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Justice in Judges' Decision Based on Positive Law

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ABSTRACT

Dissatisfaction among justice-seeking individuals toward judges' decisions often arises from the disparity between the justice reflected in societal legal sentiments and the justice delivered by judges, which is based on formal legal procedures. While judicial decisions prioritize formal legal sources and follow established courtroom procedures, some rulings of the Supreme Court deviate from existing laws. This occurs when the laws fail to satisfy a sense of justice or when the laws are silent on specific issues. As a result, individuals seek corrections through legal remedies. The concept of the rule of law in Indonesia requires that legal certainty is balanced with societal justice and benefit, which should be considered through a holistic approach in legal reasoning rather than as conflicting alternatives.

Keywords: judge, court, decision, supreme court

INTRODUCTION

Judges and other law enforcers view the law as a concrete event that requires a solution, a conflict (Sunstein, 2018a). To solve concrete events or conflicts, norms or laws are sought and the laws are contained in a set of legal regulations. Judges, as the main actors in the judicial process, are always required to hone conscience, moral intelligence, and professionalism in upholding law and justice in the form of their decisions. Based on Article 53 paragraph (1) of Law Number 48 of 2009 concerning judicial power, a judge's decisions must always be accountable to God Almighty and to the public, especially those seeking justice. One of the instruments used to realize the vision of the Supreme Court of the Republic of Indonesia is argumentative judge decisions (Christianto, 2020). Decisions of judges that are not independent, as indicated by Corruption and Nepotism Collusion (KKN), are unprofessional, do not provide legal certainty and a sense of justice, as well as decisions that cannot be executed, can reduce public trust as well as humiliate the court.

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decisions (Purwadi, Hermawan, Soares, Németh-Szebeni, & Kusuma, 2024). Decisions of judges that are not independent, as indicated by Corruption and Nepotism Collusion (KKN), are unprofessional, do not provide legal certainty and a sense of justice, as well as decisions that cannot be executed, can reduce public trust as well as humiliate the court.

The main task of the judge is to apply the law to a concrete case in the form of a decision (Struchiner, Almeida, & Hannikainen, 2020). The application of the law always begins with the discovery of the law. Legal discovery is needed in order to solve or resolve a legal issue based on law or legally. The law that is applied is the law that applies positively. In the event that the positive law governing legal events is clear, the task of the judge is to reconcile concrete legal events with existing legal rules. However, if the existing legal rules are unclear, do not comply with the sense of justice in society, or do not protect human rights, then legal discovery is carried out by interpretation, namely finding the meanings of existing legal rules or exploring various legal materials originating from public legal awareness or available legal theories so that a concrete legal event can be solved properly and correctly. The discovery of laws like this is called law formation (rechts cheeping) through the form of a decision (Morawetz, 2015). The judge's decision, which has permanent legal force, turns into positive law because it is directly binding on the parties; of course, what is meant by positive law is subjective because it only binds the parties, not a generally accepted rule.

When adjudicating legal issues related to justice issues, Austin is of the view that law is an order from the authorities and law is strictly separated from morals (Barberis, 2017). The essence of all law is an order made by a sovereign ruler addressed to the governed, accompanied by sanctions if the order is violated. Social rules outside of legal provisions made by sovereign rulers are not law. In contrast to the positivist philosophical way of thinking, the prevailing philosophical way of thinking in the judicial power system in Indonesia must be understood as a synthesis between written law and unwritten law by placing legal justice as the service of law. Based on Article 24, paragraph (1) of the 1945 Constitution. Jo Article 1 paragraph (1) of Law No. 48 of 2009 concerning judicial power The Indonesian legal system is explained under the values of Pancasila and the 1945 Constitution of the Republic of Indonesia as the philosophical and theoretical basis for the application of law in Indonesia.

The 1945 Constitution on judicial power provides room for freedom for judges to reflect on the sound of the law in accordance with the people's sense of justice. So that the sound of the law becomes a life of moral justice. This can be seen in the provisions of Article 1 of Law Number 48 of 2009 concerning judicial power, which states, "judicial power is the power of an independent State in administering justice to uphold law and justice based on Pancasila and the 1945 Constitution, the implementation of the Republic of Indonesia Law State". Pancasila and the 1945 Constitution must be placed as sources of state ideology, which judges must guide as benchmarks for assessing legal justice in the application of law. The legal bases that are applied must not conflict with the ideological values of the State or must always be within the framework of the rule of law (Waldron, 2017).

The space for judges' freedom given by the State includes freedom to try, freedom from outside interference, freedom of expression in the context of developing practical law, freedom to explore legal values in accordance with the sense of justice in society, including the freedom to make decisions outside the provisions of written law if it is deemed that the provisions of written law are not in accordance with the sense of justice in society. The freedom of judges here does not mean unlimited freedom because the legal basis that is applied must not conflict with state ideology, must not conflict with laws that are equal and futuristic, must protect human rights (HAM), and mandate justice.

Can never fully conclude that what is decided by the judge has fully fulfilled the purpose of certainty and also must be fair (Brozek et al., 2021). Law also cannot be identified with justice because law is a means while justice is a goal. Paund stated that law is a tool to renew society (a tool of social engineering), while Mochtar said that law is a means of community renewal. If so, it means that law is a medium for approaching justice; if it cannot be said as a medium for achieving justice, it is impossible to dispute between means or means and ends. Legal reasoning for positivism always focuses on achieving legal certainty, but when legal reasoning goes astray and gets further away from its goals, namely certainty and justice, it must return to its original base. As for what is meant by "base," here is the judge's commitment to approaching the goals to be achieved. If the means move away from the goal, they must return and bring the law closer to certainty and justice (Galvin, 2019). Court decisions that look like sheets of paper, in fact, are also full of disputes between legal certainty and justice. Of course, the positivism of the followers of John Austin and Kelsen always emphasizes the enforcement of written (positive) law without questioning justice because what one wants to achieve is legal certainty alone. The Indonesian rule of law wants to uphold law and justice so that legal certainty and justice must be the product of a judge's decision. Which, in this case, is a struggle between legal certainty and justice (Huda & Sumbulah, 2024). When the product of a decision becomes jurisprudence, its status changes to become a source of law.

For those who prioritize justice, such as natural law schools, legal realism always demands that positive law be accounted for its validity on the values of justice (Brinkman, 2017). The value of justice is transcendental, and it is against the possibility of manipulating the law in the interests of those in power. The validity of positive law is not solely measured by the product of the legitimate authority for those who make it but depends on its content and whether it contains the values of justice because, for him, an unfair law does not deserve to be called a law. However, standards and criteria for fairness can never be proven empirically because they are too relative in nature (Baumard, 2016). So, when asked what is the standard of fairness, the answer is always normative. Nevertheless, theories about justice always look for sources of justification in the institutions, ideas, or ideals held by certain philosophers or legal thinkers. Depending on the validity of positive law on the abstract values of justice, of course, obscures the values of legal certainty.

The court, whose day-to-day duties are to receive, examine, adjudicate, and settle cases from various cases submitted, may not refuse to try the case (Dong & Voigt, 2022). In conditions like this, judges must apply law and justice; judges apply two kinds of rules, namely (1) formal law, namely provisions governing procedures for examining and adjudicating a case. In civil cases, judges are required to comply with the provisions of civil procedural law contained in the HIR/RBG and other provisions of procedural law. Because in carrying out procedural law, in order to realize procedural justice. Procedural justice is important to maintain legal certainty. In legal certainty, justice will be guaranteed. For example, hearing both parties in court in accordance with the principles of the other side, granting the widest possible rights to both parties to prove their arguments in a balanced manner (Menkel-Meadow, 2018). In submitting a legal effort, there is a time limit that may not be exceeded. This is to maintain legal certainty for the sake of justice; (2) material law, namely the law governing the legal consequences of a legal relationship or a legal event. Material law is intended to realize substantial justice, both written and unwritten, originating from the legal awareness of society. Judges in applying material law are provided with legal knowledge such as interpretation, analogical argumentation, contrarian and legal refinement, legal theories, and legal philosophy. Judges should not be hasty in deviating from formal legal provisions, even for the sake of justice, because justice is very relative in nature (Dimock, 2023).

Several studies have explored the tension between legal certainty and justice in judicial decisions, particularly in the context of the Indonesian legal system. Research by Lubis (2023) highlighted the gap between positive law and societal legal consciousness, emphasizing that strict adherence to written laws can sometimes lead to decisions that deviate from the public's sense of justice. Other scholars, such as Harahap (2023), have focused on how judges can reconcile these differences by incorporating unwritten legal norms and moral considerations in their rulings while still adhering to the legal framework. These studies have laid the foundation for understanding the evolving role of judges in balancing legal certainty with justice.

This study aims to further investigate the gap between societal legal feelings and the formal justice delivered by the judiciary in Indonesia. It seeks to analyze how judges navigate the complex interplay between the rule of law and the public's demand for fairness, particularly in cases where legal certainty may conflict with moral or ethical considerations. By exploring this balance, the study aims to contribute to the broader understanding of judicial independence and the degree to which judges are empowered to make decisions that go beyond the strict confines of positive law. It also aims to identify the factors that can restore or diminish public trust in the judiciary, particularly in light of decisions that may appear legally sound but morally unjust (Re & Solow-Niederman, 2019).

This research offers a novel contribution by focusing on the current challenges faced by Indonesian judges in balancing legal certainty with public perceptions of justice, particularly in a legal environment that places significant importance on positivist traditions (Wardhani, Noho, & Natalis, 2022). While previous studies have explored judicial independence and the application of moral reasoning in judicial decisions, this study delves deeper into the sociopolitical implications

of judges' decisions that fail to align with public expectations. Furthermore, this research emphasizes the evolving nature of judicial decision-making, recognizing the increasing influence of societal legal awareness and moral reasoning in shaping the future of legal justice in Indonesia.

RESEARCH METHODS

This research method uses a qualitative approach with a content analysis method on judges' decisions. Data is collected through document studies, including analysis of legal decisions, laws and regulations, and relevant legal literature. This approach emphasizes tracing the patterns of legal reasoning, both inductive and deductive, that judges use in deciding cases, as well as how aspects of legal certainty, utility, and justice are considered in each decision. An in-depth analysis is conducted to identify how the law is applied and how moral considerations and social values affect legal decisions.

RESULTS AND DISCUSSION

Mechanism of Setting Death Penalty in the New Criminal Code

The judges in the decision deliberation disagreed about the legal objectives to be achieved (between legal certainty and justice) and how to solve them; the answer returned to the formulation of the Law, and the dissenting opinion set the mechanism (Feteris, Feteris, & Olivier, 2017). Weaknesses in argumentation for those who prioritize justice open the door for legal schools to criticize, as is the case with positivism.

Positivism prioritizes legal certainty over justice. The legal positivism perspective, which is formalistic, makes judges unable to ask whether positive legal norms are fair or unfair. If it is promulgated on the basis of legal authority, it is enough to become a valid law, thereby binding on citizens, including judges. The positivistic judge has only to find his interpretation because the law is available and ready to serve as the major premise for the minor premise and then draws a conclusion as a legal opinion in response to the petitum of the lawsuit because the actual conclusion has been prepared through the major premise. A positivistic judge's method of thinking is always systemic and axiomatic. Positive law is the major premise, and legal facts are the minor premise. The rule-systematizing logie of legal science has always been used as a measure of the application of the law. Facts that are not in accordance with positive legal norms but are still within the scope of its validity can be stated based on law; the transfer of property rights due to sale and purchase does not cancel the lease, then how about the transfer of property rights due to inheritance or grants that are not specified in the law. Here, analogy argumentation or comparison is applied because there is a core similarity between branches and principals (Govier, 2018).

The major premise that does not match the facts is that professional judges always interpret in the context of reality (concrete) (Lucena-Molina, 2016a). A stepchild who helps his stepfather a lot in terms of development and acquisition of assets, then suddenly the stepfather dies without leaving a will can be perceived as if he had been given a will and determined by the judge as a mandatory will, just as an adopted child obtains inheritance through a portion of a mandatory will. Positive law, no matter how complete it is, always hobbles with the times and is always limited by

space and time, which in other eras is no longer valid, and the wording of the law is no longer valid. In the past, showing off devices so that people would not get pregnant could be criminally prosecuted, now it has become a family planning program. The law is not abolished but the law is no longer valid, bringing the interpretation closer to the sound of the text, even further away from the sense of justice (Angermeyer, 2021).

Decisions that are close to justice, of course, are not decisions whose legal reasoning only places judges as the mouth or mouthpiece of the law (D'hondt, 2014). We can assess quality decisions whose arguments can restore public trust. The judge does not only read the text but tries to penetrate what is behind the text and dialogues with the context while involving the sensitivity of his conscience.

The Supreme Court of the Republic of Indonesia has the duty and function of supervising the course of justice and providing guidance to the courts under it. In this regard, the Supreme Court has given an interpretation of the free verdict in Article 244 of the Criminal Code. Distinguishing the meaning of "free verdict" into ouslag van recht vervolging, which is a decision to release all lawsuits because the act charged is proven but not a criminal act. It is distinguished from vrijspraak (pure free verdict), which is a verdict of acquittal from all legal acts (pure freedom) because the elements of the acts charged in the indictment are not proven or the judge acquits the defendant because he is not proven to have committed the criminal act charged in the indictment.

Law enforcement parameters, according to Lon Fuller in his book entitled the morality of Law states the following: (1) everyone, including the organizers must follow the law; (2) laws must be published; (3) the law applies forward, not retroactively; (4) the rule of law must be written clearly so that it is known and applied correctly; (5) the law must avoid contradictions; (6) the law should not oblige something that is impossible to comply with; (7) the law must be constant, but the law must be changed if the political and social situation has changed.

An important principle in the rule of law is the guarantee of equality before the law for all people (Stein, 2019). According to Sudargo Gautama, the relationship and position of individuals according to the theory of a rule of law state is that in a state based on law, there are restrictions on state power over individuals. The state is not omnipotent. The state cannot act arbitrarily, the actions of the state against its citizens are limited by law.

The legal principle in a rule of law state is that there is a limit to the authority of judges; in addition to a relative limitation of authority, there is also an absolute limitation of authority. The enforcement of absolute authority is also regulated in the provisions of formal law and material law, known as procedural law and substantive law (Patyi, 2022). Judges, in making legal decisions, also may not violate the provisions of article 178 HIR/189 Rbg. However, the legal principles process of law stipulates a juridical requirement that the making of a judge's decision must not contain matters that may result in unfair, illogical, and arbitrary treatment.

H. Azikin, in the cassation decision on the Kedung Ombo reservoir case, had a different opinion from that of the Chief Justice of the Indonesian Supreme Court, namely Ganda Subrata. It has stretched article 178 Herzieene Indonesia (HIR) and subsidiary lawsuits out of fairness and

goodness in the discussion that the decision wants to manifest is justice and benefits as well as legal certainty.

The concept of thinking contained in article 178 of the HIR is a theory that teaches not to grant more than what is required or grant what is not demanded. Azikin made a decision with the value mentioned above. As a professor of law and as a Supreme Court judge, it is certain that it was not an oversight but a matter of axiological values that he wanted to realize in his decisions, namely justice and benefit. Because that's what he thinks out of fairness and goodness as a legal principle, which is supported by legal principles in the theory of the rule of law, namely due process of law, then the application of Article 178 HIR, in this case, is considered unfair because it must be made fair and applied fairly. A number of questions arose: what is meant by the value of the lawsuit requested by the plaintiff, and whether the value of the lawsuit was Rp. 10,000 per square meter as written in the plaintiffs' lawsuit made in 1990, or the real value of the land at the time the cassation decision was handed down, then what is the nature of the compensation? Isn't it the obligation of the State to make the lives of its citizens decent? Is the life of a citizen worth the compensation of Rp. 10,000, - where this value can no longer be used to buy land of the same size and quality. These questions are indicators or parameters for achieving justice and benefits. That's why the principle of law, out of fairness and goodness, gives freedom to judges to assess the appropriateness and suitability of society's sense of justice so that judges are no longer subject to the provisions of the law in the case.

In contrast to the judicial review decision (PK), according to Purwoto Ganda Subrata, it is the parties who determine the value and not the judge because of the character of civil law that the judge is a passive figure; the truth sought is also formal truth (Asrun, 2020). The legal reasoning used is pattern reasoning, which is deductive doctrinal. So, out of fairness and goodness, it does not give absolute freedom to the judge, but it is still obliged to refer to the material of the claim itself. The judge is bound by the theory determined in article 178 HIR. The judge cannot decide more than the requested claim.

In fact, if judges dare to reinterpret normative provisions by considering the context of the case casuistically, quality and jurisprudential decisions will emerge similar to those of Linderbaum Cohen 1929 Netherlands. There are several reasons that provide opportunities for judges to be creative in discovering laws or creating laws, namely (1) judges are not bound by a precedent system; (2) the judge is obliged to try all parts of the lawsuit; (3) a judge may not refuse to examine and try a case on the grounds that the law is unclear or does not exist at all, but is obliged to examine and try it.

Prismatic Judge Considerations

Reasoning is a thinking activity that is logical and analytical according to a certain pattern, different from intuition, although it is a thinking activity that is not based on a certain pattern (Lestari, Marom, & Rochmad, 2022). The knowledge used in reasoning basically comes from ratios and facts. Those who argue that ratio is the source of truth then develop an understanding which is then called rationalism. Those who argue that the facts revealed through human

experience are the source of truth then develop an understanding, which is then referred to as empiricism.

The notion of rationalism was pioneered by Plato who assumed that true knowledge is a single knowledge that does not change, namely knowledge that captures ideas. Human knowledge is a priori(preceding the practice) because it is attached to the ratio itself. A priori truth is the truth of the mind, so it is grouped in the formal sciences. The notion of rationalism reappeared in modern philosophy pioneered by Rene Descartes, Spinoza, and Wolf. They assume that true knowledge can be obtained from the ratio itself and is a priori, which produces logical, analytical, and mathematical statements. The notion of rationalism then developed into a theory called the Coherence theory. According to this coherence theory, truth is not determined by the suitability of a new proposition with a proposition that has been accepted as truth. If you follow the theory of coherence of truth in the application of the law, then the legal opinion can be predicted (predictability), which means guaranteeing stability and legal certainty.

In the coherence theory of truth, facts are assumed to be the minor premise, while propositions that are assumed to be true and already exist are made as the major premise (Sullivan & Johnston, 2018). The conclusion drawn is an answer that has been provided by the major premise himself. For example, a proposition that is considered true and a priori in nature, "all human beings must die," is used as the major premise. The new fact (new proposition) is used as the minor premise "Socrates is human"; the conclusion available from the major premise is human and dead, then the conclusion drawn is "Socrates must die."

Propositions that become conclusions drawn from a priori truths are definite propositions (predictability). The implications of the coherence theory of truth when applied in the realm of law enforcement. Then, the judge will not make a legal breakthrough because the answer to the minor premise is already available in the major premise, thus preventing the birth of new jurisprudence (Llewellyn, 2017).

According to Baharuddin Siagian, adjudicating activities are always related to cases. Besides being guided by reason, judges also have sharp instincts when dealing with cases. With a sharp instinct, it is like a sixth sense to find the truth. The judge may not say what should or should or should be because the law sounds firm and certain.

Judges are bound by the sound of the law, they may not refuse to accept, examine, and adjudicate cases presented to them on the grounds that the law does not exist or is unclear because the state has given them authority to interpret. Baharuddin Siagian gave an example of Article 244 of the Criminal Procedure Code regarding acquittals. The Supreme Court made a legal breakthrough on the differences between Dismissal From Law Prosecution with Acquittal.

Recovering errors in the application of law is a must for justice seekers to pursue legal remedies, both ordinary and extraordinary legal remedies (Nelson & Santoso, 2021). However, in court practice, legal remedies are not always due to errors in the application of the law but due to dissatisfaction with decisions caused by differences of opinion in giving the meaning of text or context in a rule, as is the case with Article 244 of the Criminal Procedure Code. Realizing legal

objectives in decisions, such as legal certainty, justice, benefit, and order, is a must, but it is very difficult to realize because these various legal objectives do not always go hand in hand.

What is the relation between creating law and discovering law. In this case, the position of the judge in the container of the Indonesian rule of law not only applies the law as it is perceived by the theory of coherence of truth because judges may make or create laws known as Judge law, but not as it is in the legislature but through decisions. Finding law is an attempt to obtain law from an existing law, or to obtain law outside the statutory regulations (Harris, 2016). Obtaining law from existing law is an attempt by a judge to give meaning to the words of an existing legal order, such as the word acquittal in Article 244 of the Criminal Procedure Code, which is defined as Acquitt Also, the verdict is free Dismissal From Law Prosecution can be appealed.

In addition to the method of interpretation as a model of legal discovery from existing legal rules, there is also a method of forming laws with the theory of pranalogian arguments. This method of establishing law with argumentation is a way to examine how to analyze and formulate an argument in a clear and rational manner by developing universal criteria and juridical criteria to be used as the basis for argumentation rationality. It is like making an analogy of the transfer of rights due to buying and selling does not erase leasing with the transfer of rights due to grants and inheritance, because they have a core equation to be analyzed. Likewise, the formation of laws that use argumentation theory, on the contrary, like a woman whose husband dies must undergo a waiting period of four months and ten days (130 days). Then what about a husband whose wife dies?Iddahlike a wife whose husband dies. In this case, apply on the contrary. What about the perpetrators and victims of traffic violations where the victim has a share in the blame? In this case, the argument applies in the form of softening the law or narrowing the law, with the principle of a balance of legal protection between the perpetrator and the victim. As for finding laws outside the law, it is carried out by judges by utilizing legal principles from jurisprudence; it can also be in the form of legal rules originating from laws that live in society according to their sense of justice, as well as principles that society demands such as demands for decency.

Likewise, creating law through construction is an effort by judges who must decide but there are no legal rules that can be used as a basis or there are legal rules that are out of date so that there is a legal (normative) vacuum, authority is given to the Law article 10 paragraph (1) Law No. 48 of 2009 states "The court is prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and adjudicate it".

Sociologically, the absence of the rule of law, among others, when the application of existing laws will conflict with a sense of justice will lead to social conflict or will conflict with public order or with generally accepted principles in society. Thus, the conditions for the ability to create law are: (a) the occurrence of normative vacancies, (b) considered through a judge's decision, (c) with respect to concrete cases, and (d) individual.

Creation of law through a judge's decision (law specifically) may become lawabstractwhen the rule in the judge's decision is taken over by the lawmaker into law, then it becomes a positive law that applies in general, as well as the judge's decision that has the force of permanent law (the

matter judged for the truth has), then followed in legal practice according to the principle like to likethen become lawabstractalthough in the Continental European tradition judges are not obligated to follow jurisprudence. Not so in traditional Sexon, which adheres to the precedent system. Indonesia is adherent to the systemContinental Europe, in the event of a normative vacuum, the judge is obliged to create a law (Ul Akmal, 2021). There are three reasons for the permissibility of judges to invent laws or create laws, namely (1) Indonesian judges do not adhere to the precedent system; (2) the judge is obliged to try all parts of the lawsuit; (3) a judge may not refuse to examine and adjudicate a case submitted to him on the grounds that the law does not exist or is unclear, but is obligated to examine and try it. One method of forming law is argumentation theory. The results of law creation by judges are only recognized as law when it is produced in the judicial process; this is what is called deciding the reason, in contrast to with incidentally said namely legal opinions by judges that are not related to the judicial process (Edmond & Martire, 2019).

Argument theory is one way of making legal discoveries by judges in handling and resolving cases at hand, and these cases do not have specific regulations governing them in the law (Sunstein, 2018c). Thus, legal argumentation is the result of scientific skills in the context of solving legal problems (legal problem solving). This theory was developed by Aristotle and began with a systematic study of logic that is consistent from premises to conclusions. The thinking that underlies the legal argumentation method is that there are many new cases that have arisen in society, while the law has not specifically regulated it, so judges carry out legal arguments to answer these cases.

To realize the concept of justice in resolving legal cases that occur in society, a judge must use a juridical thinking method which has the following characteristics;

1) Argumentation (legal reasoning) is trying to achieve consistency in legal rules and legal decisions. The rationale is the belief that the law should apply equally to all people.
2) In legal reasoning, there is dialectical reasoning, namely weighing opposing claims, both in debates on the formation of laws and in the process of considering the views and facts put forward by the parties in the judicial process.

In the event that there is no legal rule in the law, it means that the judge faces a legal vacuum so that the judge must fill or complete it. In addition, a judge may never refuse to examine and adjudicate a case submitted to him on the grounds that the law does not exist or is not clear. To fill this void, judges, in carrying out their duties, can carry out acts of legal discovery or legal formation. One of them is the argumentation method, which is divided into three namely:

1) Analogical argumentation or afortori argumentation.
2) Argument a contrary.
3) Legal narrowing or legal refinement.

Actually, this argumentation method is text-based, meaning that this method is used when written legal rules exist but are not complete. Analogy and legal refinement is a method of construction, namely from species the genus to then see if, in that case, it is included in the area

genus. Whereas in the refinement of law, people start from the genus and then go down to the species. For more details, the argumentation method will be explained as follows:

1) The analogy argument of this method is basically the judge's attempt to apply the law to a concrete case by expanding the tissues and scope regulated in the law so that it can be applied to the same core cases regulated in the law. This analogy argumentation method is based on the way of thinking from something special to something special. So this method does not use deductive or inductive thinking.
2) Argumentation, a contrario, is a legal discovery method that is carried out by determining the opposite.

The argumentation method, as mentioned above, is a method of legal reasoning, namely a method of normative juridical and empirical juridical thinking carried out by judges in order to resolve concrete cases that are unclear or have no rules in the law for the sake of realizing the concept of justice. The theory of coherence of truth, in relation to jurisprudence is a theory of truth in the framework of applying substantive law to concrete cases, whose reasoning uses deductive reasoning (Lucena-Molina, 2016b). Legal reasoning in the coherence theory of truth is a thought process that produces knowledge. In order for the knowledge produced by reasoning to have a basis of truth, then the thinking process must be carried out in a certain way, and the conclusion drawn is only considered valid if the process of drawing conclusions is carried out according to a certain way it is called logic which is defined as a study to think validly, logic as a method of thinking related to the coherences theory of truth is deductive logic.

For those who argue that facts revealed through human experience are a source of truth and then develop them as an understanding, which is then called empirical understanding. This empirical understanding was developed by Aristotle and then became a theory called the correspondence theory of truth (Brito, 2018). According to this theory, statements are only true if they are in accordance with the facts. Correspondence theory of truth in its development in modern philosophy received support from the thoughts of Locke, Berkeley, and Hume. According to him, knowledge is true if it is in accordance with reality and can be verified empirically.

Correspondence truth emphasizes the role of experience and empirical observation of the object of knowledge because it is a posteriori (preceded by experience) (Schweder, 2018). This posterior knowledge is the truth that comes from experience. Correspondence theory of truth (empirical), when associated with the science of law, then this theory is closely related to the theory of evidentiary law; anyone who postulates a right or denies the existence of other people's rights must prove it empirically. That a fact is true if proven empirically, that is, in accordance with the proposition with the reality of the object. The reasoning method used in this case is inductive.

Scientific reasoning is a combination of inductive and deductive reasoning. Meanwhile, the legal considerations of a decision always contain considerations regarding legal facts and regarding the application of law to legal facts. The reasoning method used to determine facts is inductive, and the means to test it is verification. As for the application of law, the method used is deductive, and the means of testing its truth is falsification. Therefore, to examine legal reasoning

on these legal considerations, what is studied is reasoning related to facts and reasoning about the application of the law.

In legal considerations, if the postulated legal facts are not proven, then the claim is rejected, but if the postulated facts are not based on law, then the lawsuit is declared unacceptable. This is because there is conflict between the posita of the lawsuit and the petitum of the lawsuit, even though the posita of the lawsuit is the basis for examining trial cases, so if the posita and petitum of the lawsuit do not support each other, then the lawsuit is declared without legal basis, such a lawsuit is vague and formally flawed. Pragmatists actually do not oppose the coherence theory of truth and correspondence theory of truth, but adherents of the pragmatic theory say that a priori ideas and aposteriori experiences are only considered true truth if they are useful in their application.

The view of the positivists is that for the sake of legal certainty, judges are always limited by positive law, no law may go beyond the applicable regulations because it includes exceeding the limits of the authority granted by law (article 178 HIR/189 Rbg). However serious the legal case legal cases), legal regulations remain a reference, and judges are obliged to follow them. The ideology of legal certainty obtains justification from the theory of correspondence (empiricism) and coherence (rationalism). However, for pragmatics, it is only good if it is useful in its application. Habiburahaman said it was unfair to consider normative aspects without considering the aspects of justice and unfair to consider both without considering the aspects of benefits and harms.

A good decision is made when the decision contains the value of legal certainty, expediency, and justice. Based onArticle 1 Paragraph (3), Article 28 H, and Article 28 D, Article 24 of the 1945 Constitution, the results of the amendment have mandated that if judges carry out legal reasoning in the framework of applying the law to concrete cases, they should pay attention to the values of fair legal certainty and emphasize the importance of expediency and justice for the sake of upholding and maintaining the Republic of Indonesia's rule of law.

The power of the judiciary is also the power of the State. For the implementation of the Indonesian legal state, the state gives authority to the judicial power to administer justice in order to implement and enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The meaning of the nature of law within the framework of the Indonesian legal state is that it is a positive norm in the statutory system and also a source of unwritten law that lives, grows, and develops according to social justice. The pattern of legal reasoning is to apply the doctrinally deductive rule structure to the legal fact structure. The achievement of the axiological value he wants is the achievement of legal certainty.

Indonesian judges are not merely mouthpieces for laws because they have been given freedom of expression to interpret and construct laws. Judges should not be trapped in the absolute pattern of deductive doctrinal reasoning. The law itself gives a message about the existence of legal sources that have not been accommodated in the statutory system, meaning that after the judge finds that the pattern of deductive doctrinal reasoning does not succeed in finding an

appropriate and correct legal basis, then continues the pattern of reasoning in hermeneutic approaches and critical constructivism, and/or search for sources of unwritten law including laws that live, grow and develop according to the sense of justice in society (noninductive doctrinal), jurisprudence and doctrine.

The pattern of reasoning is still doctrinal deductive, but the achievement of its axiological value is focused on achieving legal certainty, benefit, and justice. In certain cases, such as an only daughter who wears the hijab for a sibling, the case of a non-Muslim child, the case of a stepchild, the pattern of legal reasoning which is problematic casuistic, in evaluation, is contrary to positive norms in the statutory system, but due to casuistic application, even though it is contrary to the law in the context of systemic axiomatic thinking methods, it deserves respect based on the principle matter of judgment is regarded as truth (the judge's decision must be considered correct).

Even though the precedent principle has not been legally accepted according to the procedural law in force in Indonesia, this does not diminish the meaning of the legal findings it produces. This is because the judge's decision is based on legal considerations, which contain the right and correct reasons and legal basis, which is the judge's responsibility for the decision he makes.

There are three legal objectives that judges always want to realize in their decisions, namely legal certainty, benefit, and justice. The 1945 Constitution of the Republic of Indonesia states that Indonesia is a country based on law. Then, give authority to the perpetrators of judicial power, namely judges, to independently administer justice in order to uphold law and justice. The rule of law concept rule of law or the rule of law is a rule law concept that mandates law enforcement that is oriented towards the values of legal certainty and expediency as well as upholding justice.

The meaning of the nature of law in the concept of a rule of law rule of law is a positive legal norm in the statutory system. The axiological aspect to be realized is legal certainty. The legal reasoning model developed is to apply the doctrinally deductive rule structure to the legal fact structure derived from a deductive syllogism. According to him, juridical thinking is a certain way of thinking that is patterned in the context of a positive legal system and social reality to maintain stability in realizing legal certainty in order to guarantee order.

Utilitarianism wants law enforcement to bring benefits; the legal basis applied is positive legal norms in the constitutional system, which have proven their effectiveness in the field of reality. The pattern of reasoning is also doctrinal deductive, while the axiological aspect that is to be realized is the attainment of legal certainty and expediency. The legal reasoning of utilitarianism is still in the context of positivism, but the authors include it in the group social justice, just like historical sects.

The ontological aspect of the school of history is an institutionalized pattern of social behavior that controls normatively the behavior of individuals and society. This pattern of behavior is built through historical galvanizing, which is called the soul of the nation (folk spirit). The epistemological aspect is to combine at the same time the benefits of inductive non-doctrinal reasoning patterns withlegal justice results of patterns of deductive doctrinal reasoning. The two

aspects of epistemology are in the same primary position.

Volkgeist ideologically is the ideal of the state. The idea of the Indonesian unitary state that colors the ideals of Indonesian law is Pancasila. A. Hamid Attamimi interprets the ideals of law as a guiding star for the achievement of the aspirations of society. The position of Pancasila as the state ideology is not at the level of positive norms but at the level of values. Roscoe Pound stated that initially the structure of a society was in an unbalanced position. In order to create a civilized world, structural inequalities need to be rearranged into a proportional balance pattern. Existing law cannot be relied upon to change the situation. Therefore, it is necessary to take progressive steps to function law as a social renewal.

Community renewal, according to Paund, is on the shoulders of judges to issue decisions on concrete cases. According to Paund, the legal ontology aspect is the judge's decision, while the epistemological aspect is non-inductive and deductive doctrinal. At the same time, the axiological aspect is the attainment of the value of legal certainty, expediency and justice simultaneously. Likewise, moral justice that originates from the holy scriptures determines good and bad and right and wrong behavior patterns of individuals and society. Moral justice controls the individual's behavior pattern normatively.

If the judge refers to the theory of development law, which states that law is a tool to maintain order in society and maintain and defend what has been achieved, the results of development must be maintained, protected, and secured. The ontological aspect of law, according to Mochtar, is that law does not only cover the principles and rules that govern people's lives but also includes institutions and processes in realizing the enactment of these rules in reality in society.

The words principles and rules describe the law as a normative phenomenon, while the words institution and process describe the law as a social phenomenon. The words institution and process are reflections of opinionsociological jurisprudence, which is rooted in living law. Therefore, according to Mochtar, the ontology aspect of law accommodates positive legal norms in the statutory system as well as unwritten laws that are rooted in living law and moral justice.

Judges in Making Fair Judgments

An authoritative court is an independent court, neutral, competent, transparent, and accountable, capable of upholding legal authority, legal protection, legal certainty and justice, which is a requirement for a state based on law.

The judge's decision must always be accountable to God Almighty, to society and more specifically to justice seekers. Decisions of judges who are not independent, indicate collusion, corruption, and nepotism (KKN) are unprofessional, do not provide legal certainty and a sense of justice, decisions cannot be executed and can have the effect of lowering public trust as well as undermining court authority. Therefore, judges are required to act fairly, honestly, wisely, and wisely, to be independent, to have high integrity, to be responsible, to uphold self-esteem, to be highly disciplined, to behave humbly, and to act professionally. Judges who behave fairly mean placing things in their place and giving rights to those who are entitled, based on the principle that everyone is equal before the law. Thus, justice means giving everyone equal treatment and

opportunities. Judges are required to uphold law and justice. The law controls all human behavior, and everyone is obliged to behave according to the law of society.

Judges in the trial process are required and obliged to be impartial or behave in a way that can hurt the legal feelings of the community which will lead to public distrust of the judiciary. Therefore, in carrying out their judicial duties, judges are prohibited from showing likes or dislikes or partiality based on closeness to one of the parties seeking justice. Every judge is required and obliged to behave honestly, both in the trial process in the official and outside the official. Judges are always obliged to maintain public trust. Thus, the judge is obliged to declare that what is right is right and what is wrong is wrong in order to raise awareness of the nature of right and wrong. Judges are required and obliged to behave wisely because it is obligatory to explore, understand, and follow the norms that live, grow, and develop in accordance with the feelings of justice in society. Even so, it has become a moral requirement for judges to adjudicate according to applicable legal provisions. Deviating from the provisions of the law is only permissible if the principle of the rule of law allows for the sake of upholding truth and justice.

Two groups of judges will go to hell, and only one group will go to heaven, namely the first is the judge who pretends to be professional but is actually not professional; he does not know how to uphold the law and justice according to the truth. Second, the judge is a professional, so how to uphold the law and justice properly, but not be honest, not independent, not uphold the truth of the law and justice? These two groups do not enter heaven. Third, judges who are professional, independent, and capable of upholding law and justice honestly and professionally, that is, upholding truth and justice. They are guaranteed to enter heaven. Even if he has ijtihad to express a legal opinion and then his legal opinion is wrong, they still get a reward. Judges, as the main actors in the judicial process, are always required to hone conscience, moral intelligence, and professionalism in upholding law and justice in the form of decisions. The judge's decision must always be accountable to God Almighty and to the public, especially those seeking justice.

There are 10 basic values (court values) that apply universally, listed in international facts and Banglore ethical principles, namely: (a)Equality before the law; (b) fairness; (c) Impartiality; (d) Independence of decision-making (It is)Competence; (f) Integrity; (g) transparency; (h) Accessibility; (i)Timer lines; (j) Certainty. Furthermore, to assess the superior court can be seen through areas for court excellence based oneself the assessment checklist IFCE, namely:

1) Caurt management and leadership;
2) Court planning and policies;
3) Court resources and human material and financial;
4) Court processes procedures;
5) Client need and satisfaction;
6) Affordable and accessible court services;
7) Public trust and confidence.

Community trust (public trust and confidence) in the court is an indicator of the successful implementation of the court's duties. First, the trial process is fast and timely; that is, at the first

level, it takes no more than five months, and at the appeal level, it is three months, while at the cassation level, it counts from the receipt of the panel of judges, immediately determines the trial schedule and pronouncement of the verdict. Second, a quality decision is a decision that considers three legal values prismatically, and the arguments can be understood so that the parties know why they won and why they lost. All of these can naturally increase obedience to court decisions and increase public trust in the judiciary. Meanwhile, community satisfaction is not measured by the quality of decisions but by public service factors. There is a link between public trust and court authority, as well as a link between public trust and argumentative judge decisions.

Argumentative decisions are decisions in a casuistic context, where the pattern of legal reasoning is deductive doctrinal and non-inductive doctrinal applied simultaneously as the major premise. While the ontological aspect, the meaning of the nature of law includes positive law in the statutory system as well as unwritten law, both originating from folk spirit and living law, as well as that which is moral justice that originates from the holy book, which determines good and bad and right and wrong. At the same time, the axiological aspects are legal certainty, justice and expediency. The legal bases that have been applied have been considered prismatically in the legal argumentation.

Decisions that are not of good quality apply the law incorrectly, fail to fulfill the requirements stipulated by law, exceed the limits of authority, do not show a professional attitude, or even show partiality in court, the decision is suspicious and will have an impact on institutions, namely public distrust of the judiciary.309. many judges who have manipulated cases have been given strict sanctions, starting from non-hammered sanctions, postponement of promotions, and transfers to remote courts; some have even been severely punished up to dishonorable dismissal. In 2009, 26 judges were given severe sentences, 2 medium sentences, and 35 light sentences. An argumentative decision will come from a professional, independent, competent judge with high integrity. The concept of modern justice in the blueprint for the Supreme Court of the Republic of Indonesia will deliver to an authoritative judicial institution, and one of them is through an argumentative judge's decision (Putra, 2020).

There are many things that a judge cannot do in the trial process, such as a judge who is prohibited from trying cases in which a member of the judge's family acts on behalf of a party in a case or as a party that has an interest in the case. Judges are prohibited from using court authority for personal, family, or other third-party interests. Judges are prohibited from issuing statements to the public that can influence, impede, or interfere with the ongoing process of a fair, independent, and impartial trial; judges may not give information or opinions regarding the substance of a case outside the court trial process, both for cases being examined or decided or other cases. Judges may not openly provide information, opinions, comments, criticisms, or justifications for a case or court decision, whether it has or has not yet had permanent legal force under any circumstances. Judges may not publicly provide statements of opinions, comments, criticisms, or justifications for a court decision that has permanent legal force except in a scientific forum where the results are not intended to be published, which could influence the judge's

decision in other cases.

Judges must behave beyond reproach. Judges must avoid contact, either directly or indirectly, with advocates, public prosecutors, and parties in a case being examined by the judge concerned. Judges must limit close relationships, both directly and indirectly, with advocates who often have cases in the jurisdiction of the court where the judge carries out his duties as an official. Judges are required to be open and provide information regarding personal interests that indicate there is no conflict of interest in handling a case. Judges who have a conflict of interest, as stipulated in the law, must resign from examining and adjudicating the case in question. The decision to withdraw must be made at the outset of the trial to reduce the negative impact that may arise on the judiciary or the suspicion that the judiciary is not being administered fairly and impartially. If doubts arise for a judge regarding the obligation to resign from examining and adjudicating a case, he must ask for the opinion of the chairman of the court.

Likewise, judges are prohibited from trying a case if they have handled matters related to the case or with the parties to be tried while carrying out other jobs or professions before becoming a judge. Judges are prohibited from allowing someone who will give the impression that the person is in a special position that can influence judges unreasonably in carrying out judicial duties (Murphy, 2016). Judges are prohibited from trying a case if they judge already have prejudices related to one of the parties or know facts or evidence related to something to be tried.

The judge is responsible for the decisions he makes; this means that the judge concerned is willing to carry out as well as possible everything that becomes his authority and duties and has the courage to bear all the consequences for the implementation of these powers and duties. The prohibitions and obligations for judges related to the trial process and decision-making, as described above, are solely intended to maintain public confidence in order to increase the court's authority. The author himself is of the opinion that the majority of the decisions analyzed in this chapter have been formed and formulated through a fairly rigorous and in-depth consideration process because they have violated the rules contained in laws and regulations by offering considerations that focus on the principles of justice and benefits for children, such as in cases of child custody (Hashanah), joint property, inheritance rights to stepchildren, and adopted children who receive obligatory wills from their adoptive parents. However, in inheritance cases where the daughter wears the hijab for her sibling, the authors consider that the judge's consideration is still dry and does not provide value for the benefit and justice of the parties because the decision is considered to only apply existing regulations, but does not consider the existing aspects of justice and benefits.

CONCLUSION

Judge's decisions that are fair have been reflected through prismatic legal reasoning in the judge's arguments, considering the basis of decisions according to positive legal provisions in the statutory system in a deductive doctrinal manner, in addition to considering the sense of community justice in a non-doctrinal inductive manner and considering moral justice. From the

legal considerations considered by the judge, it produces legal certainty, justice and benefit. The judge, in deciding while maintaining the principle of justice, has been compiled through the legal arguments of the judge's decision, which considers the law prismatically, so that the legal objectives are realized, namely certainty, justice, and benefit. encourage the realization of judges' decisions that are argumentative in accordance with the objectives of the law. In a situation where there is a legal vacuum, to realize the concept of justice, judges use analogy and contrario argumentation methods, as well as juridical and empirical juridical thinking to resolve concrete cases. The Constitution has guaranteed freedom for judges.

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