

## Jurisprudence as a Manifestation of Legal Findings by Judges in Civil Cases That Embodies Principles of Justice and Certainty

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### **Abstract**

*A legislative regulation as the basis of legal legality within the Rechtsstaat tradition has its own limitations. Legislation never fully and in detail regulates how legal rules should be applied in every legal event; therefore, jurisprudence serves to complement it. In addition to filling legal gaps, jurisprudence is a legal instrument aimed at upholding justice and legal certainty. This research seeks to answer the question of how jurisprudence exists as a result of legal findings by judges that ensures justice and legal certainty. Based on Article 24 of the 1945 Constitution, which is further elaborated in Article 1, point 1 of Law No. 48 of 2009 on Judicial Power, judges are granted the authority to interpret or reason legally. Moreover, when laws are incomplete or unclear, judges must engage in legal findings (rechtsvinding). In relation to this, referring to Article 24 of the 1945 Constitution, and further explained in Article 1, point 1 of Law No. 48 of 2009 on Judicial Power, judges are given the authority to interpret or reason legally. In addition, when the law is incomplete or unclear, judges are required to engage in legal findings (rechtsvinding). When the content of a legislative regulation is unclear, judges are obligated to interpret it in such a way that a truly fair decision can be reached, aligning with the intent of the law, which is to achieve legal certainty.*

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## I. Introduction

Based on Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), Indonesia is a state based on law (*Negara Hukum*). The 1945 Constitution itself does not provide further explanation about the meaning of a *Negara Hukum* in the Republic of Indonesia.

In a rule-of-law state, the people and the government must uphold and act in accordance with the law. In relation to this, Sudikno Mertokusumo states that the primary purpose of law is to create an orderly social system, to maintain order and balance. With the achievement of order in society, it is hoped that human interests will be protected.

The concept of the Indonesian rule of law, based on Pancasila, is essentially not different from the characteristics of the continental European concept of *Rechtsstaat* or the Anglo-Saxon concept of the *Rule of Law*. As stipulated in the 1945 Constitution, the concept of the rule of law in the Republic of Indonesia adheres to the following principles, including the guarantee of human rights protection, regulated in Articles 28 A-J of the 1945 Constitution:

1. The existence of an independent and impartial judiciary, regulated in Article 24, paragraph (1) of the 1945 Constitution;
2. The division of power among state institutions, which consists of:
  - a. The President as the Head of Government, regulated in Article 4 of the 1945 Constitution;
  - b. The House of Representatives (DPR) with legislative, budgetary, and supervisory functions, regulated in Article 20A of the 1945 Constitution;
  - c. The Supreme Audit Agency (BPK) to oversee and be responsible for the state's financial management, regulated in Article 23E of the 1945 Constitution;
  - d. Judicial power vested in the Supreme Court and the Constitutional Court, regulated in Article 24, paragraph (2) of the 1945 Constitution;
  - e. The Judicial Commission as the body authorized to propose the appointment of Supreme Court judges and to maintain and uphold the honor, dignity, and conduct of judges, regulated in Article 24B of the 1945 Constitution;
  - f. National defense and security carried out by the Indonesian National Armed Forces (TNI) and the National Police (POLRI), regulated in Article 30 of the 1945 Constitution;

An important principle in a rule of law state related to law enforcement is the guarantee of an independent judiciary to uphold law and justice. This is also affirmed in Article 24, paragraph (1), which states that "judicial power is an independent authority to administer justice to uphold law and justice." The provision of Article 24, paragraph (1) of the 1945 Constitution is further elaborated in Article 1 of Law No. 48 of 2009 on Judicial Power, which stipulates

that judicial power is an independent state authority to administer justice to uphold law and justice based on Pancasila, for the realization of the Rule of Law of the Republic of Indonesia.

In a rule-of-law state, both the people and the government must uphold and act in accordance with the law. In this regard, Sudikno Mertokusumo states that the primary purpose of law is to create an orderly social system, to maintain order and balance. With the achievement of order in society, it is hoped that human interests will be protected.

According to Muhammad Yamin, the concept of a *Pancasila* rule of law is an idea born from thoughts that characterize the soul and identity of Indonesia itself. *Pancasila* is the essence of the ideas that live and develop within Indonesian society, embodying the spirit of the Indonesian nation to achieve justice. *Pancasila* is not a concept influenced by the legal notion of *Rechtsstaat* nor by the concept of the *Rule of Law*.

The term "rule of law" (*Negara Hukum*) originates from the concept of *Rechtsstaat*. Another term used in Indonesian law is *the rule of law*, which also refers to a legal state. Notohamidjojo uses the phrase, "... thus, the term *rule of law* or *Rechtsstaat* emerges."

The independence of the judiciary and the rule of law are an inseparable cause-and-effect relationship. On the one hand, the state requires an independent judiciary as a logical consequence of "rule by law, not by men." On the other hand, judicial independence requires the assurance that the law governs the state's actions, rather than mere power.

Article 1, point 1, stipulates that judicial power is an independent state authority to administer justice in order to uphold law and justice based on *Pancasila*, for the realization of the Rule of Law of the Republic of Indonesia. Thus, judicial power, as the administrator of justice, is a crucial element in upholding law and justice for the realization of the Rule of Law in Indonesia.

Based on the above provisions, it can be interpreted that whether a court ruling is just or unjust, right or wrong, lies in the hands of the judge. A judge is an official granted authority by law to examine, try, and decide cases in court. When handling a case until the final ruling, a judge must carefully consider all aspects related to the case at hand.

Legal findings is defined as a process of law formation by judges or other legal officials in response to specific legal events. Legal findings is an effort to concretize general and abstract legal provisions based on actual occurrences. Judges must adjust the law to concrete circumstances because existing legal regulations cannot encompass all events that arise in society.

Law enforcement is the process of implementing the law or upholding the moral values contained within the law, either normally without dispute or in the event of a legal violation. This law enforcement process is fundamentally influenced by the legal system, which, according to Friedmann, consists of three factors: legal substance, including rules, norms, and actual human behavior patterns; the legal structure, which refers to law enforcement institutions; and culture, which encompasses the attitudes, values, thoughts, and expectations of society. From various sources, factors influencing legal systems include a nation's historical background, characteristics, and ways of thinking, legal sources, and ideology. Based on these factors, the world can generally be divided into the civil law and common law systems.

In judicial legal findings, laws are seen as just one stage in the formation of law and must be supplemented and clarified by judges through practical legal interpretation. Here, judges not only apply laws to concrete cases but also create and shape law.

According to Sudikno Mertokusumo, legal findings is the process of law formation by judges and other legal officials by concretizing general laws to apply them to specific cases. Sidharta similarly suggests that legal findings involve connecting identified facts to particular legal sources.

If legislation is unclear, the judge is obligated to interpret it in a way that produces a fair ruling that aligns with the intent of the law, aiming for legal certainty. According to Sudikno Mertokusumo, human life is vast and varied, making it impossible for legislation to comprehensively cover every aspect of life. Thus, no legislation can fully address every issue that arises in society, and when the law is unclear, it must be sought out and discovered.

In his book, Sudikno Mertokusumo references Montesquieu, who described three forms of government, each with its own method of legal findings. In a despotic state (*état despotique*), there are no laws, so judges decide each case based on personal judgment, engaging in absolute legal findings. In an ideal state, legal findings is heteronomous, where judges apply laws according to their text. In a monarchic state (*état monarchique*), laws—whether detailed or not—must first be interpreted to find their "spirit" before being applied. This legal finding system includes both heteronomous and autonomous elements. Montesquieu's types of states reflect the function of judges: they sometimes act as mere interpreters of the law, while at other times they have the freedom to interpret or supplement it based on their legal reasoning and conscience.

Generally, legislation is of a general nature, meaning it cannot be directly applied to specific and concrete cases. In recent trends, lawmakers tend to draft more general laws, requiring judges to continuously engage in legal findings, i.e.,

concretizing or individualizing legal rules to suit concrete cases. This trend grants judge greater freedom to engage in legal findings before issuing rulings. It also reflects a shift from judges being strictly bound to laws (*normgerechtigkeit*) to judges acting freely according to their sense of justice (*einzelfallgerechtigkeit*), as reflected in their rulings.

In terms of judicial legal findings, the Law on Judicial Power specifies several provisions judges must adhere to, including Article 4, paragraph (1). According to this article, courts must adjudicate cases according to law. This means that judges, in performing their duties, must follow the law. In Indonesia's positive legal system, the main source of law for judges in adjudicating and deciding cases is legislation.

Conversely, Article 10, paragraph (1) of the Law on Judicial Power, which contains the principle of *rechtsweigerung*, states that judges are prohibited from refusing to examine and adjudicate a case brought before them on the grounds that the law does not exist or is unclear. The application of this principle complements the principle of *ius curia novit*, meaning that judges are presumed to know all the law. When faced with an unclear or incomplete law, judges are expected to fill in the gaps and clarify the law based on this principle.

Judges, as enforcers of law and justice, are required to adjudicate, follow, and understand the legal values and sense of justice that live within society, as stipulated in Article 5, paragraph (1) of the Law on Judicial Power.

Legislation can never fully regulate all aspects of human life. Sometimes, laws are incomplete or unclear. This is due to rapid technological developments, which have caused societal interests to evolve while laws remain relatively static or unchanged. In situations where laws are unclear or incomplete in addressing specific cases, judges are required to continue discovering the law. With the freedom and independence granted by Article 24 of the 1945 Constitution and further elaborated in Article 1, point 1 of the Law on Judicial Power, judges are given the authority to interpret or reason legally.

The term "legal findings" is often associated with terms like "legal application," "law formation," or "law creation." In the Indonesian legal system, which is based on the civil law system, judges are bound by legislation, so legal findings by judges is often referred to as the application of the law. A judge's duty in resolving a case is merely to apply the law to the facts or events presented to them, as judges are generally viewed as "mouthpieces" of the law. Judges are prohibited from creating general rules in their rulings. This means that judges can only adjudicate concrete cases based on general regulations and cannot create general rules through their rulings.

Judicial legal findings relate to the judge's function, which can be divided into two parts: a) discovering the law in areas where no regulations exist for a particular

case, and b) applying the applicable law as *the living law*. These functions are linked to Sudikno Mertokusumo's assertion that a judge's ruling, as a result of legal findings, contains two elements: on the one hand, it is a solution to a concrete case, and on the other, it establishes a legal rule for the future.

Judges are also often referred to as law creators or *law makers*. According to Yahya Harahap, the role of judges as *law makers* is especially important when they face cases governed by general legal provisions or those that concern the public interest. The judge's role in discovering the law is also supported by Article 5, paragraph (1) of the Law on Judicial Power, which states that judges, as enforcers of law and justice, must explore, follow, and understand the values that live within society.

Thus, judges must be knowledgeable about all laws in the written sense, while also understanding the development of legal values and the sense of justice that live and evolve within society, as stipulated in Article 5, paragraph (1) of the Law on Judicial Power.

Conversely, Article 10, paragraph (1) of the Law on Judicial Power, which contains the principle of *rechtsweigeren*, stipulates that judge are prohibited from refusing to examine and adjudicate a case brought before them on the grounds that the law does not exist or is unclear. The application of this principle is complemented by the principle of *ius curia novit*, meaning that judges are presumed to know all the law. When faced with an event where the law is incomplete or unclear, judges are required to fill in and clarify the law.

As enforcers of law and justice, judges must adjudicate, follow, and understand the legal values and sense of justice that live within society, as stated in Article 5, paragraph (1) of the Law on Judicial Power.

Laws can never fully regulate all human activities in a complete and comprehensive manner. Sometimes, laws are incomplete or unclear. This is a result of rapid technological developments, which cause societal interests to evolve, while laws remain static or unchanged.

In situations where the law is unclear or incomplete in regulating specific events, judges are required to continue discovering the law. With the freedom and independence granted by Article 24 of the 1945 Constitution, further elaborated in Article 1, point 1 of the Law on Judicial Power, judges are given the authority to interpret and reason legally.

The term "legal findings" is often equated with terms such as "legal application," "law formation," or "law creation." In Indonesia's legal system, which is based on civil law, judges are bound by legislation, so legal findings by judges is often referred to as the application of the law. A judge's task in resolving a case is simply

to apply the law to the facts or events presented to them, based on the idea that judges are mere "mouthpieces" of the law.

In the process of legal findings, judges are also often seen as law creators, especially when they handle events that are not yet regulated by law. In discovering the law for cases that are not clearly regulated by legislation, judges often employ creative elements, rather than relying solely on logical reasoning as in the application of law to a case. In discovering the legal basis, a judge's creativity plays a significant role. Judges must be bold enough to create law that does not contradict the broader legislative system while fulfilling societal needs.

### **Problem formulation**

How does jurisprudence exist as a form of legal findings by judges that ensures justice and legal certainty?

## **2. Research Method**

### **A. Type of Research**

The type of research used is normative legal research, which involves analyzing legislation related to judicial power, particularly the independence of judges in law enforcement in civil cases. This research traces the meaning of judicial independence in the 1945 Constitution of the Republic of Indonesia and other related laws, especially concerning the judge's freedom to decide cases within the framework of law enforcement, viewed from the perspective of Islamic law.

### **B. Approach Method**

In this research, the author uses a statute approach, focusing on the analysis of legislation related to judicial power and judicial independence. Additionally, an analytical approach is also used.

## **3. Results and Discussion**

### **1. Legal Findings**

#### **a. Definitions of Legal Findings**

According to Sudikno Mertokusumo, legal finding is generally understood as the process of law formation by judges or other legal officials tasked with implementing the law and applying legal provisions to concrete cases. The reason for engaging in legal findings is that human activities are vast and innumerable, making it impossible for legislation to fully and clearly cover every aspect. As a result, no legislation is perfectly complete or clear.

When the law is incomplete or unclear, it must be sought out and discovered.

Pontier explains that legal finding is a reaction to the challenges judges face in the process of discovering the law. This reaction is directed toward answering how judges approach concrete cases brought before them and arrive at their decisions.

Legal finding is the primary duty of judges, given that they are often confronted with concrete cases or conflicts in society. The outcome of legal findings by judges can serve as an effort to align the *das sollen* (the ideal law) with the *das sein* (the reality) through law enforcement in the context of establishing a legal state. Legal findings understood as the process of law formation by judges and other legal officials by applying general laws (*das sollen*) to specific concrete events (*das sein*).

In terms of judicial activity, legal findings refer to a series of legal activities aimed at finding legal rules that are confirmed or declared to have truly occurred, followed by the qualification of concrete events into legal events. This is because legal rules can only be applied to legal events.

Once the relevant events are proven, they are considered or declared to have truly occurred. Relevant events are those important to the law. A relevant event means that the event can be addressed by the law.

To establish a concrete event means to explain the facts of the case, as this process provides a systematic and chronological overview or a comprehensive picture of the case. Once the concrete event is established, it must be translated or converted into legal language, meaning its legal qualification must be determined. The process of legal findings begins at this stage of qualification, as the judge connects the concrete event with a specific legal source.

Once the legal provision is found, the legal event related to the concrete event is identified. After the legal event is identified, it can be confirmed, as legal findings can only be applied to legal events.

To discover the legal provision applicable to the proven concrete event, the judge must first establish the connection between the legal provision and the concrete event (*das sein*). Then, the relationship between the legal provision and the concrete event is determined. Here, the general legal provision is concretized by linking it to the specific concrete event. Even when the judge finds the legal provision that will be applied to the concrete event, the law cannot be directly applied to the event because the law is general, while the concrete event is specific.

Legislation generally cannot cover all aspects of human activity, as human activity is vast and dynamic, while laws regulate predetermined and static matters. Judges must remember that law is a system, and in legal findings, they must always operate within the legal system. If there is a legal gap, judges must fill the gap, and if the law is unclear, judges must clarify the ambiguity.

Essentially, no legislation is perfectly clear or complete. Therefore, when adjudicating a case, a judge must first interpret the law or engage in law formation. By interpreting or forming the law, judges can clarify and fill in the gaps in the law.

The qualification process ends with the findings or formulation of the legal issue. Afterward, the relevant legal provision must be found that can be applied to the discovered legal issue. Once the legal provision is applied to the legal issue, the judge must make a decision. To make or deliver a decision means to render a judgment in a ruling that cannot be withdrawn or altered, even if it has not yet obtained legal force, except at a higher court. Through legal findings, judges can complement the law if it is incomplete or clarify it. The results of legal practice are reviewed by collecting, classifying, and analyzing court decisions that have become final and binding (jurisprudence) to distill the principles and rules of law. Jurisprudence refers to final court rulings that have been followed by subsequent courts in accepting, examining, and deciding cases, as well as in supervising the execution of judgments.

Sometimes, the wording of legislation is clear, but the law may be outdated, so the judge must first adapt it to societal developments before applying it to the concrete case. The ambiguity or incompleteness of legislation stems from the fact that law, as a system, is a human creation. As a human creation, the law must change according to the evolving needs of society. However, laws cannot always be easily changed, as any amendments must follow procedures that require time and resources.

In this regard, Hans Kelsen has also stated: A court may be given the authority through its ruling to not only create individual norms that are binding for the case at hand but also general norms. This applies when the individual norm created by the decision is not established in general norms, and when there are laws or general norms that contain ambiguous language leading to various interpretations, the judge must decide by not applying the general norms of existing law but based on their own discretion. In this context, Sunarjati Hartono argues that existing legislation is tested and solidified through the judicial process, making courts both stabilizers and reformers of the law.

#### **b. Legal Basis for Legal Finding**

The legal basis for *legal findings* is established in Article 1, Paragraph (1) of the Law on Judicial Power, which states that “Judicial power is an independent state authority to administer justice in order to uphold law and justice based on *Pancasila*, for the realization of the Rule of Law of the Republic of Indonesia.”

Article 4, Paragraph (1) of the Law on Judicial Power declares, “The court shall adjudicate according to the law without discriminating against any person.” This means that judges must remain within the legal system and cannot deviate from the law, thus necessitating the *legal findings* process. Article 10, Paragraph (1) of the Law on Judicial Power further states, “The court is prohibited from refusing to examine, adjudicate, and decide a case submitted to it on the grounds that the law does not exist or is unclear, but must examine and adjudicate it.” From this, it can be concluded that *legal findings* refer to the process of law formation by judges, where judges do not only rely on textual context or laws alone

but may also refer to other legal sources.

## 2. Judge Duties and Function

Normatively, the duties and functions of judges are regulated in the Law on Judicial Power, although the law does not detail them extensively. The terms "duties and functions of judges" can be found in Article 3, Paragraph (1) of the Law on Judicial Power, which states that judges are obliged to uphold judicial independence in performing their duties and functions.

Furthermore, Article 11, Paragraph (1) of the Law on Judicial Power stipulates that in examining, adjudicating, and deciding cases, judges are assisted by a court clerk. From this provision, it can be understood that the primary duties of a judge are to examine, adjudicate, and decide cases.

According to Article 1, point 1 in conjunction with Article 19 of the Law on Judicial Power, it is clear that the function of a judge is to uphold law and justice based on *Pancasila* for the realization of the Rule of Law in the Republic of Indonesia. From this, it is explained that a judge is a state judicial official authorized by law to adjudicate.

Under Article 2, Paragraph (2) of the Law on Judicial Power, state courts apply and enforce law and justice based on *Pancasila*. The term "application of law" is often interpreted as the application of statutory law to a disputed event through the trial process. Hence, the function of a judge is often referred to as being the "mouthpiece of the law" (*bosche de la loi*). In addition to applying the law, judges also have the function of creating law in situations where the law is absent or unclear, as provided in Article 10, Paragraph (1) of the Law on Judicial Power, which embodies the principle of *rechtsweigeren*. As enforcers of law and justice, judges must examine and adjudicate all cases brought before them. If the law is unclear or incomplete, judges, according to Article 5, Paragraph (1) of the Law on Judicial Power, must adjudicate by following and understanding the legal values that live within society.

As officials exercising judicial power, judges must possess integrity and an unblemished character, and they must be honest, fair, and experienced in the field of law. Moreover, in carrying out their duties and functions, judges are required to maintain the independence of the judiciary, as stipulated in Article 6, Paragraph (2) of the Law on Judicial Power.

In relation to maintaining the honor, dignity, and behavior of judges, before the Law on Judicial Power was enacted, the Supreme Court issued Circular Letter No. 6 of 2001 regarding Hearing Complainants' Reports, which contained the following: To carry out their duties and functions in court, the Law on Judicial Power has established several obligations for judges, as stated in the following articles:

- a) To examine, adjudicate, and decide on every case submitted to them, as regulated in Article 1, point 1 in conjunction with Article 10, paragraph (1) of the Law on Judicial Power;
- b) To apply and uphold law and justice based on \*Pancasila\*, as regulated in Article 2, paragraph (2) of the Law on Judicial Power;
- c) In carrying out their duties and functions, judges are required to maintain judicial

- independence, as regulated in Article 3, paragraph (1) of the Law on Judicial Power;
- d) To adjudicate according to law without discriminating against any person, as regulated in Article 4, paragraph (1) of the Law on Judicial Power;
  - e) To assist those seeking justice and endeavor to overcome any obstacles and impediments to achieve a simple, speedy, and low-cost judicial process, as regulated in Article 4, paragraph (2) of the Law on Judicial Power;
  - f) To explore, follow, and understand the legal values and sense of justice that live within society, as regulated in Article 5, paragraph (1) of the Law on Judicial Power;
  - g) Judges must possess integrity, an unblemished character, honesty, fairness, professionalism, and legal experience, as regulated in Article 5, paragraph (2) of the Law on Judicial Power;
  - h) To examine and decide cases in open court, as regulated in Article 13, paragraph (1) of the Law on Judicial Power;
  - i) In deliberation sessions, every judge is required to provide written considerations or opinions on the case being examined, as regulated in Article 14, paragraph (2) of the Law on Judicial Power;
  - j) To assist each other when requested for the benefit of the judiciary, as regulated in Article 15 of the Law on Judicial Power;
  - k) To recuse themselves from a trial if they have a direct or indirect interest in the case being examined, as regulated in Article 17 of the Law on Judicial Power;
  - l) To provide legal considerations, opinions, and advice to other state institutions when requested, as regulated in Article 22 of the Law on Judicial Power;
  - m) In examining and deciding cases, judges are responsible for the rulings and decisions they make, as regulated in Article 53, paragraph (1) of the Law on Judicial Power.

In their role as enforcers of law and justice in court, the obligations of judges as stipulated in the Law on Judicial Power are as follows:

- 1. The obligation to adjudicate cases according to the law without discriminating against any person;
- 2. The obligation to adjudicate cases according to the law without discriminating against any person;
- 3. The obligation to maintain judicial independence;
- 4. The obligation to assist those seeking justice and to make every effort to overcome obstacles and impediments for the achievement of a simple, speedy, and low-cost judicial process;
- 5. The obligation to recuse themselves from a trial if they have a direct or indirect interest in the case being examined;
- 6. The obligation to examine and decide cases in open court;
- 7. The obligation to provide written considerations or opinions on cases being examined during deliberation sessions;
- 8. The obligations related to their position, which are:
  - (a) To apply and uphold law and justice based on *Pancasila*;
  - (b) To maintain judicial independence;
  - (c) To provide legal explanations, considerations, and advice to other state institutions when requested;
  - (d) To explore, follow, and understand the legal values and sense of justice that live

within society;

(e) To possess integrity and an unblemished character, to be honest, fair, professional, and experienced in the field of law.

According to Sudikno Mertokusumo, a judge's ruling is a declaration made by the judge, as a state official authorized to do so, which is pronounced in court with the aim of ending or resolving a dispute or issue between parties. Not only the oral declaration in court is considered a ruling, but also the written statement that is later pronounced by the judge in court. A draft ruling (in writing) does not have the force of a decision until it is pronounced in court by the judge.

A court ruling marks the end of a legal examination process conducted by the panel of judges, following a trial that adheres to procedural law as stipulated in Article 14 of the Law on Judicial Power.

Article 50, Paragraphs (1) and (2) in conjunction with Article 13, Paragraph (2) of the Law on Judicial Power requires that all court rulings must contain reasons and grounds for the decision, as well as specific articles from the relevant legislation or unwritten legal sources that form the basis for the judgment. The court clerk who participated in the trial is also involved. The ruling must then be pronounced in an open court session. A ruling must take into account the arguments in the lawsuit in accordance with the principles of evidence law or provide a detailed assessment of the evidence. Similarly, if the legal grounds are not considered or the ruling does not align with the lawsuit's *petitum*, the lawsuit may be declared without legal basis and therefore inadmissible (*niet ontvankelijk verklaard*).

The same is stipulated in Article 184, Paragraph (1) concerning civil court rulings, which states that a ruling must contain a brief but clear summary, the lawsuit and response, and the reasons for the decision. If the ruling is based on legislation, that law must be cited. Civil court rulings must be signed by the panel of judges and the court clerk who participated in the trial, and the ruling must be pronounced in an open court session.

The Supreme Court, through Circular Letter No. 5 of 1959 dated April 20, 1959, and No. 1 of 1962 dated March 7, 1962, instructed, among other things, that the written draft of the ruling must be completed when the ruling is pronounced. This circular aims to prevent discrepancies between the content of the ruling and what is pronounced in an open court session. If there is a difference between what is pronounced and what is written, the valid version is what was pronounced.

### **3. Jurisprudence as a Source of Law**

In conducting legal findings, judges often refer to and rely on jurisprudence, recognizing it as one of the sources of law. Legal findings themselves eventually become jurisprudence. In Latin, the term "jurisprudence" originates from the word *jurisprudentia*, which means legal knowledge. In Dutch, jurisprudence is known by the technical judicial term "jurisprudentie," while in French, the term is understood or interpreted as "jurisprudence," referring to fixed court rulings or judicial law.

Sudikno Mertokusumo states that jurisprudence applies law concretely, involving the assertion of rights through an independent state institution, free from any influence, and issuing binding and authoritative decisions. In short, Sudikno believes that jurisprudence is a court decision.

Moreover, jurisprudence can also refer to legal teachings or doctrines contained within rulings. Jurisprudence, or court decisions, are products of the judiciary containing legal norms or rules that bind the involved parties. Thus, court decisions only bind specific individuals and do not apply universally, like legislation. Court decisions contain legal norms; they are law. From the moment a ruling is delivered, it has binding power for the parties involved, recognizing the existence of the decision.

Jurisprudence as a source of law represents one form of determination in Indonesia's constitutional law, with court rulings settling specific disputes. Additionally, judicial decisions are always in the form of rulings and only apply to the issues being adjudicated, binding only the relevant parties.

In judicial practice, how is jurisprudence understood? In various trainings, Supreme Court officials have explained that the term jurisprudence is only understood to refer to Supreme Court rulings. These rulings are compiled into a book titled *Jurisprudensi Mahkamah Agung Negara Republik Indonesia*, which is referred to as jurisprudence. Based on this understanding, the scope of jurisprudence has been narrowed, although its definition by experts is much broader.

From the above opinions, jurisprudence is defined as rulings from the first-level courts, appellate courts, or the Supreme Court itself that have become legally binding. These decisions address cases where the law is unclear, carrying justice and objective truth, and have been repeatedly followed by subsequent judges in similar cases. This can be seen in Supreme Court Decision No. 63 K/Pdt/1987: "In cases where the defendant pays for goods purchased with a bad check (*Giro Bilyet*), this can be interpreted as the defendant being in breach of contract and having a debt or loan to the plaintiff for the price of the goods. Regarding damages due to the delayed payment, such damages are based on non-contractual interest, set at 6% annually. It is considered fair for the judge to assess the applicable interest based on the prevailing bank interest rates at the time the contract was made."

In analyzing and forming laws in cases where no regulations exist, judges are required to explore the legal values that exist and are upheld in society. Judges also have the authority to deviate from outdated written laws that no longer meet society's sense of justice. These judicial rulings are later read and understood by legal practitioners and other law enforcement officials, eventually becoming decisions that are viewed as realistic, rational, fair, and aligned with the community's sense of justice. Over time, such rulings may evolve into established jurisprudence. Occasionally, jurisprudence may conflict with clear written legal norms, but judges may deviate from these norms based on considerations of social justice. The development of jurisprudential law aims to avoid judicial confusion or

disparity in assessing and deciding similar cases.

To compile jurisprudence, the Supreme Court of the Republic of Indonesia periodically publishes a book through its Legal and Public Relations Bureau, which contains important rulings that establish legal principles and can be used as reference and guidance for future jurisprudence. Institutionally, the Supreme Court is the only constitutional body authorized to compile and announce jurisprudence. According to Supreme Court Circular No. 02 of 1972 on the Collection of Jurisprudence, other institutions, whether private or governmental, cannot announce jurisprudence unless it has been discussed with the Supreme Court of the Republic of Indonesia.

As an example, the *Jurisprudence Book of the Supreme Court of the Republic of Indonesia 2017* was compiled based on the decision of the Chief Justice of the Supreme Court of the Republic of Indonesia, No. 57/KMA/SK/III/2017, concerning the Jurisprudence Publishing Team of the Supreme Court of the Republic of Indonesia, which addresses the formulation of legal principles in important rulings. The 2017 edition of jurisprudence is divided into the following three segments:

- Substantive legal principles as contained in the jurisprudence of special criminal law and military law;
- Procedural legal principles as contained in the jurisprudence of civil law, special civil law, criminal law, and administrative law;
- Substantive and procedural legal principles as contained in the jurisprudence of religious law.

In the summary section of the *Jurisprudence Book of the Supreme Court of the Republic of Indonesia 2017*, it is explained that a ruling can be considered jurisprudence if it meets the following criteria:

- The ruling has legal force (is final and binding);
- The ruling has been tested or affirmed by the highest court (the Supreme Court);
- The ruling on a Judicial Review (*Peninjauan Kembali* or PK) as long as it meets the requirements for a PK;
- The legal issue decided has not yet been regulated in legislation.

Based on the explanation above, it can be seen or concluded that jurisprudence is one of the sources of law. As such, jurisprudence as a source of law can be used by judges to adjudicate similar cases, contribute to the formation of laws or other regulations by the government, and be utilized as a source of knowledge by scholars or the general public.

According to Yahya Harahap, jurisprudence, if it truly contains a shared fundamental idea that encompasses two dimensions—those that consider the foundational values of *Pancasila* and the 1945 Constitution, combined with globalization values—produces a rational legal formula. In practice, judges should naturally follow this. Furthermore, Yahya Harahap states that the function of jurisprudence is to create legal standards, to establish a common legal basis and uniformity of legal concepts, and to uphold legal certainty.

#### 4. Example of Jurisprudence regarding breach of contract (wanprestasi):

1. Supreme Court Decision No. 394 K/Pdt/1984 was a ruling in a cassation case concerning a debt dispute between a creditor and debtor involving a bank that held control over the collateral as security for the debt, and the State Assets and Auction Service Office (KPKNL). This jurisprudence contains the following legal principle: "Items that have been pledged as collateral to Bank Rakyat Indonesia, Gresik Branch, cannot be subjected to *conservatoir beslag* (seizure of assets for security)."

##### Case Details:

The case began with a debt dispute between Poerjadi Hadi Soemarno, as the lender (creditor), and Soekemi Saleh and Imam Sukarno Adiwidjojo, as the borrowers (debtors). However, the debtors failed to fulfill the agreement/obligation, which led to a lawsuit filed in Gresik District Court by the original plaintiff, Poerjadi Hadi Soemarno (the creditor), against Soekemi Saleh (debtor) as the first defendant, Imam Sukarno Adiwidjojo as the second defendant, the Head of Bank BRI Gresik Branch as the third defendant, and the Head of the State Debt Settlement Committee of Surabaya, East Java Branch, as the fourth defendant.

The lawsuit sought the following: (1) For the Gresik District Court to declare that the original defendants I and II were in breach of contract; (2) To declare the *conservatoir beslag* on the movable and immovable property of defendants I and II valid; (3) To hold defendants I and II jointly liable for the return of 1,000 grams of 24-karat gold plus 5% interest x IDR 2,500,000 = IDR 125,000; (4) To order defendants III and IV to withdraw the auction announcement for the aforementioned items.

Gresik District Court's Ruling: (1) The court partially granted the plaintiff's claim; (2) Declared that defendants I and II were in breach of contract; (3) Declared the *conservatoir beslag* on the assets of defendants I and II, as stated in the previous confiscation report of Gresik District Court, valid; (4) Ordered defendants I and II to repay, after settling the debt to Bank BRI, IDR 7,000,000 jointly, plus interest of 3% per month to the plaintiff from October 1976 until the ruling was enforced.

Surabaya High Court's Appeal Decision: Upon appeal by the plaintiff, the Surabaya High Court revised the Gresik District Court's ruling as follows: partially granting the plaintiff-appellant's claim, declaring defendants I and II in breach of contract, upholding the *conservatoir beslag* on the assets of defendants I and II, and ordering defendants I and II to repay, after settling the debt to Bank BRI, IDR 7,000,000 jointly, plus interest of 6% per month.

Cassation to the Supreme Court: In the cassation appeal, the applicant objected, arguing that the decisions of the Gresik District Court and Surabaya High Court violated Article 173(3) HIR because the ruling added provisions not requested by the cassation applicant. Moreover, the 6% monthly interest set by the Surabaya High Court exceeded the requested 5%.

The Supreme Court accepted the cassation appeal by Poerjadi Hadi and revised the decisions of both the Gresik District Court and the Surabaya High Court. The Supreme

Court ruled that the *conservatoir beslag* was valid only for the assets not pledged to Bank Rakyat Indonesia, Gresik Branch, and ordered defendants I and II to jointly pay the debt of IDR 2,500,000 plus 6% annual interest from October 1976 until the debt was fully repaid. The plaintiff's claim for additional damages was rejected.

Impact of the Ruling: Supreme Court Decision No. 394 K/Pdt/1984 was followed by similar rulings in debt cases involving collateral, thus becoming jurisprudence for judges in deciding similar cases. Follow-up rulings include Decision No. 05/Pdt.G/2013/PN.Pkl., Decision No. 08/Pdt.G/2012/PN.Pkl, Decision No. 38/Pdt.G/2012/PN.PKL, Decision No. 18/Pdt.G/2014/PN.TGL, and Decision No. 6/Pdt.G/2015/PN.TGL.

The legal principle used in these subsequent rulings is: "Assets that have been pledged as collateral cannot be subjected to *conservatoir beslag* (seizure for security purposes)."

Although there are differences between these follow-up cases and Case No. 394 K/Pdt/1984 (the basis of the jurisprudence), in Case No. 394 K/Pdt/1984, the party requesting the seizure was the creditor (lender) of the debtor's assets that were pledged to a third party (Bank). However, in subsequent cases following the legal principle of Jurisprudence No. 394 K/Pdt/1984, the plaintiff/requesting party for the *conservatoir beslag* was the owner of the collateral (the debtor), who claimed that their interests were harmed by the creditor (Bank) or other parties (such as the State Assets and Auction Service Office/KPKNL).

This legal principle, as established by Jurisprudence No. 394 K/Pdt/1984 and followed in similar cases, has the potential to harm debtors or other parties with an interest in the collateral. It limits their ability to request a *conservatoir beslag* on the collateral, which can be seen as infringing on their right to justice.

As is widely understood, one of the goals of law is to achieve justice, and in order to do so, a person harmed by another party can choose to resolve their case through legal proceedings in court. Every citizen has the right to obtain justice through a judicial process aimed at protecting individuals from harm caused by others. One of John Rawls' principles of justice is "to provide equal rights and opportunities to the widest possible basic liberties for every individual."

Therefore, there is a need to revise the existing legal principle from Jurisprudence No. 394 K/Pdt/1984 to state: "Assets that have been pledged as collateral to Bank Rakyat Indonesia, Gresik Branch, cannot be subjected to *conservatoir beslag*." A new legal principle should be established that grants rights and does not limit the ability of any party—whether debtor, creditor, or other interested parties—to request a *conservatoir beslag* on collateral if there are reasonable grounds for doing so. This would ensure that the legal objective of providing justice for all is realized without limiting or obstructing the rights of individuals as a result of existing jurisprudence. Thus, a party could request a *conservatoir beslag* on collateralized assets if there are reasonable grounds indicating that their interests are being harmed. This ruling has since been followed by several judges in subsequent cases, such as:

2. Supreme Court Decision No. 1076 K/Pdt/1996 contains the following legal principle: "Even though it was agreed upon by both parties that the borrower must pay 2.5% interest per month, the interest rate should be adjusted to the interest rate applicable at government banks, which is 18% per year."

The Supreme Court's legal considerations were as follows:

- The objection is justified because the *judex facti* (Surabaya High Court) erred in applying the law, with the following considerations:
- According to the Debt Acknowledgment Letter dated August 10, 1998, it was proven that the original defendant owed the plaintiff IDR 350,000,000 (three hundred and fifty million rupiah). Both parties agreed that the original defendant was obligated to pay 2.5% interest per month on the loan to the original plaintiff.
- Since the interest rate was agreed upon by both parties, it legally binds them, and the payment of this interest is justified by law. It is fair and in line with justice for the original defendant to pay the agreed-upon interest in addition to the principal debt.
- Furthermore, the seizure of the debtor's assets as collateral is legally justified to ensure that the plaintiff, as the winning party, can recover the borrowed money from the original defendant, ensuring that the plaintiff's claim is not in vain.
- Therefore, the collateral seizure imposed by the District Court in this case is appropriate and should be upheld.

Supreme Court's ruling:

- Granted the cassation request of the cassation applicant, Singgih.
- Annulled the Surabaya High Court's decision, which had amended the ruling of the Malang District Court dated March 30, 1994, No. 241/Pdt/G/1993/PN Malang.

#### 4. Conclusion

Regarding judicial independence, legal cases do not inherently undermine the values of judicial independence. As a result, jurisprudence represents an enhancement of the law, containing legal norms that bind judges. Therefore, it cannot be said that judges are not independent when they decide to consider jurisprudence.

Furthermore, jurisprudence serves as a guideline for judges in deciding cases. With established guidelines within the judiciary, consistency will emerge, and controversial decisions will be avoided. Ultimately, this will ensure legal certainty and trust in the judiciary and its decisions, both nationally and especially at the international level.

The purpose of jurisprudence is to avoid confusing judicial decisions or disparities in evaluating and deciding similar cases. A judge, in their ruling, can consider provisions from legislation, jurisprudence, legal doctrine, or customary law. Article 50 of Law No. 48 of 2009 on Judicial Power also emphasizes that the reasons and legal grounds for the decision, including relevant legislative articles

or unwritten legal sources, must be included in a court decision. The position of a judge obliges them to provide sufficient legal reasoning, even if such reasons were not raised by the litigants.

When issuing a ruling on a case, judges follow three principles: the principle of Utility, the principle of Justice, and the principle of Certainty. Sometimes the principles of legal certainty and justice may conflict in a case. In such situations, the principle of justice is prioritized. However, if the principle of utility conflicts with legal certainty, the principle of utility is used, while the principle of legal certainty is set aside.

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