

Hermeneutics as a Method of Legal Discovery in Court Decisions

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Abstract

Judges must seek, explore and study their laws, judges must find their laws by conducting legal discovery. Legal discovery is usually interpreted as the process of forming laws by judges who are tasked with implementing laws against concrete legal events. The purpose of this study is to determine the application of the hermeneutic principle by judges in court decisions, and to determine the role of hermeneutics in resolving the ambiguity of court decisions. The method used is juridical-normative which focuses on literature studies with a statutory approach that is analyzed qualitatively. Legal hermeneutics functions as a method of interpretation of the text of laws and regulations which are used as the basis for consideration and interpretation of events and facts that help judges in examining and deciding cases in court.

Keywords: Hermeneutics; Legal Discovery; Court Decisions

Introduction

Law functions as a tool to create certainty and justice, and its implementation must be carried out properly. Although the implementation of the law can take place naturally, violations of the law can also occur. In this case, the law that has been violated must be enforced, and in this enforcement process, it is hoped that the law will become a reality so that a just order is created.

In terms of law enforcement, everyone always hopes that the law will be established when a certain event occurs, in other words that the event must not deviate and must be established in accordance with the current applicable law, so that there is legal certainty. However, it should be remembered that in order to carry out the functions and objectives of law enforcement, three components must be considered: legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*) and justice.

The dynamics that emerge in society often develop faster than the legal order itself, judges must be able to follow legal developments that occur in society. In some cases submitted to the Court, there are cases for which the legal basis does not exist or has not been made, and therefore, judges must not reject cases on the grounds that the legal basis does not exist. Judges must be able to determine the law that originally did not exist to exist.

Judges are the pillars of the judiciary, and Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power stipulates that judges have special authority to create legal standards (judge made law) through the process of legal discovery (*Rechtsvinding*). If judges want to understand, study, and comprehend legal values and a sense of justice in society, they must use progressive thinking patterns, spiritual intelligence, and their intuition in resolving every case they try.

In this case, law enforcement requires judges to seek, explore, and study the law. They must carry out legal discovery. Most people consider legal discovery as the process of forming law by judges or other legal officers assigned to enforce the law against certain legal events. This is the process of identifying and organizing legal regulations by considering special events.

Court decisions are the crown of judges if they meet at least three requirements: legal (in accordance with positive law), fair (embodying goodness as the highest value of law), and scientifically accountable. In the context of hermeneutics, the last point remains relevant. From a hermeneutical perspective, court decisions are a process of proving legal truth from various perspectives, such as law, tradition, society, social goals, and context, among others. It is therefore not surprising that today, hermeneutics, as part of legal resources, is increasingly important for legal interpretation. Although there are many schools and methods in legal discovery, this paper will not discuss these schools (*mazhab*) in depth. Instead, this paper will study legal hermeneutics from the perspective of legal philosophy as a new approach to legal discovery, which is expected to help judges and other legal practitioners better understand legal texts.

Methods

The method in this writing uses the normative legal research method. This research method focuses on library research to find important data by relying on primary sources and data through journal articles and books which are then reprocessed by the author and analyzed qualitatively. The approach used is the statute approach by reviewing all laws and regulations and reviewing the legal issues being discussed based on related regulations.

Results and Discussion

Application of Hermeneutics Principles by Judges in Court Decisions

The principle of hermeneutics is very important for court decisions because it allows judges to understand and interpret the law more deeply. Hermeneutics, derived from the Greek term "hermeneuein", which means "to interpret", means giving meaning to legal texts so that they can be applied in certain cases. In practice, judges do not only rely on clear laws, but also consider society, culture, and the history of applicable law. This can help judges make decisions that are more reasonable and beneficial to society.

One important aspect in the application of hermeneutics by judges is the use of ratio legis, namely understanding the purpose of a legal norm. This is important because legal norms are not only applied rigidly based on the text, but also need to be understood in the context of the goals that the maker wants to achieve. For example, in cases related to human rights, judges can refer to the purpose of the law which is not only to regulate certain actions but also to protect the dignity and freedom of the individual. With this approach, judges do not just read the legal text literally, but also seek a deeper understanding of the background and purpose of the regulation.

When judges face cases that are not explicitly regulated in the law is one example of the application of hermeneutics. In such circumstances, judges can use the hermeneutic approach to interpret the legislator's intent and determine the principles of justice contained in the legal norm. Judges can make arguments based on the moral and ethical principles of society through this process. As a result, the decisions made not only meet legal requirements but are also considered socially legitimate.

Constitutional interpretation can involve the application of hermeneutical principles. Judges are usually asked to interpret general constitutional articles, which can be interpreted in various ways. In such cases, the hermeneutical approach allows judges to consider human rights and democratic principles when interpreting these articles in the evolving social context. Thus, the decisions made reflect both the text of the constitution and the desires and expectations of society for justice.

Customary law can also be used to apply the principle of hermeneutics in court. Customary law plays an important role in the legal systems of many countries, including Indonesia. Judges who use the principle of hermeneutics can incorporate customary law values into their decisions, making them more relevant and acceptable to the local community. In addition, this shows respect for the various laws that exist in society.

The Constitutional Court's decision is a clear example of the use of hermeneutics. The Constitutional Court often uses hermeneutics to interpret laws that are considered to be in

conflict with the constitution. Judges can make decisions that are not only based on the law but also in accordance with the wishes of the community by referring to the principles of justice and human rights.

In addition, getting adequate legal education for judges is essential to applying hermeneutics. Judges can be better prepared to handle cases that require in-depth interpretation if they understand the elements of hermeneutics. Part of the continuing education of judges should include courses and seminars on legal hermeneutics.

The importance of applying the principle of hermeneutics is also seen in the context of social justice. In some cases, judges can use hermeneutics to ensure that the decisions taken are not only legally just, but also socially just. For example, in cases involving vulnerable groups, such as women or children, judges can interpret the law by considering the social impact of the decision. Finally, an important step towards a more just and responsive legal system is the application of hermeneutical principles by judges in court decisions. The hermeneutical approach allows judges to act not only as law enforcers but also as social changers who can influence society through the decisions they make. As a result, hermeneutics must continue to be promoted and strengthened in Indonesian legal practice.

The Role of Hermeneutics in Resolving the Ambiguity of Court Decisions

The theory of legal discovery is related to legal hermeneutics, which is presented in the framework of understanding the reciprocal process between rules and facts. The hermeneutical postulate states that one must qualify facts and interpret facts, including the paradigm of contemporary legal discovery theory. Therefore, legal hermeneutics can be defined as a way to understand legal texts or understand legal rules.

The study of legal hermeneutics has two meanings at once. The first is as a way to understand legal texts. In this case, the interpretation of legal texts must always be related to the content (legal rules), both written and implied, or between the sound of the law and the spirit of the law. According to Gadamer, an interpreter must meet three requirements: subtlety intelligibility, which means accuracy of understanding; subtlety explicandi, which means accuracy of description; and subtlety applicandi, which means accuracy of application. Therefore, legal, social science, and philosophy experts believe that legal hermeneutics is a more effective and efficient way to understand normative texts.

Second, the "theory of legal discovery" has a great influence on legal hermeneutics. This theory is described in the framework of the hermeneutic spiral circle, which is a reciprocal process between rules and facts. The hermeneutical postulate states that one must qualify facts

in the framework of rules and interpret rules in the framework of facts. This is part of the paradigm of contemporary legal discovery theory.

Every study of legal hermeneutics focuses on hermeneutics as a method of legal discovery through the interpretation of legal texts. This is the case even though the core of hermeneutical philosophy is about the nature of understanding or comprehending something, namely philosophical reflection that analyzes the potential for human experience and interaction with reality, including the events of understanding and/or interpretation.

The process of legal discovery (*rechtsvinding*) consists of two stages: the stage before decision-making (*ex ante*) and the stage after decision-making (*ex post*). According to contemporary legal discovery theory, "heuristics" is the process of searching and thinking that occurs before legal decision-making. At this point, the various opinions for or against a particular decision are weighed against each other, and after that, the proper meaning is determined.

However, the discovery of law that occurs after a decision is called "legitimation", and legitimacy is always related to its truth. At this stage, the decision is given motivation or consideration and strong arguments to support it. The purpose of this process is to create reasoning that is accountable and logical. If the legal forum cannot accept a legal decision, the decision has no legitimacy. As a result, to ensure that the decision is acceptable to the legal forum, new premises must be put forward while still adhering to *ex ante* reasoning.

This is where legal hermeneutics functions and is used by judges when finding the law. Judges do not only determine the law for certain events; they also create and create law. Gadamer argues that the method of legal hermeneutics is essentially useful when a judge considers himself entitled to add to the original meaning of the legal text. The Judge's practical experience in finding the law in court supports the concept of pragmatism and its interpretation, even according to the Constitution.

As a result, legal hermeneutics helps judges understand the laws and regulations that form the basis of their considerations. Understanding events and facts will also help them examine and decide cases in court. In this paper, we will show court decisions in the United States as an example of how judges use legal hermeneutics in their practice. This will help clarify the application of legal hermeneutics in practice.

One of the main outcomes of the judicial process is a court decision. However, court decisions can be interpreted in various ways because there is ambiguity or unclearness. This ambiguity can come from many things, such as unclear application of the law, unclear logic of the argument, or unclear use of language. As experts in text analysis, hermeneutics can help

solve this problem. Hermeneutics is used in the legal world to explain concepts and court decisions that can be understood from various perspectives.

One can use hermeneutics to interpret legal texts, including court decisions. Legal texts are often abstract and require further explanation to be applied to certain situations. The hermeneutical approach does not only focus on the literal meaning of the text, but also tries to understand the reasoning behind the court's decision. This approach allows judges to understand the deeper and contextual meaning of their decisions. Hermeneutics can reduce ambiguity by explaining the purpose of the decision by considering the judge's reasons and considerations.

Hermeneutics, as a discipline that uses a historical approach, allows judges to look back at the social and historical context of the rules used to make their decisions. In many cases, current legal standards did not originate on their own, but were rather influenced by social, cultural, and political changes that occurred at a particular point in history. By looking at how norms emerged in a particular context, a hermeneutic approach can help reduce ambiguity.

Hermeneutics theory helps ensure that the interpretation of court decisions remains consistent with basic legal principles such as justice and legal certainty. By using the principle of justice, hermeneutics can provide guidance in interpreting ambiguous legal texts so that the final result is more just and in accordance with the desired legal objectives. To create legal certainty, one of the main objectives of using hermeneutics in interpreting court decisions is to create legal certainty. To maintain social stability and public trust in the legal system, this legal certainty is very important. Hermeneutics helps clarify the boundaries that exist in dispute resolution by reducing ambiguity in court decisions and ensuring that court decisions can be clearly understood and accepted by all parties involved in the case. This allows parties involved in a legal dispute to know their rights and obligations more certainly after the decision is made.

Conclusion

By using a hermeneutical approach to make court decisions based on hermeneutical principles, judges can act as social changers who can influence society through their decisions. Judges find the law by using important legal hermeneutics. Judges do not just determine the law for a particular event; they also create and recreate the law. Legal hermeneutics is a way of understanding the text of the law that is used as the basis for their considerations, as well as the events and facts that help judges examine and decide cases in court. It is essential to resolving ambiguities in court decisions. Hermeneutics helps interpret decisions more fairly and in accordance with broader legal principles by looking at the text, context, and intent behind the legal decision.

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