

***Onvoldoende Gemotiveerd* Juridical Analysis Of The Parties In
Judicial Decisions In Indonesia**

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Abstract

Errors in logical legal reasoning to legal considerations made by judges, legal decisions that have *onvoldoende gemotiveerd* can give legal consequences in the form of a justice is not being achieved. The aim of this research is to analyze the legal consequences of decisions that are important to motivate. The approach method used in this research is normative juridical research. The analysis of this research is qualitative. The results of this study regarding judges in making legal considerations have not applied logical legal reasoning, so that a resulting decision can be overturned on the grounds of wrongly applying the law because *onvoldoende* is motivational. This has linear consequences, the goal of justice has not been achieved.

Keywords: Legal Reasoning, *Onvoldoende Gemotiveerd*, Verdict.

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Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

Introduction

Indonesia is a constitutional state which has been regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which reads: "The State of Indonesia is a constitutional state". Law is a concretization of the cultural values of a society, namely values that can be in the form of ideas or ideals about justice, equality, regular behavior patterns, laws, doctrines, habits, judges' decisions, and legal institutions (such as courts, police and prosecutors).¹

The existence of the law will be felt if there is a dispute and the last means of resolving it through court institutions in the form of a judge's decision. Courts to resolve disputes arising between diverse members of society such as denials, agreements, property rights that harm others, abuse of authority by the authorities in connection with the existence of a judiciary that adjudicates certain disputes, then based on Article 24 paragraph (2) of the 1945 Constitution and Article 18 of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law No. 48/2009). Law enforcement and justice (to enforce the truth and justice) has the status of a state court or state court. Broadly speaking, article 18 of Law No. 48/2009 is the foundation of the country's judicial system.

In the concrete reality the authority decide a dispute and grants rights and obligations to the disputing parties, and the authority is held by the judicial power that the judge does it.

The judicial power is one of the bodies that plays a role in determining the content and strength of positive legal principles. Judicial power is used as law enforcement which is manifested in the act of examining,

¹ M Syamsudin, *Kontruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif*. Kencana Prenada Media Group. 2012. P. 27.

assessing and determining the value of human behavior by determining the value of concrete situations and resolving problems (cases) that arise impartially based on law as an objective benchmark.² The authority of the judicial power has been regulated in article 24 (1) of the 1945 Constitution, law enforcement is carried out, it occurs because there are cases between parties that cannot be resolved voluntarily (voluntary settlement), so that one of the injured parties needs a juridical settlement in court. Decisions issued by judges must consider juridical, sociological, and philosophical aspects, so that a justice that is expected by society (social justice), legal justice (legal justice) and moral justice (moral justice) must be accounted for by the judge. In practice, judges have not been able to apply the principles of simple, fast and low cost.

The problem of this research is how the legal consequences of an onvoldoende emotional verdict on the parties?. The purpose of this study is to analyze the legal consequences of judges' reasoning in decisions that are important to the parties. The problem solving plan is to use theoretical studies to analyze the problem, and with qualitative methods, and draw conclusions in the form of arguments.

1. Research Methods

Similarly in this study, using normative juridical research or legal research. Normative juridical research is normative legal research, the data source is entirely secondary data (library material) so that field data is not needed but it is sufficient to use secondary data which has its own weight and quality which cannot be replaced with other types of data.³

² A Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*. Sinar Grafika, 2014. P. 1.

³ Amiruddin, dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*. PT. Rajagrafindo Persada. 2016. P. 118-120.

Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

Researchers will use a statutory approach, namely a statutory approach carried out by examining all laws and regulations related to the legal issues being handled.⁴ A statutory approach (Statute Approach), this means that the researcher uses statutory regulations as the initial basis for conducting the analysis.⁵ Researchers use prescriptive methods, namely producing new arguments, theories or concepts in solving the problems at hand.⁶ Researchers use this method to provide arguments for the results of the research conducted. The types of legal materials used are primary data, secondary data, and tertiary data. This research data collection technique uses literature study techniques on legal materials, legal materials are collected, then classified based on the source and order used as a basis for analysis to help answer the problems under study.

2. Results And Discussion

The Indonesian state adheres to a continental European system (civil law system) which originated from the codification of the law that prevailed in the Roman Empire during the reign of Emperor Justinian in the 4th century BC. The source of law in the civil law system is statutory regulations, customs and jurisprudence. Indonesia is a state of law where all the rights and obligations of its citizens are regulated by law. Law is a rule that regulates and limits the space for movement, behavior, way of thinking, granting rights and obligations that must be obeyed by all citizens in order to achieve a just and prosperous society in accordance with the ideals of the nation contained in the preamble to the 1945 Constitution, to make this happen. Above, government institutions are formed, including to provide a community justice in

⁴ Ibid. P. 164.

⁵ PM Marzuki, *Penelitian Hukum*. Prenada Media Group. 2013. P. 136.

⁶ Amiruddin, dan Zainal Asikin. Op. Cit. 2016. P. 163.

terms of benefit, peace, general welfare, and protection of human rights, then a court institution that stands alone and has the authority to give a decision on an existing legal case is formed.

The existence of the law will be felt if there is a dispute and the last means of resolving it through court institutions in the form of a judge's decision. Courts to resolve disputes that arise between various members of society such as denial, agreements, property rights that harm others, abuse of authority by the authorities. In the relationships carried out by the community, a situation will be found regarding an unbalanced bargaining position, it's means that there are people who have stronger power who control people who don't have power.⁷ Thought is considered not reflecting justice, so based on article 24 paragraph 1 1945 Constitution which reads:

“judicial power are an independent power to administer the judiciary in order to uphold law and justice”

This article explains that Indonesia's people in seeking justice can use court institutions. A court institutions is an agency (official body) formed based on statutory regulations, used to execute a judicial system. There are judicial intitutions in Indonesia:

- a. general court
- b. religious court
- c. state administrative court
- d. military court
- e. supreme court
- f. constitutional court

this is regulated in article 18 of law No. 48 of 2009 concerning judicial

⁷ K Zweight, dan H Kotz, *Introduction To Comparative Law Volume Ii – The Institution Of Private Law*. Clarendo Press. 1987. P. 9.

Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

authority (hereinafter referred to as law on judicial authority) which reads:

“Judicial power is implemented by a Supreme Court and judicial bodies under it in the general court, religious courts, military courts, state administrative courts, and by a Constitutional Court”

The judicial power is one of the bodies that plays a role in determining the content and strength of positive legal principles. Judicial power is used as law enforcement which is manifested in the act of examining, assessing and determining the value of human behavior by determining the value of concrete situations and resolving problems (cases) that arise impartially based on law as an objective benchmark.⁸ The authority of judicial power has been regulated in Article 24 of the 1945 Constitution, that judicial power is an independent power to administer the judiciary in order to uphold law and justice. Law enforcement occurs because cases between parties cannot be resolved voluntarily (voluntary settlement), so that one of the injured parties needs a juridical settlement in court. A court is where cases are researched, examined, concluded and decided by a panel of judges who are given statutory authority. Judges who are state judicial officials in producing a decision must be able to process and process data obtained during the trial, whether evidence of letters, witnesses, allegations, confessions or oaths contained in the trial. The judicial environment mentioned above is under the Supreme Court which is the state administrator in the judicial sector.

Law enforcement and justice (to enforce the truth and justice) has the status of a state court or state court. Broadly speaking, Article 18 of the Law on Judicial Power is the foundation of the country's judicial system. The judicial separation system in accordance with Article 18 is

⁸ A Rifai, Op. Cit. 2014. P. 1.

based on the environment of authority to adjudicate certain disputes limited to cases that are delegated, such as in the general court environment in accordance with Article 25 paragraph (2) of the Law on Judicial Powers which regulates the authority of the judiciary to examine, adjudicate and decide criminal and civil cases. Judicial power within the general judiciary in accordance with Article 1 point 1 of Law No. 49 of 2009 concerning the second amendment to Law No. 2 of 1986 concerning General Courts (hereinafter referred to as the Law on General Courts) which reads:

"Courts are district courts and high courts within the general court"

In concrete reality the authority to decide a dispute and grant rights and obligations to the disputing parties is the authority of the judicial power exercised by the judge. Judges are state officials authorized by law to judge. The authority of the judges are independent, to maintain and protect the independence of judges, so with The Bangalore Principle of Judicial Conduct (International Judiciary Conference in Bangalore, India in 2001) which agreed to create a world code of conduct and conduct of judges, namely:

- (1) Independence of judges (independence principle), is a guarantee for the upholding of law and justice and a prerequisite for the realization of the ideals of a rule of law;
- (2) impartiality of the judge, is the judge as the party who is expected to provide a solution to every case brought to him;
- (3) Integrity of judges (integrity principle), is an inner attitude that reflects the integrity and balance of the personality of each judge as an individual and a state official in carrying out his / her duties;
- (4) Appropriateness and courtesy of judges (propriety

Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

principle), are the personal morals and interpersonal morals of each judge;

(5) Equality (equality principle), which guarantees equal treatment to all people based on fair and civilized humanity, and does not differentiate one from another;

(6) The competence and diligence principle is the ability that every judge must have.

According to Alkostar, as a central figure in law enforcement, judges have a moral obligation and professional responsibility to master knowledge, have skills in the form of legal technical capacity and standard moral certainty, then in deciding cases will be able to provide legal reasoning that is correct and correct. So that the judge in making a consideration must consider juridical, sociological, and philosophical aspects, namely: ⁹

a) The juridical aspect is the first and foremost aspect based on the applicable law. Judges as law applicators must understand the law by looking for laws related to the case at hand. The judge must be able to judge whether the law provides justice, benefits or provides legal certainty if it is enforced.

b) Philosophical aspects, which are aspects that have the essence of truth and justice.

c) The sociological aspect is to consider the cultural values that live in society.

So that justice that is expected by society (social justice), legal justice (legal justice) and moral justice (moral justice) must be accounted for by the judge. If a court decision does not adequately consider

⁹A Rifai, Loc. Cit.

(onvoldoende gemotiveerd) matters that are juridically and legally relevant at trial, it will result in anomalies or death of common sense (the death of common sense).¹⁰ Judges in adjudicating a case at trial must be guided or based on the principles of civil procedural law. The principles of civil procedural law provide direction to judges in carrying out their duties in enforcing the law, being flexible and able to resolve conflicts that occur in the legal system. Judges who do not apply the principles of civil procedural law correctly, in making legal considerations do not apply the principles of civil procedural law correctly, including:

- a. The principle of hearing both parties (*audit et alteram partem*), judges in handling cases sometimes do not listen to facts or get actual information from both parties, so that a balanced process is not applied in examinations and in filing evidence according to Articles 121 and 132 HIR.
- b. The principle of seeking formal truth, in this case the judge does not seek to seek social truth, because the judge is only based on his conviction and does not carry out extensive examinations.
- c. The principle of simple, fast, and low cost has not been implemented because the decisions issued by the judge at the first court level are still being appealed / appealed / reviewed. This indicates that the legal products made by judges do not reflect justice.
- d. The principle of the decision must be accompanied by reasons, the decision issued by the PT judge has not used the arguments and positive legal basis, which means that the

¹⁰ M Syamsudin, Op. Cit. P. 86.

Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

accountability of a decision that has been issued by the judge in court proceedings.

The reasons made by the judge are in the form of legal considerations, which come from analysis, legal arguments, previous judges' opinions or the legal balance of the judges in examining cases. Consideration is the soul and essence of the decision, which is made from objective and rational arguments. Judges in making legal considerations, must be able to dig in order to find the law, as regulated in Article 10 (1) jo. Article 28 (1) of the Law on Judicial Powers. Activities carried out by judges before compiling their considerations, judges must examine a case carefully, thoroughly and objectively. The examination conducted by the judge is the process of thinking (scientific) of the judge in implementing, discovering and creating laws through reasoning. Reasoning is a concept that refers to a thought process to arrive at a conclusion as a new statement from several other known statements. Reasoning must be based on knowledge that comes from truth or knowledge that comes from reason and facts. Scientific reasoning deals with logic, logic deals with validity, truth and validity of thinking to draw conclusions. Legal logic has two definitions, namely:¹¹

1. In a broad sense, it concerns the psychological aspects experienced by judges in making legal reasons and decisions
2. In a narrow sense, it concerns the logical study of a legal decision by examining the model of argumentation, statutes, and the validity of the reasons behind the decision, and the logical relationship between legal considerations and the decisions that are passed.

¹¹ N Qamar, et al, *Logika Hukum-Hukum Pikir Dan Nalar*. CV. Social Politic Genius (Sign). 2017. P. 13.

The form of a correct reasoning is:

- a) The composition of the proposition which becomes the premise must be considered, meaning that there is a match between the subject and the predicate
- b) The right form and structure of a proposition, meaning that there is a logical form.

Based on Soekadijo's assumptions about valid reasoning, that is, there is a truth relationship between premises and conclusions in reasoning, as has been formulated into the following laws: ¹²

- 1) If the premise is true then the conclusion is true
- 2) If the conclusions are wrong then the premise in reasoning is also wrong. However, if the premise of reasoning is wrong, the conclusion is not necessarily wrong
- 3) If the premise is wrong, the conclusion can be true and can be wrong. However, if the conclusion is correct, the premise is not necessarily true
- 4) If the conclusion is true, the premise can be true and can be false.

Judges determine considerations when made reasoning, as the basis for making judge's decisions, this is called Legal Reasoning, that is legal rationale or legal arguments, it is a rationale in the form of a clear explanation in a series of logical statements, to strengthen or reject an opinion, position or idea related with legal principles, legal norms and concrete legal regulations, as well as legal systems and legal inventions. The legal reasoning method has a characteristic that is to provide a rebuttal (legal argument). A good argument if it is based on logic, namely *conditio sine qua non* so that a decision can be accepted, it must

¹² Karomani, *Logika*. Graha Ilmu. 2009. P. 36.

Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

be based on a reasoning process, according to a formal logic system which is a requirement for arguing, namely studying the principles, rules or laws of thought that must be obeyed, so that people can think properly and reach the truth.

Judges in making arguments on their decisions in the form of considerations will use formal logic by drawing conclusions from the major and minor premises. Legal considerations are the soul and essence of decisions, which contain analysis, argumentation, opinion or legal balance of the judge examining the case. In this case, if the judge does not provide valid legal considerations, it will have an impact on the parties.

This consideration is a theory of proof based on the judge's conviction in terms of logical reasons or conviction *raisonnee*, meaning that the decision issued by a judge is based on considerations derived from the judge's conviction of correct reason or logic and gives the judge the freedom to use other evidence. Judges in making arguments on their decisions will use formal logic by drawing conclusions from the major premise and minor premise.

Judges who made a legal reasoning without using any legal logic method to find the truth can lead to logical fallacy and misunderstanding. Fallacy of thoughts is a process of reasoning or argumentation that is actually illogical, misdirected, misleading, and misguided thinking caused by the imposition of logical principles without paying attention to their relevance.¹³ Sources of errors in reasoning, namely:

- a. Deductive logic, error due to words called hononyms, which are words that have many meanings which in logic are called

¹³ Surajiyo, S Astanto, and S Andini. *Dasar-Dasar Logika*. Bumi Aksara. 2006. P. 105.

semantic or language errors.

b. Inductive logic, error occurs because of personal prejudice, incomplete or incomplete observations, misclassification or classification due to incomplete or overlapping classifications, hypotheses that are dubious and contrary to facts.

The mistakes of the judge's thinking are:

- 1) Misguided Using Emotions (Argumentum Ad Misericordiam) is a delusion that utilizes emotions in the form of compassion, which will ignore the subject matter and distract.
- 2) Losing Points (Ignoratio Elenchi) is a fallacy that occurs when the premise is not connected with a conclusion.
- 3) Rash Generalization is error that occurs when someone rushes to a conclusion.

Reasoning mistakes made by judges can make a judge's legal judgment wrong in applying the law. According to Marjane Termoshuizen, wrongly applying the law implies *onwetmatig*. It means fighting or breaking the law (law). Or the same as the term *onwettelijk* which means not based on law. It can also mean *wederrechtelijk* or *strijdmet het recht* which means contrary to the law.¹⁴ Consideration of judges who have wrongly applied the law, because *onvoldoende gemotiveerd* (lack of legal considerations or inaccurate judgment). *Onvoldoende gemotiveerd* is the Dutch language used by the Supreme Court in its decision to state that *judex facti* judges lack legal considerations, in English it is called Insufficient Judgment. In general, decisions that are categorized as *onvoldoende gemotiveerd* are related to the wrong application of the law of proof. The facts found in the trial were not

¹⁴ Ibid. P. 327.

Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

considered thoroughly and comprehensively (consideration only partially without assessing and considering other relevant evidence).¹⁵ General benchmarks for an onvoldoende gemotive verdict are:¹⁶

- 1) Consideration of a brief decision
- 2) Considerations blur
- 3) Considerations are not concrete
- 4) The conclusion rejects / grants the claim without being based on evidence that meets the minimum limit of proof.

The authority to correct or review *judex facti* decisions, namely the Supreme Court based on Article 28 paragraph (1) letter a jo. Article 43 paragraph (1) and Article 44 paragraph (1) of the Law on the Supreme Court in conjunction with Article 20 paragraph (2) letter a of the Law on Judicial Power in conjunction with Article 24 paragraph (1) of the 1945 Constitution linked to Article 30 paragraph (1) of the Law on the Supreme Court, explains in cassation examination at the court of cassation level, the Supreme Court conducts Correction of mistakes made by the subordinate judiciary both regarding the problems of the process, facts, and application of the law by means of canceling, changing the decision / stipulation or repeating the case examination so that the decision / determination of the subordinate court does not contain arbitrariness.

The errors that are corrected generally consist of:

- 1) Error regarding the process (procedural error)
- 2) Errors regarding facts (factual error)
- 3) Errors regarding the application of law (error in the application of

¹⁵MY Harahap, Op. Cit. 2013. P. 343.

¹⁶ Ibid. P. 343.

law)

A verdict which *onvoldoende gemotiveerd* has an impact on the parties involved in demanding justice for themselves, but cannot be realized properly. Judges are believed to have the authority to resolve cases by applying the principles of legal certainty, benefit and justice

Conclusion

From these problems, it can be concluded that a judgment made by the judge is a theory of proof based on the judge's conviction in terms of logical reasons or conviction *raisonnee*. In this case, the judge's belief in reasoning is wrong. The judge experienced an erroneous thought which resulted in false conclusions. The mistake of the decision of the panel of judges, which made a decision *onvoldoende gemotiveerd*, was because it did not consider and examine the legal facts in a case properly. *Onvoldoende gemotiveerd* is the judge's lack of legal consideration in making considerations that will be used as the basis for drafting decisions. Linearly, the legal consequence obtained by the parties involved is that justice is not achieved.

Recommendations

This research suggestions for the Indonesia's judges making a legal product in the form of decision, it is hoped that in the legal considerations section it must be based on legislation and logical reasoning. So that the resulting decisions can reflect a sense of justice, certainly and legal benefits for the community.

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Onvoldoende Gemotiverd Juridical Analysis Of The Parties In Judicial Decisions In Indonesia

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