

Judge Consideration Parameters in Deciding Criminal Cases for Elderly Defendants Based on Article 148 of Law No. 20 of 2025

Irwansyah^{1*}, Waryani Fajar Riyanto², Umi Khairiyah³

^{1,3} Universitas Al-Azhar, Indonesia

² Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia

*Penulis Korespondensi: irwansya.tg@gmail.com

Abstract. The treatment of elderly defendants within the criminal justice system requires an approach that is not only oriented toward legal certainty but also takes into account the humanitarian conditions of the defendant. The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code introduces specific provisions regarding elderly persons through Article 148. This provision grants elderly persons the right to appropriate services, facilities, and infrastructure according to their physical and psychological conditions, as well as access to elderly healthcare services. More importantly, it provides that imprisonment should, as far as possible, not be imposed on defendants over 75 years of age based on judicial considerations and the judicial provisions of the Criminal Code. This study aims to analyze the parameters that judges may use in determining decisions involving elderly defendants and to examine the relationship between Article 148 of Law Number 20 of 2025 and the sentencing guidelines contained in Law Number 1 of 2023 concerning the Criminal Code. This research employs a normative juridical method using a statutory approach and a conceptual approach. The findings indicate that advanced age does not eliminate criminal responsibility; However, the age and personal circumstances of the defendant must be seriously considered in determining the type and severity of punishment. The parameters include the defendant's age, physical and psychological health, degree of culpability, motive and purpose of the offense, social and economic circumstances, life history, conduct after committing the offense, the impact of punishment on the defendant and the victim, victim forgiveness, and the values of justice and humanity. Therefore, the application of Article 148 should be directed toward proportional, individualized, and humane sentencing while maintaining due consideration for the interests of victims and the protection of society.

Keywords: Article 148 Criminal Procedure Code; Elderly Defendant; Judge; Judicial Consideration; Sentencing.

1. INTRODUCTION

Criminal law is fundamentally designed to maintain social order and provide protection for everyone who comes into conflict with the law. However, in practice, the application of criminal law cannot always be applied in the same way to every defendant. Each person has a different background, social background, psychological state, level of culpability, and life situation. Therefore, fair sentencing should not only consider the crime committed, but also the individual behind the act.

This issue becomes even more significant when a defendant is elderly. Aging brings changes in physical condition, health, psychological abilities, social relationships, and dependence on family and the environment. In such circumstances, a prison sentence imposed on an elderly defendant may have different consequences than a prison sentence imposed on a defendant of productive age.

Indonesia's criminal justice system underwent significant changes following the enactment of Law No. 1 of 2023 concerning the Criminal Code and Law No. 20 of 2025 concerning the Criminal Procedure Code. Both laws came into effect on January 2, 2026, and

brought a new direction to Indonesia's criminal justice system, including attention to vulnerable groups.

One of the provisions that has attracted attention is Article 148 of Law No. 20 of 2025. This article specifically regulates the rights of elderly people who come into conflict with the law. Elderly people can be suspects, defendants, convicts, witnesses, or victims. In addition to having rights like other legal subjects, elderly people are entitled to special services, facilities and infrastructure according to their physical and psychological conditions, as well as elderly health services. Most importantly in the context of criminalization is the provision that defendants over 75 years of age should, if possible, not be sentenced to imprisonment based on the judge's considerations and the provisions of the Criminal Code.

This provision demonstrates a shift in perspectives in criminal law. Elderly individuals are not automatically exempt from criminal liability simply because of their age. Rather, the defendant's age and personal circumstances are factors that must be taken into account when judges determine the form of punishment.

This is in line with Article 54 of Law No. 1 of 2023 concerning the Criminal Code which requires judges to consider various circumstances in sentencing, including the form of error, motive and purpose, mental attitude, method of committing the crime, the defendant's attitude after committing the crime, life history, social and economic conditions, the impact of the crime on the defendant's future, the impact on the victim, the forgiveness of the victim or the victim's family, and the values of law and justice that exist in society.

Article 52 of the National Criminal Code also emphasizes that criminal penalties are not intended to degrade human dignity. Meanwhile, Article 53 emphasizes the judge's obligation to uphold law and justice. Even when there is a conflict between legal certainty and justice, the judge is required to prioritize justice.

Thus, there is a close relationship between Article 148 of Law No. 20 of 2025 and the sentencing guidelines in the National Criminal Code. Article 148 provides special protection for the elderly, while the Criminal Code provides the tools for judges to translate that protection into concrete considerations and decisions.

The question then becomes: what parameters should a judge use when determining whether an elderly defendant deserves imprisonment or other punishment? This question is crucial because the phrase "as far as possible, avoid imposing a prison sentence" does not absolutely prohibit a judge from imposing a prison sentence. This provision allows for discretion, but also requires the judge to provide rational and accountable reasons.

Therefore, this study focuses on the discussion of the parameters of judges' considerations in deciding criminal cases against elderly defendants based on Article 148 of Law No. 20 of 2025 by linking it to the objectives and guidelines for sentencing in the National Criminal Code.

2. THEORETICAL REVIEW

2.1. Theory of Judicial Consideration

The judge's considerations are a crucial part of a court decision. A verdict is not simply a statement that the defendant has been proven or not proven guilty of a crime, but must also indicate the reasons for the type and severity of the sentence imposed.

Judges in criminal cases must consider the trial facts, evidence, the defendant's circumstances, the degree of culpability, the consequences of the actions, and the interests of the victim. Thus, the judge's considerations serve as a bridge between general legal norms and the specific circumstances faced by the defendant.

In the context of elderly defendants, the judge's considerations are not sufficient simply to state that the defendant is elderly. The judge must explain how age affects their health, ability to serve the sentence, potential for correction, family relationships, and the purpose of sentencing.

2.2. Theory of Individualization of Punishment

The individualization of punishment holds that punishment must be tailored to the specific circumstances of the perpetrator and their actions. Two individuals who commit the same crime do not necessarily receive the same punishment if their circumstances differ significantly.

This approach is particularly relevant for elderly defendants. Age can impact health, ability to participate in correctional programs, treatment needs, and the psychological impact of imprisonment.

The National Criminal Code reinforces this approach through Article 54, which instructs judges to consider the life history, social and economic circumstances, the impact of the crime on the perpetrator's future, and various other circumstances.

2.3. Theory of Justice

Justice in criminal law cannot be understood simply as punishing the guilty. Justice also means imposing punishment proportionate to the crime and taking into account the human condition of the person serving the sentence.

In cases involving the elderly, justice must be balanced between three interests: the interests of society, the interests of the victim, and the interests of the accused. Protection of the elderly must not lead to neglect of the victim. Conversely, the importance of punishing the perpetrator must not override humanitarian considerations.

2.4. Legal Protection for the Elderly

The explanation of Article 148 of Law No. 20 of 2025 states that an elderly person is a person aged 60 years or older. Therefore, the elderly category begins at 60, but there are special protections in the context of imprisonment for defendants aged 75 and over.

These age differences need to be properly understood. Age 60 is the threshold for categorizing someone as elderly, while age 75 and above is a special circumstance relevant for avoiding imprisonment.

2. METHODS

This study uses a normative legal research method. This method is used because the primary object of the study is legal norms governing the status and protection of elderly defendants in criminal justice processes.

The approach used consists of three approaches.

First, the statute approach, namely by analyzing the provisions of Law No. 20 of 2025 concerning the Criminal Procedure Code, especially Article 148, and Law No. 1 of 2023 concerning the Criminal Code, especially Articles 51 to 54 and Article 70.

Second, a conceptual approach is used to understand the concept of judicial considerations, individualization of sentencing, justice, proportionality, protection of vulnerable groups, and humanistic sentencing.

Third, an analytical approach is used to connect the provisions of Article 148 of the Criminal Procedure Code with the provisions on criminal penalties in the National Criminal Code so that parameters can be formulated that can be used by judges in concrete cases.

The legal materials used consist of primary legal materials in the form of statutory regulations, secondary legal materials in the form of books, journal articles, scientific writings, and publications from judicial institutions, as well as tertiary legal materials used to help understand legal terms and concepts.

The analysis was conducted qualitatively by interpreting legal norms and linking them to the principles of justice, humanity, proportionality, and the objectives of sentencing. Using this method, the research was not aimed at counting the number of cases, but rather at identifying

legal constructs regarding the parameters of judges' considerations regarding elderly defendants.

3. RESULT AN DISCUSION

Article 148 of Law No. 20 of 2025 provides special recognition for the elderly in the criminal justice system. This provision is important because previously, protection for elderly defendants had not been specifically and comprehensively formulated in criminal procedure law.

Article 148 paragraph (1) states that elderly people can have the status of suspect, defendant, convict, witness, or victim. Meanwhile, paragraph (2) provides special rights in the form of services, facilities and infrastructure according to the physical and psychological condition as well as health services for the elderly.

This shows that the law no longer views the elderly merely as someone who happens to commit a crime, but also as human beings who have special conditions.

This protection is made even clearer in Article 148 paragraph (2) letter c which states that defendants aged over 75 years should, as far as possible, not be sentenced to prison based on the judge's considerations in accordance with the provisions of the Criminal Code.

The phrase "to the extent possible" is important. This provision does not mean that every defendant over 75 years of age should not be imprisoned. Rather, the judge must assess all the circumstances of the case before determining the type of sentence.

Thus, Article 148 creates a legal preference for non-imprisonment punishment, not immunity for the elderly.

A. Age as a Main Parameter, but Not the Only Parameter

Age is the first parameter a judge must consider. However, age should not be used mechanically.

A 76-year-old defendant, for example, does not necessarily receive the same treatment as a 90-year-old defendant. Similarly, a 76-year-old defendant who is still healthy and physically capable is not necessarily in the same condition as a 76-year-old defendant who experiences various health limitations.

Therefore, the judge needs to look at age in relation to the defendant's actual condition.

In this case, several questions can be formulated:

How old was the defendant at the time of the examination and verdict?

Is the defendant over 75 years old?

How is the defendant's health condition?

Does the defendant have a chronic illness or require special care?

What is the defendant's psychological condition?

Would imprisonment cause disproportionate suffering?

This approach is more in line with the spirit of the National Criminal Code, which places humans as an important part of the criminalization process.

B. Health condition is a very important parameter in the case of the elderly.

Imprisonment essentially restricts a person's freedom. For young and healthy individuals, these limitations may be tolerable under certain circumstances. However, for older adults with heart disease, diabetes, mobility impairments, visual impairments, or other degenerative diseases, imprisonment can have a much more severe impact.

Therefore, the judge should not only receive health information from the defendant or his legal counsel, but may consider relevant medical evidence.

Article 148 itself grants the elderly the right to receive elderly healthcare services. The law's explanation states that these services may include geriatric, gerontological, or palliative care.

These health parameters are important in determining whether imprisonment is truly necessary or whether there are other more appropriate sentencing options.

C. Degree of Guilt, Motive, and Purpose of the Crime

Advanced age does not eliminate guilt. Therefore, the judge must still assess the quality of the defendant's guilt.

Article 54 of the National Criminal Code expressly includes the form of error, motive and purpose of committing the crime, mental attitude, and method of committing the crime as things that must be taken into consideration in sentencing.

In practice, judges need to distinguish between crimes committed in a planned manner and crimes that occur due to negligence or certain circumstances.

Similarly, motive must be considered. The actions of an elderly person who commits a crime for substantial profit are certainly different from those who commit the crime due to economic pressure or certain social conditions.

This difference does not automatically eliminate guilt, but it can affect the proportionality of the punishment.

D. Life History and Socioeconomic Conditions

Article 54 of the National Criminal Code requires judges to consider the perpetrator's life history, social circumstances and economic situation.

This provision has important significance for elderly defendants.

The judge can consider whether the defendant has committed a crime in his or her lifetime or whether this is their first encounter with the law. The judge can also consider whether the defendant has dependent family members or is the sole provider.

In certain cases, economic circumstances can even be part of the explanation for the motive of a crime. This does not mean that poverty justifies crime, but socioeconomic circumstances can help the judge understand the case more fully.

This kind of approach makes decisions more humane without eliminating legal responsibility.

E. The Defendant's Attitude After Committing a Crime

The defendant's attitude after committing a crime is also an important parameter.

Did the defendant admit his guilt?

Does the defendant regret his actions?

Did the defendant attempt to repair the victim's losses?

Did the defendant apologize?

Did the accused help reveal the true circumstances?

These questions are important because the purpose of punishment under the National Criminal Code is not merely to inflict suffering on the perpetrator. Article 51 of the Criminal Code states that punishment also aims to resolve conflict, restore balance, create a sense of security and peace, and foster a sense of remorse in the convict.

Thus, the defendant's positive attitude after the crime can be part of the consideration in determining a more proportional sentence.

F. The interests of victims must continue to be protected.

A humanistic approach to elderly defendants should not be interpreted as ignoring the victim.

Article 54 of the National Criminal Code requires judges to consider the impact of the crime on the victim or the victim's family as well as forgiveness from the victim and/or the victim's family.

Therefore, in cases involving the elderly, the judge should ideally look at the case from three sides.

First, conditions and interests of the accused.

Second, loss and suffering of the victims.

Third, the interests of society and the need to maintain legal order.

These three interests must be placed in a balanced manner. Justice will not be achieved if only one party is considered.

G. Imprisonment as an Option That Must Be Considered Selectively

Article 70 of the National Criminal Code provides a basis for avoiding imprisonment whenever possible under certain circumstances, including for defendants over 75 years of age. The Supreme Court also emphasized that this provision must be read in conjunction with the objectives and sentencing guidelines in the National Criminal Code.

This means that imprisonment for the elderly should not be an automatic option.

The judge needs to first ask:

Is imprisonment really necessary to achieve the purpose of punishment in this case?

If the goal of punishment can be achieved through other, more proportionate types of punishment, then this option is worth considering.

This is in accordance with the changing paradigm of the National Criminal Code which is no longer solely oriented towards revenge, but also towards correction, rehabilitation, restoration and protection of society.

H. Parameters for Judges' Considerations for Elderly Defendants

Based on an analysis of Article 148 of Law No. 20 of 2025 and Articles 51–54 and Article 70 of Law No. 1 of 2023, the judge's consideration parameters can be formulated as follows:

These parameters indicate that the judge's consideration of the elderly must be individual, concrete, and comprehensive.

Table 1. Parameters for Judges' Considerations for Elderly Defendants

No.	Parameter	Things to Consider
1	Age	Age of the accused, especially over 75 years
2	Health	Illness, physical limitations and medical needs
3	Psychological conditions	Mental condition and ability to undergo criminal proceedings
4	Error	Level of error and inner attitude
5	Motive	Reasons and objectives for committing a crime
6	How to do it	Whether planned or not, and how the crime was committed
7	Biography	Criminal history and life of the accused
8	Socio-economic	Family and economic conditions
9	Attitude after the crime	Regret, confession and attempts to improve the situation
10	Victim	Loss and suffering of victims
11	Forgiveness	Whether or not there is forgiveness from the victim
12	The future of the accused	The impact of the crime on the defendant's life
13	Public interest	The need for protection and public order
14	Criminal alternatives	Possibility of using punishment other than imprisonment
15	Justice and humanity	Proportionality and human dignity

I. Article 148 as a Humanistic Penal Instrument

Article 148 of Law No. 20 of 2025 should be understood not as a form of privilege that erases the mistakes of the elderly, but as a form of legal protection for groups with certain vulnerabilities.

From this perspective, the law does not dictate that older adults can commit crimes without consequences. Rather, the law states that when an older adult is proven to have committed a crime, the state still has the authority to impose criminal responsibility, but the method of imposing such responsibility must take into account the individual's humanitarian circumstances.

This approach is in line with Article 52 of the National Criminal Code which emphasizes that criminal punishment is not intended to degrade human dignity.

Thus, a humane verdict is not one that always acquits the accused. A humane verdict is one that rationally explains why a person was punished, why a particular type of punishment was chosen, and why that punishment is considered fair to the accused, the victim, and society.

4. CONCLUSION

Based on the discussion above, it can be concluded that Article 148 of Law No. 20 of 2025 provides a clearer legal basis for the protection of elderly defendants in the Indonesian criminal justice system. Elderly individuals can still be held criminally accountable, but the process and sentencing must take into account their unique circumstances. The main parameters that need to be considered by the judge include the defendant's age, physical and psychological health condition, level of guilt, motive and purpose of the crime, method of committing the crime, life history, socio-economic conditions, attitude after committing the crime, the impact of the crime on the defendant's future, the interests of the victim, the victim's forgiveness, and the values of law and justice that exist in society. Specifically for defendants aged over 75, Article 148 paragraph (2) letter c of Law No. 20 of 2025 directs that imprisonment be avoided whenever possible. However, this provision is not an absolute prohibition. Judges must still consider the seriousness of the crime, the interests of the victim, the need for public protection, and the purpose of the sentencing. Thus, sentencing parameters for the elderly must be geared toward proportional and individualized justice, not simply uniform punishment. This approach is part of the development of Indonesian criminal law toward a more corrective, restorative, rehabilitative, and humane penal system. First, judges need to make more structured considerations regarding the condition of elderly defendants in their decisions, especially when the defendant is over 75 years old. These considerations should not only mention age, but also

explain the defendant's health condition, social circumstances, life history, and the impact of the crime on the defendant. Second, law enforcement agencies need to have more concrete technical guidelines regarding the implementation of Article 148 of Law No. 20 of 2025 so that there are no significant differences in implementation between one case and another. Third, in cases involving elderly defendants, adequate health and psychological examinations need to be carried out so that the judge can obtain an objective picture of the defendant's ability to undergo the process and the sentence. Fourth, non-imprisonment approaches need to be developed more seriously, particularly for defendants over 75 in cases where this is feasible. However, the implementation of these alternatives must still consider the interests of victims and the protection of society. Fifth, further research needs to be conducted through an empirical approach by examining court decisions after the enactment of Law No. 20 of 2025 to see how judges apply Article 148 in practice.

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