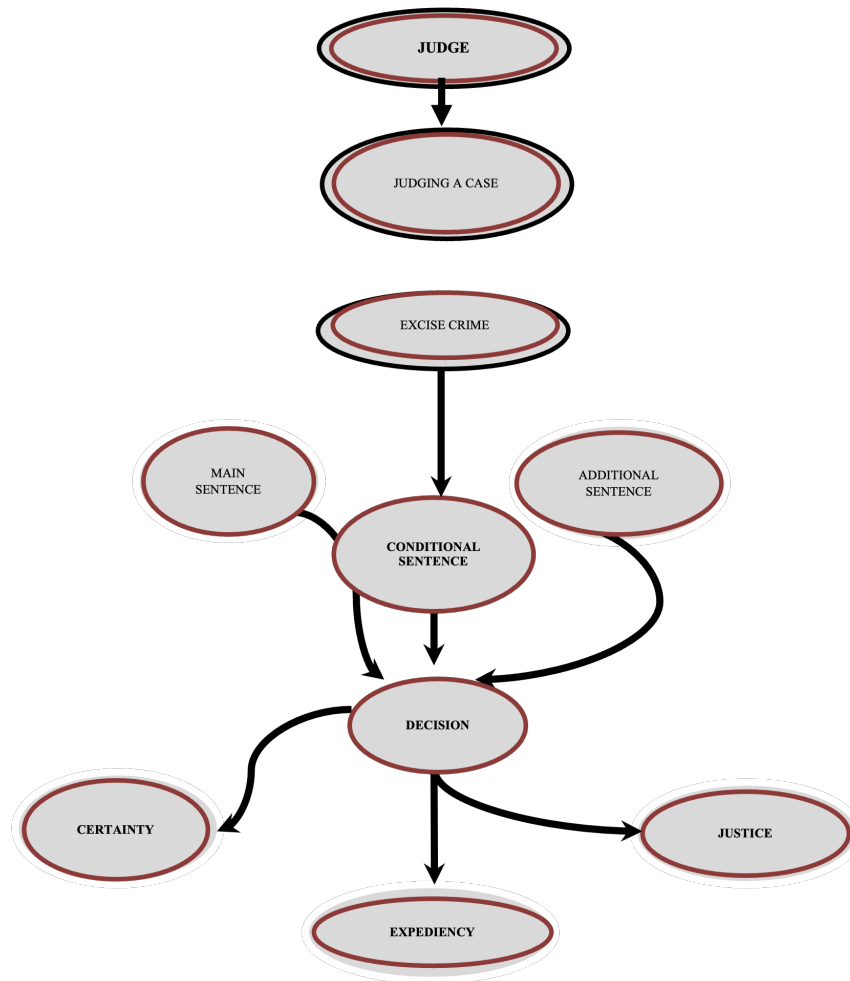
<sup>13</sup> Alldridge, P. (2017). *Criminal Justice and taxation*. Oxford: Oxford University Press. p. 39

<sup>14</sup> Burhanuddin, (2013), *Prosedur Hukum Pengurusan Bea dan Cukai*, Yustisia, Yogyakarta, p. 21

<sup>15</sup> Umar Sholehudin, (2011), *Hukum dan Keadilan Masyarakat*, Setara Press, Malang, p. 44

the law in the legal process itself, even if it is necessary to find the law in the social process. This of course makes judges not only know and understand juridically-normatively, but also juridically-sociologically. Law enforcers need to understand deeply the situation of a person exposed to legal problems so that judges can make decisions according to the purpose of the law itself, namely justice, certainty and expediency. That if a chart is made, at least a chart of the responsibility of the judge in deciding excise cases as depicted in Chart 1.

**Chart 1.** The responsibility of judge in deciding excise case



Source: Secondary data, 2021 (edited)

As depicted above shows that the judgment in excise criminal cases is based on the analysis of whether the case is subject to general and additional or conditional sentences which are all committed to create justice, expediency and legal certainty in the decision so that all this encourages the judge to make a decision tends to one actually wants to achieve in order to realize the purpose of the law itself.

In the conditional decision regarding the excise crime, the judge is responsible for carrying out his/her legal duties by respecting the principle of the presumption of innocence, without expecting anything in return, responsibility to be impartial, both inside and outside the court, and to maintain and grow the trust of the justice-seeking community. The judge is responsible

for avoiding things that can result in the revocation of his right to try the case in question, especially in the application of defective norms accompanied by irrational considerations such as criminal acts that must be dealt with with general criminal sanctions and at the same time additional criminal acts are given conditional criminal sanctions and vice versa.

As a form of judge' responsibility in his/her decision, the judge decision on excise crime should not and or seem to give the impression that the litigants or their powers including plaintiffs and witnesses are in a privileged position to influence the judge concerned. Judges in carrying out their judicial duties are prohibited from showing prejudice or dislike, partiality, prejudice, or favor on socio-economic status or on the basis of close relationship with seekers of justice or parties involved in the judicial process either through words or actions.

The judge' decision in imposing a criminal, whether conditional, additional or general sentences should reflect the judge' obligation to maintain honor and dignity, and their behavior as specified in the legislation must be implemented in a concrete and consistent manner both in carrying out their judicial duties and outside judicial duties, because it is closely related to efforts to enforce law and justice. Therefore, judges are required to always behave with noble character. Judges who have noble character can show that the profession of judge is a glory.

#### **4. Justification of Judges in Imposing Conditional Sentences on Excise Crimes**

The main discussion in legal science are written to answer questions or provide solutions to problems posed by mistakes in the application of law, ranging from the meaning of the text to its validity in the legal order. This is established to determine what according to applicable law are the rights and obligations of the parties involved in a claim that contains a dispute, and is resolved through the form of a decision whose implementation can be forced.<sup>16</sup>

The essence of discussion regarding material law is to question the applicability of material law, the meaning of material law which is directed to legal facts proven in court. A further implication is the opening of the possibility of *dissenting opinions* in decision deliberations because they give different meanings to the text of the law that will be applied. In determining the decision, it is not always choosing what the most appropriate and most acceptable legal rules are, but the majority vote. To respond the judge' decision obtained from the majority of votes because there is a real mistake caused by incorrectly applying the law, failing to fulfill the conditions stipulated by law which is threatened with annulment of the decision or exceeding the authority limit, the wrong decision can only be annulled through efforts ordinary and extraordinary laws.<sup>17</sup>

In each trial in the court, each judge submits a written legal consideration or opinion that contains the reasons and basis of the decision as well as the legal rules that are used as the basis of the trial. The development of law in this case lies in argumentation or legal reasoning, therefore argumentation theory occupies an important position because it explains the reasons and legal basis that underlie decision-making. Legal arguments are very needed by the judge on the matters he/she examines and judges. The judge must be able to process and process the

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<sup>16</sup> Tumpa, Harifin A. (2015). "Penerapan Konsep Rechtsvinding dan Rechtschepping oleh Hakim dalam Memutus Suatu Perkara." *Hasanuddin Law Review*, Vol. 1 (2): 126-138.

<sup>17</sup> Saidi, Muhammad Djafar. (2013). "Tindak Pidana Korupsi di Bidang Perpajakan." *Jurnal Hukum dan Peradilan*, Vol. 2, No. 1: 35-44.

data from the evidence of letters, witnesses, suspicions, confessions and oaths revealed in the trial. So that the decision to be made can be based on a sense of responsibility, justice, wisdom, professionalism and objective.

As argued by R. Soeparmono<sup>18</sup> that, sources of law that can be applied by judges can be in the form of statutory regulations and their implementing regulations, unwritten law (customary law), village decisions, jurisprudence, science and doctrine/teachings of experts. The judge in deciding a case, it must be based on various considerations that can be accepted by all parties and do not deviate from existing legal rules. The discussion on whether or not a judge' decision is flawed must be reviewed from the principles of the decision that must be applied in the decision. In essence, these principles are contained in Article 50 of Act No. 48 of 2009 concerning judicial power, which will be described by the author in Table 1.

**Table 1.** Principle of judge' decision

No	Legal Principles	Description
1	Contains clear and detailed consideration	The imposition by judges must be based on clear and sufficient considerations. Decisions that do not meet these provisions are categorized as decisions that are not sufficiently considered or <i>onvoldoende gemotiveerd</i> . The reasons for consideration can be in the form of certain articles of legislation, customary law, jurisprudence or legal doctrine.
2	Mandatory to judge all parts of the lawsuit	The decision must totally and thoroughly examine and adjudicate every aspect of the lawsuit filed. It is not permissible to only examine and decide part of it and ignore the rest of the lawsuit. Such a way of adjudicating is contrary to the principles outlined by law.
3	Do not grant more than the demands	The decision may not be granted in excess of the demands stated in the lawsuit. The ban is called <i>ultra petitum partium</i> . The judge who grants <i>posita</i> or <i>petitum</i> of the lawsuit is considered to have exceeded the limit of authority or <i>ultra vires</i> , namely acting beyond his/her authority. If the decision contains <i>ultra petitum</i> , it must be stated invalid, even though it is done by the judge in good faith and in accordance with the public interest. Judging by granting more than what is being sued can be equated with an illegal act (illegal) even though it is done in good faith
4	Declare publicly	Trials and verdicts declared in court sessions that are open to the public or publicly are an integral part of the principle of fair trial. Through the principle of fair trial, the examination of the trial must be based on an honest process from beginning to end. The principles of justice are open to the public from the beginning of the examination until the decision is made. It is of course excluded for certain matters, such as divorce matters. However, even if it is done in a closed session to the public, the decision must be made in a session that is open to the public

Source: Secondary data, 2021 (*edited*)

As indicated in the table above there is at least a clear picture of the important principles that then show the circumstances that can make a judge' decision a legal flaw. Such a situation

<sup>18</sup> Soeparmono, R. (2011). *Keterangan Ahli & Visum Et Repertum Dalam Aspek Hukum Acara Pidana*. Bandung: Mandar Maju. p. 67

should arouse and call the conscience of the judge to make a decision by reflecting a sense of justice and devotion to its values.

The argument above shows that there is a need for judges who have the capacity, capability, academic ability, noble character, and thirst for justice, so that through his/her decision with all the obstacles faced by the judge, be it bribery and corruption, the decision did not waver just for material reasons. Judges must always be able to make decisions by establishing them for justice based on God Almighty. From this perspective, a judge in making his/her decision must be based on things that cover all aspects that can make justice appear. So that in terms of including it in the judge' decision, it must be based on rational arguments that include the judge' legal arguments as the basis for his belief, both juridical, sociological, or philosophical arguments.<sup>19</sup>

The importance of legal argumentation by judges in cases that are being handled does not close the space for the importance of legal arguments in cases of excise crimes, especially against decisions for imposing conditional criminal offenses on excise. Legal argument, related to conditional excise crime, means a logical explanation, to strengthen or reject an opinion or idea, related to the principle of law, legal norms and concrete legal regulations, as well as a legal system built on the basis of logic, so that a decision can be accepted, that is, if it is based on a reasoning process, in accordance with a formal logical system which is an absolute requirement in arguing.

Judges in formulating and compiling legal considerations in imposing criminal decisions on excise cases must be carried out carefully, systematically and in correct and good Indonesian. The considerations are prepared carefully, meaning that the legal considerations must be complete, containing facts of events, legal facts, formulation of legal facts, the application of legal norms in positive law, customary law, jurisprudence as well as legal theories and others, which are used as arguments or bases. law in the judge' decision. On this basis, the author is interested in reviewing the legal arguments of the judge in imposing a conditional criminal offense against an excise crime.<sup>20</sup>

Legal argumentation always starts from positive law. Positive law is not a closed or static situation, but is a continuous development. From a positive legal provision, jurisprudence will determine new norms. People can reason from the provisions of positive law from the principles contained in positive law to take new decisions. Legal reasoning or legal arguments or legal considerations are part of court decisions in deciding a case. Legal reasoning carried out by a judge can be based on philosophical, juridical, sociological or theological aspects that reflect the principles of legal certainty, justice and benefit for the parties. In addition to the basis of these considerations, a judge can also use several methods of legal interpretation in providing legal arguments or legal considerations which are the result of the judge' effort rather than the decision having to be clearly stated in his legal considerations, and in accordance with the legal reasoning system in making decisions.

The process of settling criminal cases in a fair trial by a judge, should be interpreted not only to implement the function of juridical technical affairs, but in fact the judge is always involved in a choice of values that are very conditional to the interests of society in making decisions. These values and interests become a model for judges in deciding criminal cases with the

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<sup>19</sup> Wibawa, Arif, Djafar Saidi, Slamet Sampurno, and Marthen Arie. (2015). "The Recovery of the Assets of the Criminal Acts of Corruption as the Country's Financial Rescue Efforts." *Journal of Humanity* 3, no. 2: 92663.

<sup>20</sup> Shidarta, (2004), *Karakteristik Penalaran Hukum Dalam Konteks KeIndonesiaan*, Universitas Katolik Parayangan, Bandung, p. 67.

orientation of course to bring justice through the trial. The trial mechanism for excise cases that are conditionally sentenced is imposed on acts for which there is no specific criminal threat, the trial mechanism for all cases in particular that are threatened lightly or severely is essentially the same according to criminal procedure law. Based on that, the question of justification is the question of how the judge enforces the law through his decision.

The judge's decision related to excise matters that are conditionally sentenced is the judge's judgment in terms of juridical and non-juridical. In terms of jurisprudence the judge then reviews and analyzes the prosecutor general allegations in the form of indictments or allegations containing a summary of the criminal action against the defendant, the defendant's evidence in the form of what the defendant stated in accordance with what he/she did or knew or experienced himself, evidence witness is what the witness states in court and can be one of the tools of evidence and articles in criminal law. Considerations from a non-legal (non-juridical) aspect, such as sociological, for certain criminal acts, such as embezzlement or storing excisable goods, but the perpetrator of the crime has the ability in good faith to submit excise goods to be subsequently subject to excise duty and at the same time pay the price of the excise. and show signs of repentance, remorse and good behavior in court.

In the case of excise crimes with conditional sentence decisions, the role of judges in developing basic concepts (criminal law) is very significant here, where through their decisions, judges have sensitivity to the sense of community justice, but what must be known does not mean that conditional criminal sanctions can be used for all cases or will always result in something better than the criminal sanction of revocation of independence. What must be emphasized in terms of conditional criminal sanctions is that conditional criminal sanctions must be able to become a legal institution that is better than just being a kindness or leniency or generosity as experienced by the majority of today's society and being a means of correction that is not only beneficial for the convict, but also for the benefit of society. Conditional sentence is a system or model for imposing criminal penalties by judges whose implementation depends on certain conditions. This means that the sentence handed down by the judge is determined not to need to be carried out on the convict as long as the specified conditions are not violated, and the sentence can be carried out if the stipulated conditions are not obeyed or violated.

According to the author, law enforcement on conditional decisions on excise crimes is in accordance with the basic idea or basic thought of the provisions for the purpose of punishment, namely that the basic thinking underlying conditional criminal sanctions is very simple. The sentence is imposed as a whole to avoid further criminal acts by helping the convict learn to live productively in a society that has been harmed by him. The best way to achieve this goal is by directing the implementation of criminal sanctions in society, rather than sending it to an artificially abnormal environment in the form of deprivation of liberty.

As described above is very possible by the judge because normatively, the judge is free to judge according to his/her conscience or beliefs without being influenced by anyone. The judge is free to prove and decide matters based on his/her conscience. In addition, it is also free from the interference of extrajudicial parties and any interference in court affairs by parties outside the jurisdiction of the court. Decision of conditional sentence in an excise case is a person who has been sentenced, but the sentence should not be carried out, unless later it turns out that the convicted before probation committed or committed a criminal act and violated the agreement entered into by the judge to him, so the sentencing verdict remains granted to him, only punishment is not carried out.

The presence of a conditional sentence decision in excise cases means that the punishment given is suspended to a certain extent by a certain agreement so that there is a possibility if the convict in that period can improve his/her behavior and fulfill all agreements then forever the sentence that has been imposed on him. need not be executed, but on the contrary if the conditional convict during the probation period violates what has been agreed to him then the judge may order the prosecutor to immediately execute the sentence which has been previously imposed.

The judge' thoughts through his/her decision to apply a conditional sentence in an excise case is basically closely related to the development of theories regarding the purpose of punishment, where punishment is not only intended as a sorrow for the perpetrators of violations as stated by Roeslan Saleh who said that crime is a reaction to offenses, and this is realized a misery deliberately inflicted by the State on the perpetrator of the offense, but besides that it is also a means of education for the violator. These actions are intended to apply suffering, but are intended to improve, heal and educate certain people to be useful to society. Conditional punishment is expected to be useful in the context of rehabilitation, especially for beginner level actors so that they can become better people.

## 5. Conclusion

The judge's discretionary and responsibilities in imposing conditional sentence for excise crimes where the decision imposing in the excise case is based on the analysis carried out to create justice, expediency and legal certainty. All of these things encourage judges to make decisions that simply lead to what they want to achieve to realize the law's goals. In conditional criminal decisions on excise crimes, judges are responsible for carrying out their legal duties by respecting the principle of the presumption of innocence, without expecting anything in return, being accountable for impartiality, both inside and outside the court, and maintaining and growing public trust as justice seekers. Mitigating includes the defendant being young or old, being polite, and admitting his/her actions. Aggravating is giving convoluted information, not admitting to his/her actions, disturbing the community, harming the state, etc. Conditional sentence is intended to provide an opportunity for the inmate so that he/she can improve him/herself during the probationary period and not violate the conditions determined by the judge against them. In excise crimes with conditional sentence decisions, the judge has a role in developing basic concepts (criminal law) that are very significant through the judge's decision.

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