

The Role of Judges in Law Discovery (Rechtsvinding) In Handling Cases

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Abstract

The law must be enforced and implemented, because the law serves as a protector of the interests of justice seekers, Law enforcement must pay attention to the elements of legal certainty, expediency and justice. Therefore, these three elements must be ensured and can be considered proportionally, so as to produce decisions that can uphold the law, judges are required to be able to impose decisions objectively and objective decisions are only achieved through legal discovery (Rechtvinding) by the Judge. Therefore, the role of judges in every stage of legal discovery activities (rechtvinding) to determine concrete events that actually occur is very important in achieving quality and fair decisions.

Keywords: Judge, Rechtvinding, Case

Introduction

Justice is one of the most discussed legal objectives throughout the history of legal philosophy. The purpose of law is not only justice, but legal certainty and legal expediency. Ideally, the law should accommodate all three. A judge's decision is a reflection of a judge's ability to examine, hear and decide cases. A good decision must be compiled from complete, detailed, clear and accurate facts of events and legal facts obtained in the trial contained in the trial report. A decision that is compiled in a systematic manner) with good and correct language containing clear, precise and correct legal arguments, reflects the professionalism of a judge, such a decision can at least provide clear and accurate information and hopefully also provide satisfaction to the parties, so that the parties are satisfied and accept the decision without taking other legal remedies that cause the settlement of the case to be protracted.

That arise in this discussion are as follows:

1. How is the method of legal discovery carried out by judges in deciding a case before them?

2. What is the role of judges in the process of legal discovery to apply laws and regulations to concrete legal events?

Methods

The research used is included in the Normative and Empirical classification, because the research departed from the void of existing norms in implementation.

Results and Discussion

Legal Discovery Method

Legal discovery is the process of forming laws carried out due to a legal vacuum or a vacuum of laws, the discovery of *rechtsvinding* law is the process of searching for legal norms both in laws and regulations and legal norms that live in society. Moreover, laws as positive legal norms that must be implemented are unclear, even incomplete, so that judges as implementers of laws, are required to explore, follow and understand the legal values and sense of justice that live in society.

This is clearly stated in Law Number 48 of 2009 Article 5 paragraph 1: "judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that live in society"

In reality, judges in examining and deciding cases often face a situation, that the written law is not always able to solve the problems faced. In fact, judges often have to find the law themselves and/or create it to complement existing laws, in deciding a case the judge must have their own initiative in finding the law, because judges may not reject cases on the grounds that the law does not exist, is incomplete or the law is vague.

Therefore, judges must apply the law in accordance with the laws and regulations that cover 2 legal aspects: First, judges must use written law first, but if the written law is not enough or not appropriate, then both of them will seek a judge and find the law themselves from other legal sources. These legal sources are jurisprudence, doctrine, treaties, customs or unwritten law.

In finding the law to decide a case where a judge is obliged to try, follow and understand the values of law and justice that live in society. Furthermore, it can be understood that "This provision is intended so that the judge's decision is in accordance with the law and sense of justice that lives in society."

From the description above, it is implied both legally and philosophically that Indonesian judges have the obligation or right to make legal discoveries and legal creations, so that the decisions they make can be in accordance with the law and the sense of justice of society. Textually, as mentioned, the law does require judges to explore values in life in life, which philosophically means requiring judges to make legal discoveries and legal creations.

The discovery and creation of law by judges in the judicial process must be carried out on certain principles and principles, which are the basis and guidelines for judges in applying, finding and creating law. The description above is the steps taken by judges in finding law through sources of interpretation and construction.

With the interpretation method is the interpretation of the text of the law, but still adheres to the sound of the text.

Interpretation is one of the methods of legal discovery that provides a clear explanation of the text of the law, so that the scope of the rules can be determined in relation to certain events. Interpretation by judges is an explanation that must lead to the implementation that can be accepted by the community regarding legal regulations for concrete events.

This interpretation method is a means or tool to find out the meaning of the law. Its justification lies in its usefulness to implement concrete provisions and not for the interests of the method itself.

Distinguishing interpretation and its types as follows:

a. Valid (authentic, official) or substantive interpretation method. Namely a definite interpretation of the meaning of the words as given by the law maker. The method by which the judge must apply a text of the law. The method by which the judge must apply a text of the law to the case in concrete.

b. Grammatical or taalkundig interpretation method. Is an interpretation according to language or words. Words or language are tools for lawmakers to express their intentions and will. The words must be brief, clear and precise. Therefore, if a judge wants to know what the law means, the judge must interpret the words in the law.

c. Systematic or logical interpretation method. Is an interpretation that connects one article with another article in a relevant law, so that it understands its meaning. Interpreting laws and regulations by connecting.

With other laws or regulations or with the entire legal system. In this interpretation method, the law is seen as a whole, not a stand-alone part, but part of a system.

d. Historical interpretation method. Is an interpretation based on the history of the occurrence of the regulation. Every provision of law certainly has a history of law certainly has a history of law, thus the judge knows the purpose of its creation. In Judicial Practice, historical interpretation can be distinguished between interpretation according to the history of the birth of the law (*wetshistorisch*) and interpretation according to legal history (*rechtstorisch*).

e. Sociological or teleological interpretation method. Is an interpretation that is adjusted to the state of society. The importance of this interpretation is that when the law was made, the social state of society was different from when the law was implemented, because law is a social phenomenon that is always changing following the development of society. Here the judge

interprets the law according to the purpose of the law maker, the emphasis is on the purpose of the law being made, not just on the sound of the words, The legislation was made, not just on the sound of the words. Outdated legislation, its use is adjusted by connecting it to current conditions and situations or new social situations.

f. Comparative interpretation method. Is a comparative or comparative interpretation, namely an interpretation by comparing old law with positive law, between national law and international law. The method of interpreting laws by comparing various legal systems. This model of interpretation is most widely used in the field of international treaty law. Outside of international law, comparative interpretation is very rarely used.

g. Restrictive interpretation method. It is an interpretation to explain the law in a way that the scope of the provisions of the law is limited by narrowing the meaning of a regulation by starting from its meaning according to language.

h. Extensive interpretation method. It is an interpretation method that makes the interpretation go beyond the limits given by grammatical interpretation. For example, the word sell in article 1576 of the Civil Code; interpreted not only as a sale and purchase, but also as a "transfer of rights".

i. Futuristic interpretation method. Is an anticipatory interpretation of the law by referring to a law that does not yet have legal force (*ius constituendum*), for example a draft law that is still in the process of being enacted, but make sure it is enacted.

From the description above, it can be understood that interpretation is a method of finding a law whose regulations exist but are not clear to apply to the event. It should also happen, the judge must examine and try cases that do not have specific regulations. Here the judge faces a void or incompleteness. The law that must be filled or completed, because the judge may not reject, examine and try cases on the grounds that there is no law or the law is incomplete. To fill the void, the argumentation method is used.

2. Discovery of law with construction method

Furthermore, it is said that interpretation and construction have different meanings, interpretation only determines the meaning of words in a law. While construction means solving or explaining the double meaning, ambiguity and uncertainty of legislation, so that it cannot be used in concrete events that are tried.

In carrying out construction of discovery and solving legal problems, judges must know three clear main requirements:

- a. Construction must be able to cover all areas of positive law concerned,
- b. In making construction there must be no logical contradiction in it,
- c. Construction must be able to provide a clear picture of something, because the purpose of construction is so that the judge's decision in a concrete event can meet the demands of justice and be beneficial for justice seekers.

3. Discovery of Law with the Legal Hermeneutics Method

This method only reconstructs the entire hermeneutic problem and then re-forms unity, hermeneutics as a whole, where legal experts and legal theology meet with hermaniora experts. The function and purpose of hermeneutics is to clarify something that is unclear so that it is clearer (bringing the unclear into clarity).

The Role of Judges in the Legal Discovery Process.

In deciding a Case, the Judge's Decision is a reflection of a judge's ability to examine, try and decide a case. A good decision must be composed of complete, detailed, clear and accurate facts of events and legal facts obtained in the trial contained in the Minutes of the Trial. A decision that is arranged in a coherent manner (systematically with good and correct language containing clear, precise and correct legal arguments reflects the professionalism of a judge, such a decision at least provides a decision to the parties, so that the parties feel satisfied and

accept the decision without taking other legal efforts that cause the settlement of the case to drag on.

According to Edi Riadi, in order to obtain such facts and legal facts, the judge from the first trial to the verdict reading trial must not deviate from the corridor of procedural law. In the process of the trial of questions and answers and the process of proof, the judge must provide the fairest opportunity to the parties to reveal the arguments and evidence that the parties consider important to be submitted. So that not a single fact of the event and legal fact is not revealed or unclear in the trial.

However, complete, detailed, clear and accurate facts and legal facts obtained in the trial do not necessarily produce a good decision. This goes back to the extent to which the judge has the ability to reason legally.

This is where the judge is required to make an objective decision with the aim that the product of the judge's decision truly reflects justice for the parties seeking justice, not vice versa, the judge's decision reflects the bias of one of the justice seekers. In the direction of the Chairman of the Religious Chamber of the Supreme Court of the Republic of Indonesia, DR.H Andi Syamsu Alam SH., MH. In his guidance to judges in order to improve human resources, namely carrying out their duties, judges are not enough to just read the book normatively. Judges are required to be able to see the law more deeply, more broadly and more broadly far into the future. Judges must be able to see the things that underlie a written provision, what thoughts are there, how to feel in their guidance to judges in order to improve their human resources.

This is where the need for *rechtsvinding* (legal discovery) is very necessary because judges in examining and deciding cases often face the reality that existing laws cannot be appropriate to answer and resolve the disputes faced, therefore judges must seek completeness by finding the law themselves.

Because basically human life activities are very broad in scope, cannot be counted in number and type, so it is impossible to be covered in a complete and clear regulation. So it is natural that there is no legislation that can cover the whole of human life, so that there is no legislation that is as complete and as clear as possible, and because the law is unclear, it must be sought and found.

From what is described above, a judge must truly understand what is being proposed by the justice seekers, so that a judge must have a basis of thought that truly understands all the rules that will be used as a definite legal basis that will be a reference for deciding a case that is being handled, without any expertise in finding a legal basis and responsiveness to the problems faced by a judge, then a judge's decision will not come out that truly reflects justice that exists on this earth. The need for a judge to find an event and facts objectively, so this is the war of the Panel of Judges in determining events and facts objectively, so the Panel of Judges tries to find the law precisely and accurately for the event that occurred. If the legal basis found by the parties to the case is incomplete, then the Panel of Judges because of their position can complete the legal basis as long as it does not harm the parties to the case (See Article 178 paragraph (1) HIR and Article 189 paragraph (1) R.bg). After the law is found using appropriate legal discovery methods that are suitable and suitable to be applied to the legal event, the judge must issue a decision.

Conclusion

1. The method of legal discovery carried out by judges in deciding a case that is faced with them is using the legal method of interpretation, construction and hermeneutics.

2. The role of judges in the process of legal discovery to apply laws and regulations to concrete legal events is very important to realize objective decisions so that the judge's discovery is very much needed in deciding a case that he faces, because there is no argument or reason that can be rejected by the judge in deciding a case that he handles.

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