

# Legal Reconstruction of Judges' Decision on Obscure Lawsuit Exception Based on Justice Value

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## Abstract

The aim of this research is to find and analyze the weaknesses of the judge's decision on the obscure lawsuit exception in Indonesia and how to reconstruct it based on justice value. This study uses the constructivism paradigm, the approach method is sociological research, the research specifications are analytical descriptive, the data used are primary data and secondary data, primary data is obtained by interview while secondary data is obtained by means of literature study, data analyzed qualitatively by using the Dignified Justice Theory, Legal System Theory, and Progressive Legal Theory. The results of the study show that the Weaknesses include weaknesses in legal substance, namely weaknesses in the provisions of Article 136 HIR. Weaknesses in Legal Culture are that positivism is still the mainstream of judges therefore the Panel of Judges often does not read and study cases together from the start and the Chairperson of the Panel of Judges as a senior judge is still decisive in making decisions, next, the weaknesses in the Legal Structure including the acceptance stage, where, after starting their career as a judge, they must submit themselves to the supervision of judges and structures outside the court. Therefore, the legal Reconstruction intended by the author is related to the values of Pancasila, as the Reconstruction of the Norm is an exception to the obscure lawsuit being considered and decided before the examination of the main case.

**Keywords:** Legal Reconstruction, Decision, Obscure Lawsuit, Justice Value.

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## INTRODUCTION

The judge's decision on a lawsuit can be in the form of a lawsuit being granted, meaning that the Plaintiff's lawsuit is granted by the judge because the Plaintiff can prove the arguments for his lawsuit, and the lawsuit's decision is rejected, meaning that the Plaintiff's lawsuit is rejected by the judge because the Plaintiff cannot prove the arguments for his lawsuit so that the lawsuit decision is granted and the lawsuit is being rejected is a decision on the principal case and the decision on the plaintiff's lawsuit is declared unacceptable, meaning that the plaintiff's lawsuit does not meet the formal requirements of a lawsuit so that the lawsuit's decision is declared unacceptable (*Niet Onvankelijk Verklaard/N.O.*) is a decision out of the main case, in this case, Sudikno Mertokusumo (2007) explains that if the lawsuit is not based on law, that is, if the events as the basis for the claim do not justify the claim, the claim will be declared inadmissible (N.O.) if the claim is unreasonable, that is, if events that justify the claim are not presented, the claim will be rejected.

A decision not accepted intends to reject a lawsuit outside the subject matter of the case, while a rejection is a decision after consideration of the subject matter. If the decision is not accepted, the Plaintiff may later submit his claim again, but in practice today it is not uncommon for an unacceptable decision to be appealed, whereas in the event of a refusal, there is no longer an opportunity to file the lawsuit a second time to the same judge (*ne bis in idem*). Because the "*not accepted*" decision (N.O.) is intended to reject a claim outside the subject matter, which means that the judge has not yet examined the main case, whereas in the "*refused*" decision the judge has already examined the main case, logically in one decision it is impossible to contain the dictum "*not accepted*" and at the same time "*refused*".

Riduan Syahrani (2016) explained that the decision stating that the claim was unacceptable was meant as a rejection of a claim outside the point of the case, while the decision stating that the claim was rejected was a decision after considering the main

matter of the case. So, between this two types of decisions that have enormous differences and different consequences, Against an unacceptable decision (*niet onvankelijk verklaard*), the Plaintiff can still file his lawsuit back to the District Court, while against a decision declaring the lawsuit rejected (*onzegd*), the Plaintiff cannot submit his lawsuit to the District Court (*ne bis in idem*), but can only submit an application for an appeal examination at the High Court.

In the process of settling civil disputes, one of the exceptions that can be made by the defendant against the Plaintiff's lawsuit is that the exception for the lawsuit has been prepared inaccurately and not thoroughly, so that the Plaintiff's claim is blurred if the defendant's exception for the vague lawsuit is accepted and justified by the judge, then the judge's decision on the civil case will declare the lawsuit unacceptable or the lawsuit declared unacceptable, the provisions for imposing a judge's decision on the exception of the lawsuit are blurred when the time of imposition is determined by Article 136 HIR which stipulates that the exception (objection) that the person being sued wants to submit, except regarding matters the judge do not have power, may not be presented and weighed individually, but must be discussed and decided together with the subject matter.

Based on the provisions of Article 136 of the HIR, the imposition of a judge's decision on exceptions other than exceptions to the competence or authority of the court must be considered and decided together with the examination of the main case, because the exception of a vague lawsuit is not an exception to the competence or authority of the court, it must be considered and decided together with the examination of the main case, it means that the judge's decision on the exception of the vague lawsuit is considered and decided after going through the answer stages, repliek, dupliek, proof of both evidence from the plaintiff and evidence from the defendant, local inspection (*descente*) of the object of dispute, the conclusion of both the plaintiff and the defendant, this means that the examination of the main case has been completed, but the results of the examination of the main case were not considered and not decided by the judge, because what was considered and decided is an exception to the blurred lawsuit.

Because of the provisions for imposing a judge's decision on the exception of a blurred lawsuit in the settlement of a civil case court process as described above, in practice, there are many civil dispute settlements in a civil court in which there are exceptions to a blurred lawsuit being considered and decided by the judge together with an examination of the principal case, so that the examination of the principal case in a civil case where there is an exception to a vague lawsuit becomes useless in the civil justice process and even results in the judiciary not being able to run simply,

quickly and at low cost which in turn cannot realize a civil justice process based on justice value (Widodo, 2018).

A vague or unclear lawsuit is deemed sufficient to be known by the judge by only examining the editorial contained in the lawsuit in question so that the judge should have been able to pass a decision on the exception of a vague or unclear lawsuit by declaring the claim unacceptable or the claim declared inadmissible and not to be accepted (*niet onvankelijke verklaard*) without having to be considered and dropped together with an examination of the subject matter.

In order for the imposition of a judge's decision on the exception of a vague lawsuit to realize civil justice based on the value of justice, it is necessary to update or reconstruct the provisions for imposing a judge's decision on the exception of a vague lawsuit, the provisions must be considered and decided before examining the main case, so that the judge's decision on the exception of a blurred lawsuit is in accordance with the principle of being simple, fast and low-cost, in turn, the judge's decision on the exception of a runaway lawsuit can create a just and dignified civil court process. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Judges' Decision on Obscure Lawsuit Exception Based on Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of the Regulation regarding the Judges' Decision on Obscure Lawsuit Exception?
2. How is the Legal Reconstruction of Regulation regarding the Judges' Decision on Obscure Lawsuit Exception Based on Justice Value?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses of the Regulation Regarding the Judges' Decision on Obscure Lawsuit Exception

According to Achmad Ali, the judge's duties include three stages, namely as follows: *Constatir* stage, where the judge determines whether the events proposed are true or not. For example, is it true that person A has broken the window of person B's house so that person B suffers a loss? Here the parties (in civil cases) and the public prosecutor (in criminal cases) are obliged to prove through the use of evidence. In this constant stage, the judge's activities are logical. Mastery of proving law for judges is needed at this stage. Next, the *Qualification* Stage, where the judge qualifies, including what legal relationship was A's actions earlier? In this case, whether it is qualified as an unlawful act or not (Article 1365 BW). And Lastly, The *Constituent* Stage, where the judge determines the law against the person concerned (the parties or the defendant, the judge uses a syllogism, namely drawing a conclusion from the major premise in the form of the rule of law (in this example, Article 1365 BW) and the minor premise in the form of the action of person A breaking the window of person B. The process of law discovery by judges begins at the qualification stage and ends at the constituency stage.

In the judicial environment, it is known that there is jurisprudence but which is a rule or provision in a decision that is then followed permanently by the judge. Next, Judge is considered to be part of the general law conviction as doctrine is also a source of legal discovery as is the case with the definition of an agreement as contained in Article 1313 of the Civil Code which is too general and unclear, so that doctrine helps define the agreement.

If the definition of law is limited to a decision of the authorities and in an even more limited sense as a legal (court) decision, the main issue is the legal duty and obligation to find out what can become law, so that through his decision, the judge can be considered as one of the factors lawmaker. So the important task of the judge is to adjust the law to the real things in society. If the law cannot be implemented according to the meaning of the word, the judge must interpret it. In other words, if the law is not clear, the judge is obliged to interpret it so that he can make a fair decision in accordance with the intent of the law, namely to achieve legal certainty. Because of that people can say, legislators, therefore, judges are not allowed to arbitrarily interpret binding rules, only interpretations that are in accordance with the intent of the legislators are the correct interpretations. Therefore, according to Polak, the method of interpretation is determined by (a) the material of the relevant laws and regulations (b) the place where the case was filed, and (c) according to the era.

The view that lived until the 19th century as a result of the influence of the teachings of the separation of powers where it was taught that judges cannot create or invent law has long been abandoned. In view of the jurists of this century, judges cannot make and reveal the thoughts contained in the law. Judges simply study laws and conduct analysis to find a way for firm matters through logical deduction by means of syllogisms, so this method is also called juridical geometry. Judges may not use other methods of interpretation other than grammatical, systematic, or historical interpretations if this does not mean that the judge is reneging on his duties which are not scientific in nature.

Legal discovery is usually interpreted as the process of law formation by judges or other legal officers who are in charge of implementing the law against concrete legal events. This is a process of concretization and individualization of general legal regulations.

In the discovery of the law, the judge can fully comply with the law. The discovery of this law occurs based on regulations outside the judge's self. The legislators make the general rules, while the judges only confirm that the law can be applied to the event, then the judge applies it according to the law. Thus, the discovery of law is nothing but the application of laws that occur logically forced as a syllogism. Here the judge does not carry out an independent function in applying laws to concrete legal events. Judges are only mouthpieces of laws that cannot change or add to laws. This classical view defended by Montesquieu and Kant has based on Montesquieu's basic thought that the formation of laws is the only source of positive law. For the sake of legal certainty, legal unity, and the freedom of its citizens who are threatened by the arbitrary

actions of judges, judges must submit to the formation of laws. In this view, the judiciary is nothing but a form of a syllogism; the law is the major premise, concrete events are the minor premise, and the judge's decision is the conclusion. A logical conclusion will not include more than what is contained in the law relating to concrete events. This is a letter lock view.

According to Achmad Ali and Wiewie Heryani who quoted Satjipto Rahardjo's opinion that now we are abandoning the logical view that only sees judges as mere "trumpets of the law", so since then we no longer view judges as executors of the law, but judges have made (judge-made) namely the verdict. In other words, the judge's decision is the law. Of course, there is a difference between the laws produced by the legislature in the form of laws and the laws made by judges. The law in the form of law is binding in general, while the judge's decision is only binding on certain parties.

The hope to realize the development of national law is currently dealing with various conditions that are currently not ideal. There are many factors that lead to such a legal condition. In terms of legal substance, for example, there are still many positive legal substances that have not been harmonized, causing implementation difficulties and legal uncertainty. There are also many complaints about the formation of positive law that is currently only based on momentary considerations and does not touch the interests of the wider community. From the aspect of legal substance, one of the discussions is written law or statutory regulations. The current condition of laws and regulations in Indonesia has found many problems both at the central and regional levels. These problems include, among other things, laws and regulations often do not meet the needs and developments of society so laws are left behind and laws and regulations are often unable to function effectively and efficiently.

## **2. Legal Reconstruction of Regulation Regarding the Judges' Decision on Obscure Lawsuit Exception Based on Justice Value**

The administration of justice is aimed at fulfilling the demands of justice seekers in a rule of law based on the legal awareness and ideals of society (Widodo, 2019). The ideals of community law are that the costs for justice seekers are as low as possible, the settlement of cases is simpler and faster, and it is fully resolved through proper legal channels. According to Nia Sari Sihotang, there were convoluted procedures that resulted in a case not being carried out simply. Simple can also be referred to as a process that is not complicated, clear, non-interpretible, easy to understand, easy to do, easy to apply, systematic, and concrete both from the point of view of justice seekers and from the point of view of law enforcers who have very diverse levels of qualifications, both in the field of the educational potential possessed, social, economic, cultural conditions and many more. The principles of

simplicity, speed, and low cost are court principles that if properly implemented, will provide comfort to justice seekers.

The use of the modern justice system as a means of distributing justice has proven to encounter many obstacles. The causal factor is that modern justice is loaded with formalities, procedures, bureaucracy, and strict methodology. Therefore, justice that is distributed through the judiciary is provided through bureaucratic decisions for the public interest and therefore tends to be rational justice, so it is not surprising that the justice obtained by modern society is none other than bureaucratic justice.

The settlement of disputes using the courts has been proven to cause a lot of dissatisfaction with the disputing parties and the wider community. Community dissatisfaction was expressed in the form of cynical views, ridiculing and blaspheming the court's performance because it was deemed to not humanize the parties to the dispute, alienating the parties to the dispute from justice, where trading of judge's decisions took place, and other blasphemy directed at the judiciary or according to Pramono Sukolegowo that in its implementation, the judiciary has received criticism and even criticism from various parties, this is due to various complex problems that entangle the world of justice in Indonesia, including the slow process of resolving disputes, the cost of proceedings in court is expensive, the court is considered less responsive in resolving cases so that decisions tend to be unable to resolve problems, and there is a buildup of cases at the Supreme Court level that are not resolved (Toebagus, 2022).

In fact, the public/justice seekers often complain about various things, especially those related to court proceedings (particularly civil proceedings) which tend to be long and convoluted, so it is very detrimental to justice seekers, both in terms of time, cost, and service. the court, as well as from the side of the court decision itself with regard to court decisions, based on objective facts, still shows that court decisions are unable to provide a satisfactory settlement to the parties. Besides that, court decisions are also unable to provide peace and tranquility to the parties to the litigation and the situation of losing and winning in a case does not bring peace but creates seeds of sorrow and hostility, and hate. Court decisions often do not provide legal certainty, in terms of philosophy and doctrine, in the life of a rule of law and democratic society, the certainty of law enforcement must be given, because this is a guarantee for upholding the principles of equal treatment and equality before the law and the application of the law by all people.

It is not surprising that to this day the people's satisfaction with legal certainty, including their sense of justice, is still far from over. This is because the

judiciary in Indonesia, after gaining its structural independence, is still dominated by the influence of positivism, so the legal products produced by the judiciary are still dry in capturing personal ethical intentions and collective awareness in society. The judiciary can only be held accountable positively in the sense that the decision has complied with the scientific method of making decisions. Even the provision of this positivist method is apparently not sufficient provision to answer society's thirst for justice because what is contained in the law (statute) is still interpreted without reflecting the reality that exists within a person and society.

Friedman, in Putra (2020) emphasizes the importance of legal culture because talking about legal culture means talking about the functioning of the law, is that, the law does not only stop at the presence or absence of structure and substance but whether these substances and structures are recognized and used as norms to regulate behavior and resolve disputes between members of the community (dispute settlement). The legal culture is basically determined by the culture of the local community, so a community group with a certain culture creates a separate legal culture, and even creates a legal system. Therefore, in a country that has cultural diversity, there are several legal cultures and even legal systems. This situation illustrates what is called the pluralism of a separate legal system, caused by cultural, political, and social pluralism public. Even the law should be a reflection of the values prevailing in society. Good law is a law that is in accordance with the living law. Furthermore, it is said that values cannot be separated from attitudes and characteristics that (should) be owned by people who are members of the society that is developing it.

The importance of values as living law in society is also in line with the concept of law put forward by Carls Von Savigny, in Aulia (2020) that law is not made but grows and develops together with society. Habits or values that live in society can be adopted into modern positive law by considering several important aspects, namely honesty, thrifty, rationality in thinking and making decisions, and the ability to suspend future consumption (there is a perspective).

Some of the cultural values of Pancasila law that are important to strengthen are the spirit of deliberation for consensus which is packaged in the modern language of peaceful dispute resolution, respect for rights and obligations, and the importance of being an example of a leader in obeying and complying with the law. The culture of Indonesian society which is concrete and paternalism provides a strong portion for example and is exemplary as an effective form of legal education. People see examples not in what is contained in the text.

Pancasila is the result of the deepest thoughts of the Indonesian people which are considered, trusted, and believed to be the truest, fairest, wisest, best, and most suitable thing (reality, norms, values) for the Indonesian people. Pancasila in essence also has a meaning as the embodiment of the noble values of the Indonesian people throughout history and is a combination of external cultural elements that are in accordance with Indonesian culture so that the whole is integrated into an ideology called Pancasila.

If so far the liberal culture still dominates the running of the justice system, then to support progressive law, this culture needs to be changed. This change is made by creating a new culture of law enforcement that is more collective in nature, different from the principle of checks and balances. The collective in question is not a nest for law enforcement components to make compromises, but solely for law enforcement to side with one big interest, namely prosperity and providing justice to the people.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The legal weakness referred to is the provision for imposing a judge's decision on the obscure lawsuit exception that is currently in effect due to the provisions of Article 136 HIR which stipulates that the exception (demonstrator) that the person being sued wants to present, except for cases where the judge is not in power, may not be presented and weighed individually, but must be discussed and decided together with the subject matter. Based on these provisions, the judge's decision on exceptions other than exceptions to the competence of the court must be considered and decided together with the examination of the main case. The substance of Article 136 HIR does not reflect the values of justice and the legal feelings of the Indonesian people which are based on Pancasila and the 1945 Constitution of the Republic of Indonesia's current regulation. The application and determination of law by judges for a legal event they face by applying the provisions of the applicable laws and regulations is a good thing to guarantee legal certainty, but apart from legal certainty that is considered by judges, elements of justice and expediency are also important elements that must be considered by judges. Must be considered by the judge in making a decision on the civil case he is facing.
2. The legal Reconstruction intended by the author is related to the values of Pancasila, as the Reconstruction of the Norm is an exception to the obscure lawsuit being considered and decided before the examination of the main

case. Settlement of civil disputes is prioritized through peace deliberations, but if peace deliberations are not reached, interested parties can file claims for rights in the form of lawsuits through a court that has both absolute and relative authority. Whereas the judge's decision regarding the exception of a futile lawsuit in civil court has not been based on the value of justice, this is because the civil court process should have been carried out quickly, precisely, and inexpensively, or a trial that was simple, fast, and low cost. The civil justice process should be simple, not complicated, the examination and settlement of cases is carried out efficiently and effectively, the procedures are clear, easy to understand, uncomplicated, fewer and simpler formalities required or required in court proceedings the better, vice versa too many required formalities are an obstacle to the speedy and appropriate course of justice so that a court decision can be obtained in the shortest possible time. Cheap or low cost is the lowest possible cost so that it can be borne by the people without sacrificing their thoroughness in seeking truth and justice.

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