

Breakthrough of the Positivism Paradigm in Judge's Decisions as a Form of Reflection of Justice Values

I Gusti Ayu Eviani¹, Juniardi Windraswara², Jaedin³, Alif Abdurrahman⁴, and Galih Puji Mulyono⁵.

¹ Universitas Pendidikan Nasional, Kota Denpasar, Bali, Indonesia

^{2,3,4,5} Law Doctoral Program, Diponegoro University, Indonesia.

Article history:

Received 2024-05-19

Revised 2024-07-10

Accepted 2024-08-01

Keywords:

Legal Certainty; Supreme Court; Positivism.

DOI:

doi.org/10.26905/idjch.v15i2.14495.

Corresponding Author:

I Gusti Ayu Eviani.

E-mail: ayueviani@undiknas.ac.id.

Abstract: This research aims to analyze the Ferdy Sambo case through the lens of positivist thinking, which emphasizes facts and empirical evidence in the law enforcement process. This case became the public spotlight because it involved members of the police, the alleged motive for planning the loss of life was complex, and where there was a disparity in punishment between the decisions of the South Jakarta District Court and the DKI Jakarta High Court which imposed the death penalty. At the same time, the Supreme Court reduced the sentence to life imprisonment. This research uses normative legal research methods, emphasizing the study of legal norms or doctrine to uncover alternative interpretations and provide insight into specific issues. This research uses two methodologies: a legislative approach, which focuses on legal norms or laws, a conceptual approach, and a case approach, which examines the Supreme Court's decision with the defendant Fredy Sambo. The results of this research discuss legal analysis by exploring the implications of the approach to the value of legal certainty and justice in the context of cases involving judicial power. This research also uses an approach from a positivist perspective. Through this approach, analysis is carried out on the investigation process, the evidence presented in court, how the legal system handles this case, and the sentence imposed by the judge.

1. Introduction

Legal certainty is one of the main pillars of the legal system, which ensures that the law can be predicted, consistent, and applied fairly in every situation.¹ Legal certainty is critical in the context of judges' decisions because it assures the public that decisions taken by the court are based on clear, logical rules and do not change without valid reasons. We can see this in the legal decision related to Supreme Court (MA) decision Number 813 K/Pid/2023 with the defendant Fredy Sambo. The Supreme Court's legal decision above strengthens the first instance court's decision at the South Jakarta District Court Number 796/Pid.B/2022/PN Jkt.Sel. and the decision of the DKI

¹ Sandrarina Hertanto, Gunawan Djajaputra, "Tinjauan Yuridis Terhadap Penyelesaian Wanprestasi dalam Perjanjian Jual Beli," *Unnes Law Journal* 6, 4, Juni 2024, DOI: <https://doi.org/10.31933/unnesrev.v6i4>.

Jakarta High Court Number 53/PID/2023/PT DKI by finding Fredy Sambo guilty of being legally and convincingly proven to have violated Article 340 of the Criminal Code (KUHP) jo. 55 paragraph (1) 1 of the Criminal Code and article 33 of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Electronic Information and Transactions jo. Article 55 paragraph (1) 1st of the Criminal Code.

The chronology of the case with the defendant Ferdy Sambo is related to the premeditated murder of Brigadier Nofriansyah Yosua Hutabarat (Brigadier J). In the ruling, the Supreme Court (MA) strengthened the legal basis at the 1st level of court and the appeal level. However, in sentencing, the Supreme Court judge made a different sentence by reducing Ferdy Sambo's sentence from the death penalty to life imprisonment. This decision drew various public reactions. Some people believe that the death sentence initially imposed by the court of first instance was an appropriate punishment considering his role in planning and ordering the murder.² However, in the cassation decision, the Supreme Court considered that a life sentence was a more appropriate punishment, even though Sambo was still found guilty of his crime.

Based on the judge's decision with the defendant Ferdy Sambo regarding changes to the decision, the considerations or reasons behind reducing the sentence were not published in detail. The judge considers that a reduction in sentence is given by the judge taking into account factors from the defendant's side, such as the defendant's age, the possibility of improving his behavior, or other human aspects and the defendant's attitude when undergoing trial.³ Based on these reasons, the judge can make a different decision; this is included in the explanation of the judge's dissenting opinion and looks at the provisions in the Criminal Code and Criminal Procedure Code while also paying attention to the principle of legality, where these provisions do not regulate the permissibility of *ultra petita* in the judge's decision. Paying attention to legal provisions can provide the value of legal certainty and the value of justice in law enforcement; even though in the development of society, these decisions are subject to debate, they must be excluded as characterized by the principle of legality and the value of legal certainty.

This change in punishment created a broad debate in society, primarily related to the value of legal certainty. Legal certainty is one of the fundamental principles in the legal system, ensuring that the law can be predicted, applied consistently, and does not change without a clear basis.⁴ Legal certainty provides assurance to society that the applicable norms and rules can be understood, followed, and applied equally to every individual.

Based on the context of the Ferdy Sambo case, legal certainty was questioned when a sentence that was initially very strict, namely the death penalty, was changed to life imprisonment. These changes raise questions about the consistency of the application of criminal law, especially in cases with high public pressure. On the one hand, the public who supports the death penalty for Sambo

² Galih Pradipta, "Ferdy Sambo, Ma Batalkan Hukuman Mati Pembunuh Brigadir Yosua, Apa Reaksi Pemerintah dan Pakar Hukum?" 9 Agustus 2023, BCC Indonesia, URL: <https://www.bbc.com/indonesia/indonesia-66440966>, diakses pada tanggal 05 Oktober 2024.

³ Yunes Prawira Darma, Susi Delmiati, Fahmiron, "Pertimbangan Hakim Menjatuhkan Pidana di Bawah Sanksi Minimum Kepada Terdakwa Tindak Pidana Pilkada Pada Tahapan Kampanye," *UNES Journal of Suara Justisia* 7, 4, Januari 2024. DOI: <https://doi.org/10.31933/ujs.v7i4.449>.

⁴ Mario Julyano, Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido*, 01, 01, Juli 2019, 13-22. DOI: [10.14710/crepido.1.1.13-22](https://doi.org/10.14710/crepido.1.1.13-22).

considers that this sentence reflects justice for the victim and fulfills demands for strict legal certainty for serious crimes such as premeditated murder. On the other hand, reducing the sentence to life imprisonment can be seen as a form of flexibility in applying the law, considering humanitarian factors or the potential for improving the convict's behavior.

This legal uncertainty broadly impacts public confidence in the justice system and law enforcement, which is expected to be firm and consistent. Suppose changes in punishment are not explained with strong enough reasons. In that case, this can trigger the perception that the justice system tends to be unfair, indecisive, or easily influenced by non-legal factors such as public opinion or political pressure. This means there is a clash between the values of justice in this case. However, the law must be enforced, which is justice according to the law.⁵ Law must be separated from human and moral values for the sake of legal certainty.

Understanding this human reality, the problem that arises then is how the Supreme Court judge's decision in the Fredy Sambo case turns out to be not in line with the principles of justice and/or existing positive law, because the length of time it has been in effect turns out to be no longer in line with justice. Next there is the question, does this mean that the law can be deviated at will?⁶ Therefore, every law made by humans (positive law/judge's decision) must be based on natural law, which has a higher degree than human-made law. Positive law has no appeal to society if it is not based on natural law (invalid).

The Fredy Sambo case can be used as important study material regarding how legal certainty is applied in the judicial process, especially in significant cases involving important figures and broad public attention. It also highlights the challenge of balancing the strict application of the law with the values of justice and humanity in the sentencing process. Therefore, this case demands an in-depth analysis of the extent to which legal certainty can be maintained in a legal process involving complex social, political, and ethical dynamics, as well as how the legal system can ensure that justice is not only implemented but also seen as something that definite and consistent by society.

Hans Kelsen explains the value of legal certainty in Pure Legal Theory - Kelsen argues that law must be applied based on norms that apply hierarchically and consistently to ensure legal certainty.⁷ Therefore, the value of legal certainty in the Supreme Court judge's decision in the Fredy Sambo case by reducing the sentence because of the *ultra petita* in the legal decision is significant to see the value of legal certainty as the basis for the judge's actions. This is very important to prioritize in law enforcement because it reflects respect for the human rights of accused perpetrators.

The value of legal certainty can maintain public confidence in the justice system, where the value of legal certainty is the foundation of public trust in the justice system.⁸ Suppose the judge's decision in the Fredy Sambo case at first instance and appeal is consistent and predictable based on applicable legal rules. In that case, the public will feel secure that the law will be applied fairly and not arbitrarily. When society feels that everyone is treated equally before the law, trust in legal

⁵ Fikrotul Jadidah, "Kasus Nenek Minah Ditinjau Dari Perspektif Teori Hukum Positivisme," *Iblam Law Review* 02 (03) 2022, 129-142. DOI: <https://doi.org/10.52249/ilr.v2i3.98>.

⁶ Ibnu Artadi, "Hukum : Antara Nilai-Nilai Kepastian, Kemanfaatan dan Keadilan," *Jurnal Hukum dan Dinamika Masyarakat* 4 (1), 2006, DOI: <http://dx.doi.org/10.56444/hdm.v4i1.362>.

⁷ Darmini Roza and, Gokma Toni Parlindungan S. "Teori Positivisme Hans Kelsen Mempengaruhi Perkembangan Hukum Di Indonesia," *Lex Jurnalica*, 18 (1), 2021. DOI: <https://doi.org/10.47007/lj.v18i1.4056>.

⁸ Tata Wijayanta, "Asas Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* Vol 14, No 2 (2014). DOI: <http://dx.doi.org/10.20884/1.jdh.2014.14.2.291>.

institutions will increase. Therefore, if there is uncertainty in a judge's decision—for example, different sentences for similar cases without a solid explanation—this can fuel the perception that the legal system is unfair or can be influenced by external factors such as politics or social pressure.

The analysis in the discussion in this research will provide strong reasons for the positivism paradigm by looking at the differences in the sentences of Supreme Court judges and considering the value of legal certainty. The value of legal certainty can also create stability in society. Legal certainty provides stability and order in society.⁹ With certainty that every act against the law will receive clear sanctions, society will comply more with the rule of law. When the law is consistently enforced, the public will know that criminal acts or acts that violate the law will be punished according to applicable regulations. This helps reduce social uncertainty and creates a safer societal fabric.

The value of legal certainty is an effort to prevent the court from making decisions where, without legal certainty, the judge's decision could be arbitrary or based on unclear considerations. Legal certainty ensures that decisions taken by judges are based on applicable legal norms and not on personal preferences or external pressure. It maintains the judiciary's integrity and ensures that justice is carried out objectively, not subjectively or based on political, economic, or social forces.

Legal certainty is not only about applying the same rules but also about achieving substantive justice.¹⁰ Laws that are applied consistently by established principles enable justice to be carried out balanced. When someone is punished by applicable law without bias or discrimination, this reflects substantive justice that protects individual rights and the interests of society.

Legal certainty also functions as a check on potential abuse of power by state officials, including judges.¹¹ With clear legal rules, judges and other law enforcement officials must comply with established legal norms. This avoids deviant or excessive interpretation of the law, which could harm certain parties and create injustice. Legal certainty is important to protect individual rights in the legal process.¹² If legal rules and procedures are clear and applied consistently, individuals will feel secure that their rights are protected and respected.

Legal certainty ensures that every individual receives a fair and equal legal process before the courts without any uncertainty regarding the legal treatment they will receive.¹³ In making its decision, the Supreme Court referred to several legal principles that apply in the Indonesian legal system in addition to the value of legal certainty. One is the principle of legality, namely that every legal action must have a clear basis in law. The Supreme Court also considered the principle of substantive justice, which requires that decisions reflect a real sense of justice for all parties involved.

Based on the problems of the Supreme Court's decision against Fredy Sambo, it is worth conducting an in-depth analysis of the judge's considerations in reducing the punishment for Fredy Sambo. So it is interesting to analyze juridically whether the Supreme Court's decision on the Fredy Sambo case, the judge approaches the principles of legal positivism. Seeing the extent to

⁹ Prabaswara Fardantio, and Nugroho Wibowo, *Kepastian dan Perlindungan Hukum dalam Penanaman Modal di Indonesia Ditinjau dari Undang-Undang 25 Tahun 2007 tentang Penanaman Modal*, *Unes Law Review*, 6 (2), Desember 2023. DOI: <https://doi.org/10.31933/unesrev.v6i2>.

¹⁰ Haryono, "Penegakan Hukum Berbasis Nilai Keadilan Substantif (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)," *Jurnal Hukum Progresif*, vol. 7, no. 1, pp. 20-39, Apr. 2019. DOI: <https://doi.org/10.14710/hp.7.1.20-39>.

¹¹ Tata Wijayanta, *Op. cit.*

¹² *Ibid.*

which the Supreme Court judge's decision refers to existing laws and ensuring that the entire process followed is legal and valid. The decisions handed down are based on concrete evidence and applicable legal rules, not purely on moral or emotional considerations. The Supreme Court also shows its commitment to legal certainty by providing firm and precise decisions. This is important to ensure that the law does not become subjective and subject to individual interpretation. Legal positivism helps create a consistent and predictable legal system in this context.

2. Method

This research uses normative legal research methods, emphasizing the study of legal norms or doctrines to uncover alternative interpretations and provide insight into specific issues. Literacy studies are a priority in this research to explore this topic further. This research uses two methodologies: a legislative approach, which focuses on legal norms or laws, a conceptual approach, and a case approach, which examines the Supreme Court decision Number 813 K/Pid/2023 with the defendant Fredy Sambo.

Secondary data collected through qualitative methods, as well as secondary and tertiary legal sources, were used in this research. Primary legal materials, including laws and regulations, rules, and court decisions, are used as secondary data in this research.¹⁴ One method of collecting data is by conducting a literature review, which requires collecting all written materials related to the research topic, namely the juridical analysis of the Supreme Court decision Number 813 K/Pid/2023 with the defendant Fredy Sambo in the positivism paradigm.¹⁵

The qualitative deductive analysis method examines legal materials, including identifying, categorizing, and organizing them according to legal scientific theories and concepts, legal principles, or principles.¹⁶ The Supreme Court decision in case Number 813 K/Pid/2023, which involved the defendant Fredy Sambo, will be analyzed using legal, scientific theory, and legal science concepts, principles, or principles.

3. Juridical Analysis of Supreme Court Decision Number 813 K/Pid/2023

Supreme Court Decision Number 813 K/Pid/2023 is a cassation decision that corrects the decision of the DKI Jakarta High Court regarding the premeditated murder case involving Ferdy Sambo. In this decision, the Supreme Court rejected the appeal from the Public Prosecutor and Ferdy Sambo but reduced the sentence from the death penalty to life imprisonment. Juridical analysis of this decision can be carried out from various aspects, including the application of criminal law, human rights (HAM), and the death penalty moratorium policy. This sentence reduction is considered a positive step in efforts to abolish the death penalty in Indonesia, which is in line with the global agenda of increasing the promotion of human rights. The Supreme Court reasoned that in cases of premeditated murder, life imprisonment is a valid alternative to the death penalty and 20 years in prison.

¹³ Haryono, *Op. cit.*

¹⁴ Soerjono Soekanto and Sri Mamudji, *"Penelitian Hukum Normatif."* (Jakarta: RajaGrafindo Persada, 2007) 23.

¹⁵ Al-Habsy Ahmad, "Analisis Pengaruh Penerapan Sistem Hukum Eropa Kontinental Dan Anglosaxon Dalam Sistem Peradilan Di Negara Republik Indonesia," *Petitum* 9, no. 1 (2021): 51–65. DOI: <https://doi.org/10.36090/jh.v9i1.997>.

¹⁶ Aris Hardianto, Viny Octaviarany, "Penggunaan Drone Penyerang Dalam Peperangan" *Jurnal Progresif* 12, no. 1 (2024): 45–55. DOI: <https://doi.org/10.14710/jhp.12.1.45-55>.

Based on aspects of the application of criminal law in this case, it is important to analyze the offenses the defendant was charged with and the elements of the crime that were proven in court.¹⁷ Usually, Supreme Court decisions review evidence in lower-level courts and ensure the judge has applied criminal law appropriately, using applicable laws, such as the Criminal Code or other relevant laws. Applying appropriate criminal law in the Fredy Sambo case also regulates the legal system to provide certainty to the Defendant.

Suppose you look at the decision of the Supreme Court. In that case, Fredy Sambo's actions are legally and convincingly proven to fulfill the elements of a criminal act under Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code, where as a result of the Defendant's actions, the victim Nofriansyah Yosua Hutabarat died from 7 injuries. Incoming shooting and 6 exiting gunshot wounds by Visum Et Repertum No.R/082/Sk.H/VII 2022/IKF dated July 14, 2022, made and signed by Dr. Farah P Karouw. Sp. F.M. and dr. Asri M Pralelda, Sp. F.M. and the Defendant intended the death of the victim, Nofriansyah Yosua Hutabarat, to trigger an incident in Magelang, which made the Defendant angry, and he planned to kill the victim at Saguling's house.¹⁸

Judex Facti has appropriately and correctly considered that the Defendant's entire series of actions above have fulfilled all the elements of a criminal act of violating Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.¹⁹ Whereas regarding the second and first primary charges of the public prosecutor, which have been declared proven by the Judex Facti decision, the Judex Facti decision is considered to be appropriate and correct in its legal considerations, both in terms of the rules of proof and the qualifications of the proven acts because they are based on legal facts related to the series of actions of the Defendant in carried out the premeditated murder of victim Nofriansyah Yosua Hutabarat. Another important aspect of criminal analysis is malicious intent or mens rea. Does the Supreme Court's decision conclude that the Defendant committed the crime intentionally or negligently, and how are these aspects considered in imposing the death penalty? The reasons for the appeal of the Public Prosecutor and the Defendant cannot be justified because the High Court's Judex Facti decision confirmed the District Court's Judex Facti decision, which stated that the Defendant was legally and convincingly proven guilty of committing the crimes of "Participating in premeditated murder" and "Without the right to commit the act which resulted in the electronic system not working as it should, which was carried out jointly" as the FIRST indictment of Primair violated Article 340 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.

Based on the consideration of the argument of the Defendant's cassation application that the motive behind the criminal incident was because the Defendant felt that his self-respect and honor had been injured in connection with the incident that befell his wife, Witness Putri Candrawathi, then this is related to the assessment of the results of the evidence which has been considered appropriately and correctly by Judex Facti. Suppose this argument turns out to be true. In that case,

¹⁷ Farel Arif Al Jibrán and Ade Adhari, "Penegakan Kepastian Hukum Dalam Unsur Tindak Pidana Penganiayaan Berencana Pada Putusan Pengadilan Negeri MARISA 72/PID.B/2019/PN.MAR," *Unes Law Review* Vol. 6, No. 4, Juni 2024. DOI: <https://doi.org/10.31933/unesrev.v6i4>.

¹⁸ Direktori Putusan Mahkamah Agung Republik Indonesia, *Putusan Mahkamah Agung RI Nomor 813 K/Pid/2023 tertanggal 8 Agustus 2023, dengan terdakwa Fredy Sambo*. URL: <https://putusan3.mahkamahagung.go.id>. Diakses pada tanggal 04 Oktober 2023.

¹⁹ *Ibid.*

the Defendant's actions cannot still be justified by law because as a law enforcement officer who occupies a high position, namely as police supervisor throughout Indonesia (as Head of the National Police Propam Division) and the Defendant is a role model for all members of the National Police, The Defendant should also be able to order his staff to examine the victim and impose sanctions on the victim if they are proven to have made a mistake or violated the code of ethics. In other words, the reason why he was forced to defend himself was that his self-respect and honor were injured in connection with the incident that happened to his wife, Witness Putri Candrawathi; as stated in the Defendant's cassation memory, it has no legal grounds and must be set aside.

The *Judex Facti* decision was confirmed and could not be justified because it was not a formal object of cassation grounds stipulated in Article 253 paragraph (1) of the Criminal Code. The consideration of the Supreme Court granting the Defendant's cassation request regarding the error in the application of the law or *ultra petita* at the first instance at the South Jakarta District Court and the appeals court at the DKI Jakarta High Court, *Judex Facti* did not judge according to the law and the court exceeded the limits of its authority as outlined in its cassation memorandum, cannot be justified because it is a subjective assessment from the perspective of the Cassation Applicant. Based on this, what the Supreme Court judge decided was correct; even though the Criminal Code and Criminal Procedure Code and Laws outside of criminal law do not regulate the permissibility of deciding beyond the prosecutor's demands, the judge cannot decide beyond the prosecutor's demands, because this is contrary to the value of legal certainty and the principle of legality.

The judge's reasons for accepting the Defendant's cassation request are also a repetition of facts and an assessment of the results of the evidence, which are like an appreciation of a fact. This matter falls under the authority of *Judex Facti* and is not subject to examination at the cassation level. However, regarding the sentence imposed on the Defendant, it is necessary to consider the objectives and guidelines of punishment according to criminal law science, as well as the politics of national criminal law after the promulgation of Law Number 1 of 2023 concerning the Criminal Code which states that the death penalty is seen as a unique crime, no longer a criminal offense principally, so that the political spirit of criminal law in Indonesia has shifted from the original retributive/retribution/*lex talionis* paradigm to a rehabilitative paradigm which prioritizes the goal of punishment as a means of prevention, correction/rehabilitation, conflict resolution/restoration of balance, creation of a sense of security and peace as well as the growth of convict's remorse.

Based on the consideration of the Supreme Court judge, bearing in mind the entire series of premeditated murder events committed by the Defendant against the Victim Nofriansyah Yosua Hutabarat, it is necessary to review it clearly, wisely, and judiciously by prioritizing the principle of objectivity and proportionality of the Defendant's mistakes towards the actions that have been committed, so that the criminal sentence is imposed on the Defendant in The *quo* case must consider various aspects, both philosophical, sociological and normative, so that it is felt to be fair and beneficial, not only for the victim/family but also for the Defendant and society in general. Uphold the values of legal certainty.

It has become a legal fact that the Defendant was indeed proven guilty because he ordered Witness Richard Eliezer Pudihang Lumiu to shoot Victim Nofriansyah Yosua Hutabarat, and the Defendant also shot the victim until the victim died, but this was triggered by the motive or reason for the Magelang incident which the Defendant said was the incident. He had shaken his soul, making Defendant very angry and emotional because Defendant understood the incident involved

the honor and dignity of Defendant and his family. Although it cannot be proven what events occurred in Magelang that made the Defendant so angry, emotional, and unable to control his anger, it is clear that it is impossible to eliminate the unlawful nature of the Defendant's actions and not abort his criminal responsibility. This matter is still considered in imposing a fair sentence on the Defendant regarding why the Defendant committed the crime because it has become a legal fact at trial.

The ultra petite principle is issued by judges for cases that are not prosecuted or granted more than requested. In the context of criminal procedural law, the ultra petita decision was issued because the Public Prosecutor's (JPU) indictment was less than perfect and as a form of progressive legal development, where the judge is not only a mouthpiece for the law but is a mouthpiece for justice who can provide quality decisions by finding sources. Proper law. The judge's decision does not have to be guided by the law as an absolute procedure.²⁰ If the judge's decision is only based on procedure, the spirit and ideals of criminal law, as stated in legal principles, cannot be realized.

Let us look at it from a juridical point of view regarding the decision of judges using ultra petita. It can be seen from the provisions of Article 178 HIR that it states that judges are not permitted to make decisions on cases that are not contested or award more than those that are contested. Then, article 189, paragraph (3) RBg states that judges are prohibited from making decisions on matters that are not requested or giving more than requested. Judges can determine punishment according to legal considerations and their conscience, which can be higher or lower than required. The judicial power is a body that determines the content and strength of positive legal rules in their concretization by judges through their decisions. Therefore, the Supreme Court judge's decision in the Fredy Sambo case was appropriate because it was based on statutory provisions by reducing the death penalty to life imprisonment.

The Supreme Court Judge's reasons from the social side of looking at the Defendant's life history and social situation must also be taken into consideration because, after all, when the Defendant served as a member of the Indonesian National Police with his last position as Head of the Propam Division, he had contributed to the state by contributing to maintaining order and security and enforcing the law on the ground. Water, the Defendant has served as a member of the National Police for approximately 30 years; the Defendant also firmly admits his mistake and is ready to take responsibility for the actions he committed so that it is in line with the aim of the sentence, which is to foster a feeling of regret for the perpetrator of the crime. For these reasons, the Supreme Court judge prioritized the principles of just legal certainty and proportionality in sentencing, so the death penalty imposed by *Judex Facti* on the Defendant must be revised to life imprisonment with the abovementioned considerations. This is by the nature of the Defendant's actions, by the provisions of Article 197 paragraph (1) of the Criminal Procedure Code. Therefore, from sociological and juridical considerations, juridical considerations are taken in imposing sentences because these values are based on just legal certainty and proportionality in punishment.

²⁰ Luis, "Legalitas Ultra Petita Dalam Hukum Acara Pidana Pada Putusan Pengadilan." *Jurnal Hukum Adigama* Vol. 4 No. 2 (2021). DOI: <https://doi.org/10.24912/adigama.v4i2.17125>.

4. Analysis of Supreme Court Decision Number 813 K/Pid/2023 from the Positivism Paradigm Perspective

Based on the positivism paradigm approach, the Supreme Court (MA) cassation decision which changed Ferdy Sambo's sentence from the death penalty to life imprisonment, although it received various reactions from the public, can be explained based on formalistic and normative principles which are the basis of positivism. This analysis will look at how these decisions are considered and decided by written law without considering moral aspects or external social pressures, often the focus of criticism of positivism.

Ontologically: in the positivism paradigm, the ontology in the Ferdy Sambo case focuses on the legal facts proven at trial without considering moral aspects or external values such as public emotions. This paradigm emphasizes that the law is an objective and independent system of norms and must be applied by applicable regulations, as explained in the Supreme Court decision, which considers the elements contained in Article 340 of the Criminal Code concerning premeditated murder.

Epistemology in the positivism paradigm in the Ferdy Sambo case focuses on gaining knowledge through empirical evidence and verifying facts that can be directly observed. In a legal context, valid knowledge comes from written norms and evidence in court without being influenced by emotional, moral factors or subjective interpretations. In the Ferdy Sambo case, positivist epistemology relies on concrete evidence such as witness statements, evidence, and post-mortem results, which clearly show that there was an act of premeditated murder. Judges in this paradigm do not interpret the law based on personal opinion or moral influence but rather based on written legal rules, namely Article 340 of the Criminal Code, which regulates premeditated murder. According to Radbruch, legal certainty must always be maintained so the legal system can function. However, there are times when the law that applies formally (positivistically) must be adjusted if it conflicts with the principles of substantive justice.

The axiological approach in the Ferdy Sambo case, especially when viewed from a positivist perspective, focuses on analyzing legal values and norms applied in the legal process. Axiology in legal philosophy is related to the moral, ethical, and justice values that underlie the law and how the law operates in society. In legal positivism, law is seen as rules set by the state (applicable regulations) and does not depend on external (non-legal) moral or ethical values.²¹ Positivism tends to separate law and morality.²² Therefore, in this approach, what is most important is whether Ferdy Sambo's actions violate existing positive legal rules, not whether these actions are moral or ethical. However, in Sambo's case, axiology can still be applied to explore questions regarding substantive justice and the purpose of law in maintaining social order.

Analyzing the Ferdy Sambo case, several important things need to be observed, namely regarding the basis for consideration by the Supreme Court judge in imposing a life sentence, legal certainty about the application of Article 340 of the Criminal Code, and the purpose of the sentence

²¹ Islamiyati, "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan," *Law, Development and Justice Review*, vol. 1, no. 1, pp. 82-96, Nov. 2018. <https://doi.org/10.14710/ldjr.v1i1.3574>.

²² Farel Arif Al Jibrán and Ade Adhari, *Op. cit.*

²³ Shidarta, "Hukum Penalaran dan Penalaran Hukum: Akar Filosofis," (Jakarta: Genta Publishing, 2019): 157.

about the positivism paradigm. The basic considerations of Supreme Court judges can be seen from the patterns of legal reasoning, which are strongly influenced by the viewpoints of the subjects involved in the reasoning. This point of view leads to a juridical thinking orientation, namely in the form of models of reasoning in the legal discipline, especially those widely known as schools of legal philosophy.²³

Focusing on legal certainty, with a methodological approach, we can look at the Fredy Sambo case. The Supreme Court judges prioritize the value of legal certainty as the main element, which is one of the foundations of positivism. In Fredy Sambo's case, reducing the sentence from death to life imprisonment was considered while maintaining legal certainty, even though there was a moral debate from a societal perspective. This methodology successfully evaluates how legal certainty is maintained despite the final decision changes.

This methodology is strong in its sharp focus on written legal rules and the application of positive law, which fits well with positivist analysis. The use of a normative approach helps maintain objectivity and consistency in assessing the law's application in this case. Overall, the normative methodology used is good enough for analysis within a positivist framework, but it could be improved by considering additional, more flexible approaches, such as moral or social approaches, to provide a more comprehensive analysis.²⁴ If you look at the consideration of the Supreme Court's decision, it ignores the moral or social approaches that occur in society. Based on the considerations of the Supreme Court judge's decision, it prioritizes a juridical approach with the value of legal certainty.

Consideration of the Supreme Court judge's decision to grant the defendant's cassation request regarding an error in the application of the law or *ultra petita* at the first instance at the South Jakarta District Court and the appeals court at the DKI Jakarta High Court, *Judex Facti*, did not judge according to the law and the court exceeded the limits of its authority as outlined in the memorandum. The cassation cannot be justified because it is a subjective assessment from the perspective of the Cassation Applicant. Based on this, what the Supreme Court judge decided was correct; even though the Criminal Code and Criminal Procedure Code and Laws outside of criminal law do not regulate the permissibility of deciding beyond the prosecutor's demands, the judge cannot decide beyond the prosecutor's demands, because this is contrary to the value of legal certainty and the principle of legality.

The advantage of the positivism paradigm is a close connection between the principle of legal certainty and positivism. The common thread connecting the principle of legal certainty with positivism is the aim of providing clarity on positive law. Law in the positivistic school requires "regularity" and "certainty" to support the proper and smooth functioning of the legal system.²⁵ Legal certainty is one of the main goals of the positivism paradigm. Positivism prioritizes the application of the law clearly and firmly, without any ambiguity or vague moral considerations. In positivism, laws must be written, orderly, and obeyed objectively.

Apart from providing clarity, legal positivism, when applied to human rights law, requires the release of meta-juridical thinking about law as held by natural law thinkers (naturalists).²⁶

²⁴ Aslan Amin, "Analisa Kepastian Hukum Dalam Kasus Sertifikat Ganda Dalam Perspektif Paradigma Rasionalisme Kritis." *VERITAS Jurnal Program Pascasarjana Ilmu Hukum* Vol 10 No 1 (2024). DOI: <https://doi.org/10.34005/veritas.v10i1.3342>.

²⁵ Aditya Yuli Sulistyawan Mario Julyano, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido* 1, no. 1 (2019): 13–22, DOI: <https://doi.org/10.23920/jbmh.v6i1.324>.

²⁶ Ibnu Artadi, *Op. cit.*

Therefore, every legal norm must exist objectively as positive norms and be confirmed through concrete contractual agreements between community members and their representatives. Here, the law is conceptualized as *ius*, which has undergone positivization as *lex*, to guarantee certainty regarding what is considered law, and even what is normative must be declared as things that are not considered law.²⁷ Regarding the principle of legal certainty, written rules are the only reference for judges and law enforcers when making decisions. Positivism emphasizes that laws must be formulated clearly and implemented by the text of the law. Therefore, positivistic law does not allow judges to evaluate the law based on their moral views. This provides stability in applying the law, where the law remains objective and free from subjective judgment, thereby ensuring certainty and order in the legal system.

In this regard, if it is related to cases of premeditated murder, which in the clause of the article is stated as taking or taking the life of another person after planning the time or method to ensure the success of the murder or to avoid arrest. Article 340 of the Criminal Code has an element of premeditation. These, namely special conditions, must be taken into account in deciding whether the defendant's actions are proven to be premeditated murder or manslaughter. In contrast, the distinction between murder and premeditated murder is only the element of premeditation. Knowing and understanding the meaning and requirements of the planned elements according to Article 340 of the Criminal Code, the crime of premeditated murder is believed to be the formation of a planned will/desire.²⁸ The element of planning is a form of intentionality within the perpetrator regarding the image at the time of implementation regarding the will to be fulfilled. Apart from that, the objective element of the article contains the element of taking another person's life, namely killing in a certain way, causing the death of a person in such a way that the target of that element is that person's life.

Fredy Sambo was legally and convincingly proven to have violated Article 340 of the Criminal Code (KUHP) jo. 55 paragraph (1) 1 of the Criminal Code and article 33 of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Electronic Information and Transactions jo. Article 55 paragraph (1) 1st of the Criminal Code. This is stated in the decisions of the district court, high court, and Supreme Court, which mutually confirm that Ferdy Sambo was legally proven to have committed the crime of premeditated murder.

According to Kelsen, pure legal theory is a theory of positive legal science that seeks to answer the question "What is law?" but not "What should the law be?". Muri's legal theory concentrates on law alone and tries to free science from the interference of foreign sciences, such as psychology and ethics. According to him, law cannot be used as an object of social research.²⁹ Pure legal theory emphasizes legal fundamentalism, where law is considered an objective normative system separate from external factors such as morality and social context. Kelsen focuses on the question, "What is law?" and attempts to isolate the law from other variables.³⁰ This also aligns with the

²⁷ Aslan Amin, *Op. cit.*

²⁸ Niken Febriana Dwi and Ade Adhari, "Unsur Direncanakan Pada Pasal 340 Kitab Undang-Undang Hukum Pidana Dalam Putusan Pengadilan Tinggi Tanjung Karang Nomor 145 /Pid/2020/PT Tjk" *UNES Law Review* 6, no. 4 (2024): 10329-37. DOI: <https://doi.org/10.31933/unesrev.v6i4.2019>.

²⁹ Abd Halim, "Teori-Teori Hukum Aliran Positivisme Dan Perkembangan Kritik-Kritiknya," *Jurnal Asy-Syir'ah* 42, no. 2 (2009): 396-97. DOI: <https://doi.org/10.14421/ajish.v42i2.115>.

³⁰ Indra Rahmatullah, "Filsafat Positivisme Hukum (Legal Positivisme)." *Adalah: Buletin Hukum & Keadilan* Vol 6, No 1 (2022) DOI: <https://doi.org/10.15408/adalah.v6i1.26427>.

Positivist paradigm, which holds that valid knowledge only comes from empirical experience and observation and is not influenced by moral norms or ideology. In this case, positivism prioritizes facts that can be observed and verified by Kelsen's approach, which emphasizes the law's objective, normative aspects.

In the Ferdy Sambo case, the judge must analyze and apply the legal norms that apply in the context of murder. Kelsen's pure legal theory emphasizes the importance of an objective normative system, where judges' decisions are based on established legal norms without considering external factors, such as morality or public opinion. By paying attention to the objectives and guidelines for punishment according to criminal law science, as well as the politics of national criminal law after the promulgation of Law Number 1 of 2023 concerning the Criminal Code, the death penalty is seen as a unique crime, no longer as a leading crime. With the political spirit of criminal law in Indonesia with its birth, The 2023 Criminal Code has shifted from its original retributive/retribution/*lex talionis* paradigm to a rehabilitative paradigm that prioritizes the goal of punishment as a means of prevention, correctional/rehabilitation, conflict resolution/restoring balance, creating a sense of security and peace as well as fostering convict remorse.

Based on the spirit of the birth of the 2023 Criminal Code above, if it is used as material for analysis of the Fredy Sambo case, the entire series of premeditated murder events committed by Fredy Sambo against the victim Nofriansyah Yosua Hutabarat needs to be looked at again clearly, wisely and judiciously by prioritizing the principle of objectivity and proportionality of the Defendant's mistakes. Regarding the actions that have been committed, the criminal sentence imposed on Fredy Sambo in the quo case must take into account various aspects, both philosophical, sociological, and normative, up to felt to be fair and beneficial, not only for the victim/family but also for the Defendant and society in general while still upholding the values of just legal certainty.

The judge's decision in the Ferdy Sambo case reflects an effort to provide legal certainty to the convict and the community by emphasizing that criminal acts will be subject to sanctions by applicable law, regardless of the status or position of the defendants. The Supreme Court Judge's decision to reduce the sentence from the death penalty to life imprisonment is correct, even though the Criminal Code and Criminal Procedure Code and the Laws outside of criminal law do not regulate the permissibility of deciding more than the prosecutor's demands, so the judge cannot decide more than the prosecutor's demands, because this is contrary to the value of legal certainty and the principle of legality.

The weakness from a positivist point of view is if we look at the basis of the judge's considerations when the judge sees that the Defendant committed the shooting because of emotional feelings regarding the dignity and self-respect of the Defendant and his family which cannot be proven legally in court, so it is clear that it is impossible to eliminate the nature of being against the law. The Defendant's actions do not abrogate his criminal responsibility. Another weakness is its limitations in explaining or considering substantive justice or human-ity aspects that other approaches, such as natural law theory or sociological approaches, might better explain. Positivism is often criticized for being too rigid and ignoring broader values of justice, so this methodology may be less able to capture the social and moral dynamics relevant in this case.

Apart from that, there is a legal fact that the Defendant was proven guilty because he ordered Witness Richard Eliezer Pudihang Lumiu to shoot the victim, Nofriansyah Yosua Hutabarat and

the Defendant also shot the victim until the victim died. The victim dies (the element of taking another person's life has been fulfilled). Based on the positivist view, it separates the value of certainty from the value of justice in society. According to John Austin, separating law from justice is based on ideas about good and evil and is also based on a higher power.³¹ Law is a compelling order whose application can be fair or otherwise. Regardless of Fredy Sambo being a law enforcer who should be upholding the law, not breaking it, and regardless of other motives revealed at trial, the positivist view only sees that those who commit acts in accordance with criminal provisions deserve to be punished.

According to Gustav Radbruch, the value of legal certainty (juridical aspect) is that the existence of law is intended to ensure that if human behavior violates legal orders, it is inevitable that he will be subject to sanctions that have been previously determined. This could be a drawback of positivism because, based on the new Criminal Code, the theory of retaliation has been changed to rehabilitation, but this still does not change the legal fact that there has been an unlawful act in the form of premeditated murder committed by Ferdy Sambo. Pure legal theory supports legal certainty as one of the main goals of the legal system. In the Ferdy Sambo case, the Supreme Court's decision to change the sentence from death to life imprisonment reflects an effort to provide legal certainty. Based on this, the decision is considered more proportional and by the norms applicable in the Indonesian legal system.

5. Conclusion

The judge's considerations are based on the facts revealed during the trial, including witness statements, evidence presented, and recordings of events leading up to the crime. The judge looked at important details that showed the involvement of Ferdy Sambo and the other defendants in planning and carrying out the crime. This act fulfills all the elements of a criminal act as appropriately and correctly considered by *Judex Facti*. Based on a positivist approach, strong empirical evidence is the primary basis for determining decisions. In this case, the judge carefully analyzed evidence from witnesses, recordings, and others. One of the important things about positivism is legal certainty. The judge's decision in the Ferdy Sambo case reflects an effort to provide legal certainty to the convict and the community by emphasizing that criminal acts will be subject to sanctions by applicable law, regardless of the status or position of the defendants. The Supreme Court Judge's decision to reduce the sentence from the death penalty to life imprisonment is correct, even though the Criminal Code and Criminal Procedure Code and the Laws outside of criminal law do not regulate the permissibility of deciding more than the prosecutor's demands, so the judge cannot decide more than the prosecutor's demands, because this is contrary to the value of legal certainty and the principle of legality.

³¹ *Ibid.*

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