

***ANALYSIS OF COURT DECISIONS REGARDING
THE CRIME OF SHIP PIRATION FROM AN
ISLAMIC PERSPECTIVE***

***(Study of Tanjung Karang District Court Decision Number
501/Pid.B/2021/PN Tjk)***

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ABSTRACT

Fishermen are concerned about piracy of commodities and people aboard ships in Indonesian waters since it not only causes financial losses but also jeopardizes the lives of the victims. In addition to utilizing weapons to commit their crimes, the offenders intimidated and threatened the victims. The issues in this study are: What factors did the judges take into account while making decision 501/Pid.B/2021/PN Tjk dam? What are the legal ramifications of the Tanjung Karang District Court's 501/Pid.B/2021/PN Tjk judgment. This study strategy is known as normative juridical research. Normative legal research simply examines laws that are seen as principles or standards that apply in society and serve as a roadmap for each person's behavior. This normative juridical method is being used to assist scholars in their analysis of Tanjung Karang District Court Decision Number 501/Pid.B/2021/PN Tjk's Study of Court Decisions on Ship Piracy Crimes. The basis for the judge's legal considerations in imposing a prison sentence of 2 years and 7 months against the perpetrators of the crime of piracy against goods and people on fishing boats in Indonesian territorial waters in Decision Number: 501/Pid.B/2021/PN.Tjk consists of juridical considerations , sociological and philosophical. Juridically, the actions of the accused have been legally and convincingly proven to have violated Article 439 Paragraph (1) Jo. Article 55 Paragraph (1) 1st Criminal Code. Sociologically, the judge considers the aggravating and mitigating factors for the defendant as well as the events behind the criminal act. Philosophically, the judge considers that sentencing does not only aim to create a deterrent effect but as an effort to punish the accused.

Keywords: *Consideration of Judges, Piracy, Ships, Decisions*

PRELIMINARY

The vast sea area encourages United Nations (UN) to establish provisions for orderly law at sea, which can facilitate international communication and promote the peaceful use of the sea, the fair and efficient use of its natural resources, the conservation of its biological resources and the study, protection and preservation of the marine environment and the conservation of its biological nature, through the United Nations Convention on the Law of the Sea 1982 (UNCLOS).

As stated earlier, the root cause of conflicts of interest over sea areas is sovereignty on behalf of the sea. The assumption is that with sovereignty over foreign territories, a country will be able to meet the need for security of resources for its people. Therefore, in the 15th-16th centuries coastal states began to claim sea areas around and around their land areas.¹

In general, when carrying out actions the pirates use speed boats, beheading boats, or fishing boats with firearms, machetes, masks, and ropes hooked to board the ship. In this case, the target ships are generally merchant ships, tankers, and fishing vessels. Meanwhile, the consequences arising from piracy are the killing of the crew, kidnapping or injury, as well as losses to goods, such as money, ship equipment, spare parts, equipment owned by the crew, and ship catches.²

A criminal act is an act prohibited by a prohibition law which is accompanied by threats (sanctions) in the form of crime. Criminal acts as acts that by a rule of law are prohibited and threatened with crime, provided that in the crime it is remembered that the prohibition is aimed at an act that is a condition or event caused by the negligence of people, while the criminal threat is directed at the person who caused the incident.³

Piracy itself is known as piracy and armed robbery, but the two things are equal and inseparable. Ship piracy activities were previously carried out by fleets tasked with maintaining sea security. In addition, he was given the task of attacking merchant ships and plundering crops from other kingdoms. At that time piracy activities were not a violation of the law because they were approved and received legal protection from the state.

At this time many people have forgotten the obligations and prohibitions in Islam, especially the prohibition of stealing. In big cities or in rural areas, criminalism often occurs, generally they steal or rob for the reason of making ends meet so that they dare to commit these illegal acts. Stealing or robbing in Islam can be interpreted as the act of taking the property rights of others without the knowledge or not of the owner. In Islam, stealing and daydreaming are prohibited acts.

Most people only understand the basic legal basis of stealing and daydreaming. And without any thought to be able to understand more deeply about the law of action in real Islamic studies. To be able to understand the prohibition of stealing and its laws, here are the verses and hadiths of the Prophet about it.

Word of Allah SWT:

Men who steal and women who steal, cut off their hands (as) retribution for what they do and as torment from God. And Allah is mighty, wise. So whoever repents (among the thieves) after committing the crime and improving himself, Allah accepts his repentance. Indeed, Allah is merciful. (QS. Al-Maidah : 38-39)⁴

Hadiths of the Prophet SAW:

It is from 'Aisha RA that the Prophet SAW said (to Osama bin Zaid), "Will you defend those who break the law from the laws of Allah?". Then he stood up and preached, and said, "O men, verily those who before you have perished for their sake when the honorable among those who steal, they

¹ Dhiana Puspita, International Law of the Sea, Prenadamedia Group, Jakarta, 2017, p. 2.

² Tri Setyawanta R, Legal Aspects of Piracy and Piracy at Sea, Andi, Yogyakarta, 2023, p 6.

³ Adami Chazawi. Criminal Law Lessons Part I, Rajawali Press, Jakarta, 2015, p. 12.

⁴Source:<https://kisahimuslim.blogspot.com/2015/08/ayat-hadis-larangan-mencuri-hukumannya.html>.

let them. But if the weak among them steal, they punish him." (HR. Muttafaq 'alaih, and this is Muslim lafadh)

From 'Aisha he said: There used to be a Makhzumiyah woman who borrowed goods (jewelry), and she denied it. Then the Prophet SAW ordered his hands to be cut off. Then the woman's family came to Osama bin Zayd and told him about the matter. Then Osama bin Zayd conveyed to the Prophet SAW about it. So the Prophet SAW replied, "O Osama, I do not consider that you can provide help (free) punishment from the punishments of Allah 'Azza wa Jalla". Then the Prophet SAW stood up and preached, he said in his sermon, "Behold, the ummah before you has been destroyed, because if any respectable person among them steals, they let him. But when the weak among them stole, they cut off their hands. By Allah whose soul is in her hands, if Fatima (daughter of Muhammad) stole, I would have cut off her hand." Then he SAW cut off the hand of the Makhzumiyah woman. (HR. Ahmad, Muslim and Nasai)

From Abu Umayyah Al-Makhzumi RA he said: Having faced the Prophet SAW a thief who had confessed while the goods were gone, so the Prophet SAW said, "I did not expect you to have stolen". He said, "Yes, I have stolen, O Messenger of Allah". He repeated his confession two or three times. Then he ordered (that the man be cut off his hand), and the man had his hand cut off. Then the man confronted him again, so he said, "Please forgive Allah and repent to Him". He said, "I ask Allah for forgiveness and repent to Him". Then he prayed, "O Allah, accept his repentance". He repeated his prayer three times.(HR. Abu Dawud and this is his lafadh, Ahmad and Nasai also narrated, and his rawi-rawi tsiqat. And the Judge also narrated from the hadith of Abu Hurairah (r) and mentioned the same meaning as that. In that hadith he said) "Take him and cut off his hand, then treat the cut marks."(HR Al-Bazzar, he said, "Sanadnya is okay")

In the decision of Judge Number 501 / Pid.B / 2021 / PN Tjk, one of the criminal cases of ship piracy in Indonesian sea areas committed by Amir Hidayatulloh Alias Sakir Bin Mas Ud which was decided by the Tanjung Karang District Court in 2021, the incident occurred around the sea waters of Tulang Bawang Lampung.

The perpetrator threatened to use violence against the crew of KM, the defendant Amir Hidayatulloh Alias Sakir Bin Mas Ud has been convicted of criminal acts of ship piracy in Indonesian sea areas in the past year. Barokah Anak Mas proceeds from the catch of KM ships. Barokah Anak Mas and also took other items on the ship. namely threatening with 2 pistol-type homemade firearms, then the perpetrator took.

Based on Number 501/Pid.B/2021/PN Tjk, the Public Prosecutor (JPU) charged the defendant with Article 439 Paragraph (1) Jo Article 55 Paragraph (1) 1 of the Criminal Code with a sentence of 4 (four) years, but the Judge set the sentence against the defendant for 2 (two) years 7 (seven) months. This verdict has not fulfilled the sense of justice for justice seekers, when compared to the Demands of the Public Prosecutor, namely imprisonment for 4 (four) years, as a result, the prison sentence was said to have not been able to convey a deterrent impact for the perpetrators and the people in the future.

RESEARCH METHODS

Based on the background described above, the problems that the researchers formulated are as follows:

- A. How did the Judge consider in decision Number 501/Pid.B/2021/PN Tjk?
- B. What are the legal consequences of the decision of the Tanjung Karang District Court Number 501/Pid.B/2021/PN Tjk?

This type of research is normative juridical research, normative legal research basically studies laws that are considered as rules or principles that apply in society, and become a guide for the actions of each individual. The use of this normative juridical method aims to facilitate researchers

in analyzing the Juridical Analysis of the Crime of Ship Piracy in the Indonesian Sea Area (Study of Tanjung Karang District Court Decision Number 501/Pid.B/2021/PN Tjk).

The author focuses research on the case approach. The case approach is carried out by reviewing cases related to the issue at hand which has become a court decision that has had permanent force. The case can be in the form of cases that occur in Indonesia or in other countries.⁵ From what is stated actually in using a conceptual approach, researchers need to refer to legal principles. These principles can be found in scholarly views or legal doctrines. Although not explicitly, legal concepts can also be found in legislation. It's just that in identifying this principle, researchers first understand the concept through existing views and doctrines.

This research is a descriptive research analysis. Analytical descriptive research is a writing that conducts research by describing applicable laws and regulations and is also associated with legal theories and law implementation practices that concern the problems in the research.⁶

The descriptive referred to here is an attempt to explain more broadly related to the Juridical Analysis of the Handling of the Crime of Ship Piracy in the Indonesian Sea Area (Study of Tanjung Karang District Court Decision Number 501 / Pid.B / 2021 / PN Tjk) which is directly related to legal theories and direct implementation of positive law as well as other laws and regulations which in this case relate to the core of the problem being researched by the author.

RESEARCH RESULTS AND DISCUSSION

The judge's decision or court decision is an important and necessary aspect to resolve criminal cases. The judge's verdict is useful for the defendant to get legal certainty about his status. The judge's decision must be based on Article 5 paragraph of Law number 48 of 2009 which states that judges and constitutional judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society, so that the Judge before handing down his verdict must first find the facts and events revealed in the trial.

The role of judges in handing down decisions is not just done in terms of decision making that is decided to be a legal act and is certain. Therefore, the judge as a person who is given the authority to decide a case is not arbitrary in giving his decision. A judge when experiencing a case, is expected to act wisely and wisely, upholding the value of justice and material truth, is active and dynamic, based on positive legal tools, conducts logical reasoning in accordance and in harmony with theory and practice, so that everything boils down to the decision he will be handed down, because through his decision, judges can change, transfer or even revoke the rights and freedoms of citizens and all of that is done in order to uphold law and justice.

The amount of authority and high responsibility of judges is shown through court decisions that can be accounted for from aspects of legal science itself, the human rights of the accused, society and the State, themselves and "For Justice Based on the One and Only God". This affirms that the obligation to uphold justice is not only accountable to fellow human beings, but also to God Almighty.⁷

The judge in making a decision certainly needs to look at other factors in considering the case to be decided, both related to the case being examined, the level of action, and the mistakes committed by the perpetrator, the interests of the victim, his family, and the sense of justice of the community.

⁵ Farhana, A Positive Legal Approach to the Punishment of Trafficking in Persons, Cv. Assofa, North Jakarta, 2022, p. 21

⁶ Moch Nazir, Research Methods Jakarta, Ghalia Indonesia, 2008, p 84

⁷ Lilik Mulyadi, A Special Review of Indictments, Exceptions and Judicial Decisions, PT. Citra Aditya Bakti, Bandung, 2002, p. 33.

The judge's decision must be based on the facts in the trial and no less important is based on conscience or belief.⁸

Considering the factors that can be aggravating and mitigating for the defendant as stipulated above, the crime imposed by the judge is expected to be in accordance with the defendant's deeds and mistakes, not excessive and absolutely necessary to maintain the rule of law. Thus, the criminal effort made is not solely based on the purpose of retaliation, Instead, it contains certain goals to be achieved such as prevention, protection for the community and for coaching.

From the picture above, to find out the severity of criminal sanctions, the judge in considering the crime to be imposed on the defendant, the judge must pay attention to the objective circumstances of the actions of the perpetrators, the judge must look at the background of the defendant's life and the weight of the actions committed. Or in other words, the judge in sentencing The severity of the crime must consider the factors that exist in the defendant and the factors committed by the defendant.

The author conducted a study on the Court Decision in the case of ship piracy in the Tanjung Karang State Court decision number 501 / Pid.B / 2021 / PN Tjk That the basis for the judge's consideration in sentencing the perpetrators of ship piracy committed by Amir Hidayatulloh Alias Sakir Bin Mas Ud Alm, the Judge decided lighter than the Public Prosecutor's demand, this was related to several considerations.

The following are the factors that exist in the defendant Amir Hidayatulloh Alias Sakir Bin Mas Ud Alm which are considered by the judge in imposing the severity of criminal sanctions imposed on the perpetrators of ship piracy. The incriminating consideration of the defendant is that the defendant's actions disturb the community

The above considerations contained in the court decision considered by the judge in imposing the severity of criminal sanctions are 1 (one) point.

In addition to the burdensome considerations of the defendants mentioned above, there are also factors assessed by the panel of judges that are taken into consideration to be able to reduce the sentence against the defendant, including:

1. The defendant has never been convicted
2. The accused admits guilt and regrets his actions
3. The defendant behaved politely at trial
4. The defendant has family dependents

The above factors are considered by the judge in imposing a light criminal offense, while the considerations seen by the judge are the defendant's criminal experience, the defendant's confession, and the defendant's remorse.

The problem of criminal conviction is a very difficult problem, especially in cases of ship piracy, so that giving too high a crime can have fatal or bad consequences on themselves and the future of the perpetrators. Vice versa, if the judge in his decision gives a sentence too lightly, it will have a bad impact on the community.

The criminal act of ship piracy is an extraordinary crime, because it has a negative impact arising from piracy is the killing of the crew, kidnapping or injury, as well as losses to goods, such as money, ship equipment, spare parts, equipment owned by the crew, and ship catches.

In this case, the judge is faced with a dilemma in sentencing the perpetrator Amir Hidayatulloh Alias Sakir Bin Mas Ud Alm for the crime of ship piracy, where the judge must pay attention to the interests of the community on the one hand, that the defendant's actions are acts that must be severely punished, while on the other hand it concerns the interests of the defendant himself. These

⁸ Rizky Argama, The Responsibility of the Judge Profession as the Main Actor in the Implementation of Judicial Power in Indonesia, <<http://www.google.com/Makalah Judge Professional Ethics>>, retrieved August 8, 2023.

things are obstacles that are often experienced by judges in handing down a criminal verdict for ship piracy.

In making the decision of the Tanjung Karang State Court did not pay attention to the negative impact caused when giving a sentence of 2 (two) years 7 (seven) months for the perpetrator, it was unfair to the community because the crime was very disturbing to the community, especially to people whose livelihood was at sea (fishermen).

Legal consequences are the consequences given by law on a legal event or act of a legal subject. Based on the Indonesian Dictionary, effect means something that becomes the outcome or result of an event, requirement, or circumstance that precedes it.⁹

Talking about legal consequences begins with the existence of legal relations, legal events, and legal objects. According to Soedjono Dirdjosisworo, in his book Introduction to Legal Science, legal consequences arise due to legal relationships where in legal relationships there are rights and obligations. Peristiwa atau kejadian yang dapat imbulkan akibat law antara pihak-pihak yang has a relationship with law, peristiwa this law ada dalam different aspects of law, baik public law ataupun private.¹⁰

The Tanjung Karang District Court should be more firm in determining the punishment for this piracy crime so as not to harm the community and can also provide a deterrent effect to perpetrators of ship piracy at sea. This ship piracy in Indonesia has not happened once in Indonesia and The Tanjung Karang District Court did not see how the impact on the community if the sentence was too light, it was likely that the perpetrators would repeat the crime of piracy at sea. Tanjung Karang District Court to give the law not too light so that people do not worry about going to sea for their livelihood at sea.

Ship piracy itself occurs because there is an opportunity to commit a criminal act of ship piracy, so we must also pay attention to several institutions related to ship piracy itself, as for some lambaga that must participate and increase security guard or supervise at sea are:

1. Water and air police
2. Indonesian State Army Navy
3. Bakamla (Maritime Security Agency)
4. Immigration

The occurrence of the criminal act of piracy of ships at sea, the lack of attention from several institutions guarding at sea, so the criminal act of piracy of the ship occurred, therefore each institution must guard or supervise the sea area closely so that the criminal act of piracy of the ship does not occur and also the public must be able to guard and be careful, must also prepare some tools so that ship pirates cannot get on board the ship such as barbed wire.

The hijackers themselves are also ordinary people, there are several factors that make the hijackers commit criminal acts such as rising food prices, financing household needs, and difficult employment, therefore the marine and fisheries service must also pay attention to the management and marketing of fish in the market so that there is no drastic price increase.

CONCLUSION

The judge's legal basis for imprisonment in imposing a prison sentence of 2 years and 7 months on perpetrators of piracy of goods and people on fishing boats in Indonesian territorial waters in Decision Number: 501/Pid.B/2021/PN.Tjk consists of juridical, sociological and philosophical considerations. Juridically, the defendant's actions are legally and conclusively proven to violate Article 439 Paragraph (1) Jo. Article 55 Paragraph (1) 1 of the Criminal Code. Sociologically, the judge considers the aggravating and mitigating matters of the defendant and the events behind the

⁹ Marwan Mas, Introduction to Law, Ghalia Indonesia, Bogor, 2003, p. 39

¹⁰ Soedjono Dirdjosisworo, Introduction to Law, PT. Raja Grafindo Tinggi, Jakarta, 2010, p.131.

criminal act. Philosophically, judges consider sentencing not only to cause a deterrent effect but as an attempt to convict the accused.

The crime imposed by the judge on the perpetrators of piracy of goods and people on fishing boats in Indonesian waters is in accordance with the relative theory in the purpose of punishment, because basically the crime is not only as retaliation and provides a deterrent effect to the perpetrators for the criminal acts they commit, But it aims to train the perpetrator to become a better person and not repeat the crime after completing his criminal period.

AUTHORS' CONTRIBUTIONS

Analysis Of Court Decisions Regarding The Crime Of Ship Piration From An Islamic Perspective (Study Of Tanjung Karang District Court Decision Number 501/Pid.B/2021/Pn Tjk)

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