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Original Research Article

The Principle of the Judge's Consideration of the Parties in the Dispute over the Legal System of Indonesia

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Abstract

The principle of judges' consideration of the disputes between parties in Indonesia's legal system currently still does not reflect the values of justice. Justice for everyone is different. It is not surprising that in a judge's decision there will always be someone who declares justice; on the other hand declaring it unfair. Legal remedies are actually available to test the decision taken by a judge, whether he has applied the law and justice properly. The purpose of the study is: to analyze and find the principle of judges' consideration of the disputes of parties in the current Indonesian legal system. The research method used in this study is the constructivism paradigm, a type of normative legal research and empirical legal research. The method of sociological juridical approach. The source of research data consists of primary data sources and secondary data sources, primary and secondary data sources. Using descriptive qualitative analysis. The findings indicate that the principle of judges' consideration of the disputes of the parties in every civil decision in the court is still not based on the value of justice and balance for the parties and in fulfilling the losses is still burdensome to the losing party, there will be legal remedies.

Keywords: Principles of judges' consideration, Legal systems, Justice.

INTRODUCTION

The 1945 Constitution stipulates that judicial authority is free and independent. The authority of the judiciary was also affirmed in the TAP MPR Number III / MPR / 1973 Jo TAP MPR Number VI / MPR / 1978 concerning the position and relationship of working procedures of the highest state institutions with or between high state institutions. In article 11 it is stipulated that the Supreme Court is a body that carries out judicial power which in the execution of its duties is independent of government authority and other influences. Other legal provisions that constitute the basis of the exercise of judicial power are the Laws of the Republic of Indonesia Number 48 of 2009 on Judicial Power. Explanation of Article 1 of the Law of the Republic of Indonesia Number 48 of 2009, affirms that independent judicial power contains a sense of in it "the power which is free from the interference of other state power and the freedom from coercion, directive or recommendation which comes from extra-judicial except in matters permitted by law."

The Judge in principle only accepts any matter brought to it to settle, and this means that there has been an event or event or dispute arising, then bringing the incident and dispute before the judge so that the judge can determine the law applicable to the event and the dispute. The provisions of Article 10 are in accordance with the provisions of Article 5 paragraph (1) of Law Number 48 Year 2009 regarding Judicial Power which stipulates that if the Judge is faced with a case where the law does not exist, or the law is unclear, the Judge shall abide by, the legal value and the sense of justice that lives in society.

The Judge applies the weigering recht principle that is prohibited from refusing to judge the case because the judge does not only rely on written law alone but also on unwritten law. With the evolving times of the ever-changing changes that lead to new dynamics, it can be ascertained that many things are not or are not governed by written law. In the system of judicial power in Indonesia, freedom of speech to the judiciary (independent judiciary), as well as to judges (judges' freedom) as the core apparatus of judicial power. The freedom of the judge as a constitutional principle is manifested in both personal and social has made many kinds of interpretation. When freedom of speech is combined with the word of the judge, which forms the compound word "freedom of the judge," its

argument is diverse. There is an interpretation that the freedom of the judge is the freedom that is not absolute because the judge has to uphold the law and justice that must be based on Pancasila [1].

Therefore, the independence of the judge is not absolute; the freedom of the judge cannot be separated from the elements of responsibility. The judge's freedom is not absolute and unrestricted freedom to the authorities. A legal and judicial system cannot be formed without regard to justice, and that fairness includes the essential understanding of a legal and judicial system, therefore in the formation of legal and judicial systems must be guided by certain general principles [2]. These principles are those that concern the interests of a nation and state, which is a living belief in society about a just life, because the goal of the state and law is to achieve the greatest happiness for every person as big as possible, precisely thinking legally related to the idea of how justice and order can be realized [3].

Based on the background above, several problems can be formulated to be examined in this paper, as follows:

- What are the principles of judges' consideration in deciding cases?
- What are the principles of judges' consideration of disputes between parties in the Indonesian legal system?

RESEARCH METHOD

The research method used in this study is the constructivism paradigm, a type of normative legal research and empirical legal research. The method of sociological juridical approach. The source of research data consists of primary data sources and secondary data sources, primary and secondary data sources. Using descriptive qualitative analysis.

DISCUSSION

The principle of judges' consideration in deciding cases

In the Principle of Judges' Consideration of the Disputes of Parties in the Indonesian Legal System several principles can be found in the laws and regulations, as follows:

The principle of Justice is Fast, Simple and Low Cost

Regulated in Article 2 paragraph (4) of Law Number 48 the Year 2009 concerning Judicial Power. The article stipulates that "Justice is carried out in a simple, fast, and low-cost manner." In the Explanation of Article 2 paragraph (4) what is meant by simple justice is the examination and resolution of disputes conducted efficiently and effectively. Or in other words, what is meant by simple justice is a judicial process that is not too complicated, easy to understand, so it can be followed by justiabelen (justice seekers), most of whom are lay parties or blind to the laws and legal processes they face. The principle of Fast Justice implies that the course of the judicial process is effective, efficient, not redundant, not protracted, by the specified time stages so that it can be predicted or ascertained when it ends so that justibellers can immediately know their legal status for each decision dropped by the Court.

In the explanation of article 2 paragraph (4) of Law Number 48 of 2009, what is meant by a light court fee is case costs that can be reached by the public. This case implies that the course of the justice process undertaken by justice seekers or the parties is burdened with the obligation to bear costs that are affordable and by the capabilities of justiabelen.

The principle of judgment is "For Justice Based on the One True God."

Regulated in Article 2 paragraph (1) of Law Number 48 of 2009. The principle of justice is the elaboration of Article 29 paragraph (1) of the Amendment 1945 Constitution which states that the State is based on the One Godhead so that in each head of the Court's Decision must contain rules "Justice Based on the One Godhead." The intention is that the Court's Decision has executorial power, namely the power to enforce the Decision forcefully if there is a defeated party unwilling to carry out the Court Decision voluntarily.

Article 4 paragraph (1) of Law Number 48 the Year 2009 applies to all environments of the judiciary both within the Supreme Court and the Constitutional Court. According to Bismar Siregar the sentence "For the sake of justice based on the One Godhead," if living is a prayer and a promise between the Judge and God, where in the name of God I pronounce this Decision on justice [4].

The principle of Judicial Independence

Related to the principle of independent justice which is implemented again with Judges' Consideration of the Disputes of Parties in the Indonesian Legal System, Article 3 paragraph (1) of Law Number 48 of 2009 states that in carrying out their duties and functions Judges and Constitutional Judges must maintain judicial independence. Further independence of the judiciary, in this study known as the principle of Independence and impartiality of judges in deciding disputes between parties, as stated in Article 3 paragraph (1) of Law Number 48 the Year 2009 includes 4 (four) independence, namely:

- Substantive independence is independence in examining and damaging a matter solely to uphold truth and justice by legal principles;
- Institutional independence is the independence of the judiciary from the intervention of various state institutions and other governments in deciding a case;

- Internal independence is the independence possessed by the judiciary to regulate the personal interests of the judiciary itself, including among others recruitment, transfer, promotion, payroll, years of service, retirement;
- Personal independence is the independence of the management of colleagues, leaders and judicial institutions themselves.

The principle of equality before the law

Based on Article 27 paragraph (1) jo. Article 28 D Amendments to the 1945 Constitution. Article 27 paragraph (1) of the 1945 Constitution states that "all citizens are at the same time in law and government and are obliged to uphold the law and the government without exception." Whereas Article 28D of the 1945 Constitution states that "Every person has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law."

The purpose of the equality before the law in a judicial perspective is that if there are two people in dispute coming before the judge (Court), the two disputing people must be treated equally by the Judge (audi et elteram partem). Piatur Pangaribuan and Arie Purnomosidi explained that this same treatment aims to guarantee access to justice for all people regardless of their background.

To create justice for all people in the judicial process, every person who litigates in the court must obtain an Advocate's defense. It means that if someone able (economically) has a legal problem, that person can appoint one or more Advocates to defend their interests. Conversely, people who are not able (economically) can also ask for defense from one or more Advocates or through Legal Aid Institutions (legal aid institute) to defend its interests in a legal case. Injustice will occur if only the person who is capable of being defended by the Advocate in legal matters, while the person who is not capable or indigent does not get a defense because he is unable to pay the services or fees of an Advocate [5].

Judge's Principle Cannot Refuse Case

The historical background of the principle reads, "The judge may not reject a case submitted to him based on an adage or Latin proverb which says ius curia novit or iura novit curia, which means that the Judge is considered to know the law (de rechtbank kent het recht or the court knows the law).

This means that the parties in a legal dispute do not need to postulate or prove the law that applies to their case, because the judge is considered to know the law. In some references, often iura novit curia is also followed by facta sunt proband, namely that "the judge knows the law, the facts must be proven," Ius curia novit even becomes the basis that the Court or Judge is prohibited from refusing a case with an unregulated legal pretext or incomplete law. This is as stipulated in Article 22 Algemene Bepalingen van wetgeving voor Indonesia (AB) or General Regulations concerning Legislation for Indonesia, stating Judges who refuse to try cases can be convicted. "Judges who refuse to make decisions on cases, under the pretext that the law does not regulate them, there is darkness or incompleteness in the law, can be prosecuted for refusing to hear cases.

Even in Article 10 paragraph (1) Number 48 of 2009 it is stated that "Courts are prohibited from refusing to examine, hear, and decide on a case filed under the pretext that the law does not exist or is unclear, but is obliged to examine and try it." Article This does not mention the possibility that the law or regulation is incomplete so that the prohibition on the judge to reject the case is also enforced.

The principle of ius curia novit means that the Court is responsible for determining the law that applies to some instances. The court has ex officio legal authority, which is to give unlimited consideration to legal arguments submitted by the parties. The court can determine the applicable legal theory even though litigants have not submitted it. Whereas the parties were released from the obligation to determine what the law was for the case filed.

Based on this principle also, so there is a refusal of testimony because of expertise relating to the application of the law because regarding the application of the law is to become the realm of judges. While the substance of the case can be that the parties or the Court ask for a witness's testimony because of expertise in the substance of the case that is examined and becomes the basis of the Judge in dropping the Decision, for example, the case is related to information technology become the judge's competence.

The principle of justice is passive and waiting

This principle means that the Judge is expecting, or waiting for the case to be brought to him (wo go to the court, ist kein richter). In this case, it means that the litigation initiative in the court is in the interest of the parties, while the Judge is waiting for the coming of the claim of rights submitted to him (iudex ne procedat ex officio). According to Sutiyoso, B. Sri Hastuti Puspita Sari [6] Aspects of the Development of Judicial Power in Indonesia. That there is a process or not, there are demands for rights or not fully submitted to the parties concerned. So that the judge only helps justice seekers and tries to overcome all obstacles and obstacles to achieve a fast, low-cost and straightforward trial.

In the judiciary, other than Judges are passive and waiting, Judges must also be active. The purpose of the Active Judge is that the Judge as the chairman of the trial should actively lead the trial to run smoothly. The judge determines the call, sets the day of the trial and

orders that the necessary evidence is delivered at the hearing. Piatur Pangaribuan and Arie Purnomosidi point out that the Judge is also authorized to give advice, seek peace, show legal remedies and give evidence to litigants (Article 132 HIR / 156 Rbg).

Principles of Open Justice for the Public

The provisions governing this principle are regulated in Article 13 paragraph (1) of Law Number 48 of 2009 which states that all court hearings are open to the public unless the law stipulates otherwise. The meaning of all court hearings is that it is open to the public that everyone may attend to hear and watch the proceedings at the court. Whereas the objective of the principle of justice open to the public is to ensure that the judiciary is impartial, fair and also to protect human rights in the field of justice, by applicable legal regulations. Piatur Pangaribuan and Arie Purnomosidi explained that this principle opens social control from the community, namely by putting the judiciary under other supervision. So that with the existence of social control from the community, each visitor to the court can file a protest or raise an objection to the judge's policy as a correction [7].

There are several hearings of court proceedings that are conducted in a closed manner, for example, trials with child defendants and divorce trials. Although the court hearing is closed, the court ruling must be pronounced in an open session, because only by being pronounced in the open session can the court ruling be valid and have legal force.

In Article 13 paragraph (2) of Law Number 48 of 2009, which states that Court Decisions are only valid and have legal force if they are stated in a trial open to the public. If this provision is not fulfilled, then the Court Decision is null and void by law. As determined by Article 13 paragraph (3) of Law Number 48 of 2009 which states that the provisions not referred to in Article 13 paragraph (1) and (2) result in the decision being null and void by law.

The principle of judges' consideration of disputes between parties in the Indonesian legal system

It is expected that the parties to the dispute will be able to accept the decision taken by the judge properly with the settlement using the civil procedure law. There are several principles in civil procedural law [7], as follows: (a) the principle of the judge is waiting, (b) the judge is passive, (c) the nature of the trial, (d) hears both parties (e) the decision must be accompanied by reasons, (f) the procedure is subject to a fee, (g) there is no obligation to represent it.

According to Kadir MA [8], the judge may only refuse to examine a case if the law determines otherwise, for example for reasons of competence, the existence of blood relations with the parties, or because of the reason that the case has been examined and terminated, and for rejection on the grounds that the case has been reviewed and decided (nebis in idem) is carried out after the trial of the matter is held. The judge referred to in the Act is not only the first level Judge and the appellate judge, but the provision also applies to the Judge at the appeal level. A judge's verdict has no meaning whatsoever when the verdict is unenforceable. There are some judges' decisions that do not resolve a dispute because the judge is too formalistic in its judgment. It is often found that the verdict stipulates that a lawsuit cannot be accepted because the plaintiff's lawsuit argued against 'lawlessness,' but in the case of his lawsuit was stated to be 'acts of torture.' The judges who are formally viewable will state that such a lawsuit is obscure or obscure libel. Though there is no difference in principle because both are derived from the alliance/agreement.

In general, several main principles must be done to find objectivity that is expected to bring justice, namely:

- The judge must be independent, and the judge must not be influenced by anyone, either because of the intimacy relationship or because of accepting something (lure/promise).
- Judges must be honest, both to themselves, others and their Creator. Honesty will foster independence because in honesty that impartiality will arise.

Independent, honesty and impartiality will bring clear conscience to the judge in finding justice. In that conscience, the judge will be 'whispered' by a justice against the case he is facing. The legal justice is in the conscience of the judge who is trying a case. Therefore, the legal principle states that what is decided by a judge must be considered correct.

In principle, in civil cases, the implementation of court decisions is carried out by the defeated party. However, sometimes the losing party does not want to carry out the decision voluntarily. In the legislation, there is no period if the decision will be carried out voluntarily by the losing party. The winning party can ask the court for help to enforce the execution of the decision based on Article 196 HIR:

"If the defeated party is unwilling or negligent to fulfill the contents of the decision peacefully, the winning party enters the request, either verbally, or by letter, to the chairman, the district court mentioned in the first paragraph of article 195, to carry out the decision. ordered to summon the defeated party and warned him to fulfill the decision within the time determined by the chairman, which for eight days at the most. "

If after a predetermined period, the decision is still not implemented, the Chairperson of the Court

orders that the property of the losing party be confiscated until it is sufficient to substitute the amount of the money in the decision plus all costs to carry out the decision. (Article 197 HIR). In principle, the court's decision in a civil case must be won by the party and the defeated party. However, the losers are often punished too high by granting all the winners' requests, which in the end the losers usually take legal action because they do not accept the court ruling. If the verdict is fair, the losers will not retake legal actioni.

CONCLUSION

To answer the question of how the principle of judges 'consideration of the disputes of parties in the Indonesian legal system can be found by conducting an in-depth study of the principles and rules of law governing judges' consideration of the disputes of parties in the Indonesian legal system. It is expected that the parties to the dispute will be able to accept the decision taken by the judge properly with the settlement using the civil procedure law. There are several principles in civil procedural law, (Kadir, MA, 1990) as follows: (a) the principle of the judge is waiting, (b) the judge is passive, (c) the nature of the trial, (d) hears both parties (e) the decision must be accompanied by reasons, (f) the procedure is subject to a fee, (g) there is no obligation to represent it.

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