

The Freedom of Judges in Making Decisions in Court

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ABSTRACT: *Judges are considered to always know the law (ius curia novit), so the decision must contain adequate considerations, which can be accepted logically among scientific forums, the wider community and the litigants. Judges need to pay close attention so that their decisions are in line with the doctrine of legal science. The purpose of this study is to analyze the freedom of judges and the obstacles they face in making decisions in court. This study uses the type of empirical juridical research. The results of this study are judges must have high morals and integrity so that they are expected to reflect a sense of justice, guarantee legal certainty and can provide benefits to the community. In trying someone, judges must be open to constructive criticism and truth, and should not base decisions on their feelings. Judges must also really pay attention and understand the circumstances, events/facts for the occurrence of a crime, the background factors of the defendant, the consequences of the sentence imposed, as well as the values of life (ethics/norms of manners and religion) that develop in society. . The obstacles faced by judges in making decisions in court are divided into two types, namely internal constraints and external constraints. Internal obstacles, for example, the appointment of judges are still limited, the education of judges is still lagging, the wrong mastery of the science of law, the morale of judges is low, the welfare of judges is not paid attention to. While external constraints such as the independence of judicial power which is very dependent on the conscience of the judge himself.*

KEYWORDS - Court, Freedom of Judge, Judgment.

I. INTRODUCTION

The main task of judges in adjudicating criminal cases is to carry out juridical activities. Judges participate in law formation, not objectively as created by abstract legislators, but apply abstract legal texts into concrete events. The process of applying general and abstract legal texts into concrete events in criminal law cases is essentially an activity of reading and interpreting general and abstract legal texts into concrete events.

The task of the judge related to the application of the text of the law into the concrete events of criminal cases as an activity of legal interpretation. This is where the freedom of judges lies. The mindset of judges who are still shackled to formal legality will result in law enforcement that tends to be unfair which will injure people's sense of justice. The law stipulates what to do, what to do and what not to do. The legal targets to be addressed are not only people who are acting against the law, but also legal actions that may occur, and to state, equipment to act according to the law. Such a system of working law is a form of law enforcement (Hartanti, 2007)

The essence of law rests on the idea of justice and moral power. The idea of justice is never separated from legal links because talking about the law clearly or vaguely is always talking about justice. Moral strength is also an element of the nature of law because without morality it loses its supremacy and independent character. Justice and injustice according to the law will be measured and judged by a morality which refers to human dignity and worth. The law only becomes law if it fulfils the principles of justice. The existence of a link

between law and morality gave birth to a formulation that the law cannot be separated from the idea of justice and moral concepts so that the law itself is not tyrannical, contrary to the morals of society and far from justice.

This linkage will have value and benefit if it is realized in moral law and material law and is applied in social life (Bani Syarif Maula, 2010). Justice in the ideals of law is the struggle of the human revolution that follows the rhythm of time and space, from the past until now without stopping and will continue until humans are no longer active. Humans as God's creatures consisting of spirit and body have the power of taste and thinking power, both of which are spiritual powers, where sense can function to control the decisions of the reason so that they run on moral values such as good and bad because what can determine good and bad is taste (M Rasjidi & Harifuddin Cawidu, 2008).

Laws that are recorded in written regulations, as well as those which are legal rules and in unwritten laws, are abstract and generally applicable, while concrete and specific laws are in nature when they have been applied/enforced in certain cases. Courts through judge decisions play a role in transforming ideas that are based on abstract moral values into concrete events so that judges' decisions visualize abstract principles into concrete legal rules. For example, the criminal policy against narcotics abuse, in the case of a person who uses narcotics without rights and against the law for himself within the minimum ownership limit for one day's consumption (Ariyanti, 2017).

The judge's decision is made to provide answers to the questions posed to him. Because judges are considered to always know the law (*ius curia novit*), then the decision must contain adequate considerations, which can be accepted logically among scientific forums, the wider community and the litigants. Judges need to pay close attention so that their decisions are in line with the doctrine of legal science (Darmoko Yuti Witanto & Arya Putra Negara Kutawaringin, 2013). The area of determining the crime is the jurisdiction of the judge, even in this area, no one can influence the will of the judge in determining how much punishment is appropriate for the defendant. It is not surprising that in a sentence there is often a criminal disparity because the size of the sentencing of each judge will not be the same. After all, the area of conscience is the most abstract in a dimension of authority.

Limiting the freedom of judges in expressing legal logic in each particular case will in the end only hinder the process of searching for true values of justice, although this freedom does not mean that it can be carried out freely without being accompanied by juridical responsibility. The method of interpretation and discovery of law is an effort for judges to explore hidden legal meanings, but if even that is not possible, then judges must create their laws by overriding existing rules and creating laws that are deemed to be able to provide goodness and benefit to the parties in particular. and the wider community in general (Supandriyo, 2019).

The judge must have complete independence and freedom in making decisions, he is free to determine his belief in himself based on the evidence presented before the trial, outside that framework, there should be no things that can influence him in making a decision (Pontang Murad B.M., 2005).

Many decisions on criminal cases that are decided are different from the minimum criminal provisions, for example, cases of criminal acts of corruption, where law enforcement against corruption crimes should be carried out firmly, comprehensively, continuously, and with legal breakthroughs (using extraordinary way).

This then raises a question that is often debated among practitioners and academics, namely concerning the principle of freedom of judges, may a judge decide a criminal case by overriding the provisions of the law and determining the law that is fair according to the size of the judge who tried it. Perhaps for the adherents of the flow of positivism, they will firmly oppose it because this understanding views that the law is only a written rule, in this case, it is a law, and judges should not go out of the way of the provisions outlined by the law (Pontang Murad B.M., 2005). Many decisions on criminal cases that are decided are different from the minimum criminal provisions, for example, cases of criminal acts of corruption, where law enforcement against corruption crimes should be carried out firmly, comprehensively, continuously, and with legal breakthroughs (using extraordinary way).

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It is different if the issue is studied based on progressive legal schools/understandings as initiated by SatjiptoRahardjo, that the law should follow the times; With all the principles in it, based on the spirit of following the times, the idea of legal progress was built (Rahardjo, 2006) For adherents of progressive law, it is not unlawful for judges to deviate from the law if justice can be obtained by violating the law and justice will emerge if the provisions of the legislation are applied. SatjiptoRahardjo's thoughts see this legal phenomenon more as a reality, meaning that the law is not something that is perfect and will bring justice if it is applied as it is, but SatjiptoRahardjo's thinking focuses on the fact that the law is for humans, not vice versa for humans for law.

Still according to SatjiptoRahardjo, in legal science, an important part of the trial process occurs when a judge examines and hears a case. Basically what the judge does is examine the reality that happened, and punish the defendant with the applicable regulations. When a decision is made about how or what the law is for a case, that's when law enforcement reaches its peak. By Hans Kelsen the process of law enforcement carried out by judges is referred to as concretising (concretization) (SatjiptoRahardjo, 2000).

In addition, OemarSenoadji stated that in carrying out the principle of freedom to be able to make the right decision, the judge carried out the best interpretation of *rechtsverfijning* (legal refining) and legal construction. A legal expert in general and a judge, in particular, must go into the midst of society to know, feel and be able to explore the feelings of law and the sense of justice that live in society (AminalUmam, 2010). The absence of a formulation of the rules/guidelines for punishment, especially in special laws outside the Criminal Code which include specific crimes in the formulation of the offence, will cause problems in its application. At least when the judge adjudicating a special criminal case is faced with many factors that mitigate the crime (Mukti Fajar & YuliantoAchmad, 2010).

Based on the description of the background above, the author is interested in writing a thesis entitled "The Freedom of Judges in Making Decisions in Court". So that the formulation of the problem in this study is how the freedom of judges in making decisions in court and how obstacles faced by judges in making decisions in court. So the purpose of this study is to find out and analyze the freedom of judges in making decisions in court and to find out the obstacles faced by judges in making decisions in court.

II. RESEARCH METHODS

This research is structured using the type of empirical juridical research, namely the approach carried out by studying the law in reality in the form of attitudes, judgments, behaviours, which are related to the problem under study and which is carried out by conducting research in the field (SoerjonoSoekanto & Sri Mamudji, 2015). The research specifications used in completing this thesis are descriptive-analytical research methods, namely research conducted by examining library materials (secondary data) or library law research (Ediwarman, 2016). Sources of data used are primary and secondary data. To obtain primary data, the researcher refers to data or facts and legal cases obtained directly through research in the field, including information from respondents relating to the object of research and practices that can be seen and related to the object of research. Meanwhile, secondary data is carried out through library research. This secondary data is useful as a theoretical basis to underlie the analysis of the main problems in this study. The data obtained are presented in the form of narrative text, which describes the data systematically, logically and rationally, starting with primary legal materials, secondary legal materials and tertiary legal materials. The data analysis method used is descriptive qualitative.

III. RESULTS AND DISCUSSION

1. Freedom of Judges in Making Decisions in Court

Talking about the freedom of judges, GJ Wiarda reminded the three types of state administration described by Montesquieu which are also suitable for three different types of courts and judges (HartiniTreggono, 1990). Furthermore, Wiarda said that the form of state administration which, according to Montesquieu's view, was prioritized was a republican state, namely a country with well-defined laws and judges who obeyed those laws. Judges here are heteronomous because they are fully under the power of the law which they apply almost mechanically to concrete cases. The opponent of the republic is a bad despotic state, which means that the judge decides each case according to his own will and arbitrarily according to personal judgment. This type of judge is by the autonomous law discovery method where the judge sets his own rules for concrete cases (UciUswatunKhasanah, 2013). The third form of state administration according to Montesquieu is a monarchical state. The form of this third state system is following the judicial system, contains laws carefully which can be followed automatically by judges and is also less thorough and cannot be simply followed by judges but must be interpreted by searching for the soul (*esprit*). In addition to being a mouthpiece in this regard, judges are also interpreters (HartiniTreggono, 1990).

Based on the thoughts put forward by Wiarda, to clarify the theory of judge freedom about making decisions in criminal cases here will be stated about the development of judge freedom in general according to the Chief Justice of the Supreme Court of the Republic of Indonesia. According to him, the development of the freedom of judges can be seen from three theories, namely: the theory of legal declaration, the theory of judges who make laws and the theory of whether or not the law is fair not is on the shoulders of judges (Marzuni, 2005).

The first theory is upheld on the doctrine that legitimizes the notion of legislative supremacy (legislative supremacy) following the *triaspolitica* system based on separation of power (doctrine of parliamentary sovereignty which outlines several benchmarks, which do not give freedom of autonomy to judges as executor of judicial power). This understanding is based on the idea that only parliament has the authority to determine all state and government policies (implementing governing power). Therefore, the policies made by parliament are appropriate and have anticipated social change. To add and modify any changes, they must be handed back to parliament. Thus, only parliament has the right to develop and renew the law (development and reform of the law) which is carried out through formal channels in the form of codification or amendment.

The second theory is an understanding that opposes the notion of legislative supremacy, which is very extreme above, which teaches that judges are lawmakers or judges are lawmakers. It is also known as judge-made law. There are two strong reasons underlying this understanding, namely the first reason that direct law is conservative and the second reason that no law is perfect. According to the first reason, it is said that the law is made to be immediately conservative because the law will become a dead letter formulation and will become static in the face of social changes that do not stop. Especially in the current era of globalization, where social life moves quickly, the economy and morals are racing to experience a change of perspective. Therefore, every law passed by parliament must be updated and updated at all times in implementation. It is the judge who has the authority to actualize the law. This authority is given to judges with the aim that the laws and laws that are applied can follow changes and developments so that the relevant laws reflect and transform the values and needs of social, economic, cultural and moral developments that occur. Furthermore, the conservative law can function as a living law. Therefore, without giving the judges the right and freedom to act as lawmakers, it is impossible to enforce the interactive doctrine between social change and legal development. This authority is given to judges with the aim that the laws and laws that are applied can follow changes and developments so that the relevant laws reflect and transform the values and needs of social, economic, cultural and moral developments that occur. Furthermore, the conservative law can function as a living law. Therefore, without giving the judges the right and freedom to act as lawmakers, it is impossible to enforce the interactive doctrine between social change and legal development. This authority is given to judges with the aim that the laws and laws that are applied can follow changes and developments so that the relevant laws reflect and transform the values and needs of social, economic, cultural and moral developments that occur. Furthermore, the

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The third theory is whether the law is fair or not is on the shoulders of the judge. This understanding has also left the supremacy of the legislature with the framework of thinking, that after the legislators have finished creating the law, then it is promulgated, the tasks and responsibilities of the legislature are completed. In theory, it can be said, after the law is enacted, the legislative task is completed and this body no longer deals with whether the provisions of the law are fair or not, humane or not. This is because since the law was enacted, the responsibility for its implementation has shifted to judges as law enforcers.

The freedom of judges contextually has 3 (three) essences in carrying out judicial power (Rifa, 2011). that is :

- a. Judges are only subject to law and justice,
- b. No one, including the government, can influence or direct the decision to be handed down by the judge,
- c. There are no consequences for the judge's personality in carrying out their judicial duties and functions.

According to the Law on Judicial Power, judges' considerations are the thoughts or opinions of judges in making decisions by looking at things that can relieve or burden the perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision. Judges are the personification of the judiciary, in making decisions on a case apart from being required to have intellectual abilities, a judge must also have high morals and integrity so that they are expected to reflect a sense of justice, guarantee legal certainty and can provide benefits to the community (Arianto et al., 2012).

Based on Article 53 of the Law on Judicial Power, it reads:

1. In examining and deciding cases, judges are responsible for the decisions and decisions they make.
2. The stipulation and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct reasons and the legal basis.

This is the legal basis for a judge in carrying out his duty to decide a case, that it must be based on various considerations that can be accepted by all parties and do not deviate from existing legal rules, which is called legal considerations or legal reasoning. Formulating and compiling legal considerations or legal reasoning must be careful, systematic and incorrect and good Indonesian. The legal considerations must be complete, containing facts of events, legal facts, formulation of legal facts, application of legal norms in positive law, customary law, jurisprudence and legal theories and others.(Chandran RoladicaLumban Batu, 2018).

For judges, legal reasoning is useful in making judgments in deciding a case. A judge before making his decision must pay attention to and try how much he can lest the decision to be handed down allows new cases to arise. Decisions must be complete and not lead to new cases. The task of the judge does not stop with making a decision but also completes it until its implementation. Legal considerations carried out by a judge are also one of the duties and obligations of judges, namely the obligation to explore, follow, and understand legal values and a living sense of justice. in society(Erna Dewi, 2010).This becomes material that is processed to make legal considerations. It is also implied that a judge in carrying out his duties can make legal discoveries or rechtvinding.

Based on the Law on Judicial Powers Article 5 paragraph (1), judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society. This means that if there is a legal vacuum or the rules are not clear, then to overcome this a judge must have the ability and activity to find the law (rechtvinding)(Waty&Haryono, 2017).What is meant by rechtvinding is the process of

establishing law by judges/other law enforcement officers in the application of general regulations to concrete legal events and the results of legal findings being the basis for making decisions. The judge in deciding a court trial may consider several aspects(Barda Nawawi Arief, 2008) :

- a. Errors of perpetrators of criminal acts;
- b. The motive and purpose of committing a criminal act;
- c. How to commit a crime;
- d. The inner attitude of the perpetrator of the crime;
- e. Curriculum vitae and socio-economics;
- f. Attitudes and actions of the perpetrator after committing a crime;
- g. The effect of the crime on the future of the perpetrator;
- h. The public's view of the crime committed by the perpetrator.

principle of error. The terms of sentencing in a decision depart from two very fundamental pillars, namely the principle of legality which is a social principle and the principle of guilt which is a humanitarian principle(Barda Nawawi Arief, 2008), Stipulation is a court decision on a case of application (volunteer), for example, determination in cases of marriage dispensation, marriage license, polygamy, guardianship, and others including the determination of foundation examination based on the provisions of the Foundation Law. The stipulation is a voluntary jurisdiction, which means it is not a real trial because in the stipulation there is only an application, there is no legal opponent. In the determination, the judge does not use the word "judgment", but it is enough to use the word "determine".(M. Yahya Harahap, 1986)

Talking about law enforcement through criminal justice institutions (courts) is closely related to what is known as a judge's decision/court decision because it is through the judge's decision that criminal sanctions against perpetrators of criminal acts are applied. The judge's decision is obtained by interpreting the applicable provisions, and then determining the law, after that the judge applies the violated Articles based on the freedoms that exist in them.(Isnantiana, 2017) The freedom of judges to carry out legal provisions is the art of realizing the law and the law in its realization. This is closely related to certain factors that play a role such as power, law, and justice which often characterize the practice of justice (criminal) in Indonesia so it can be said that power, law and justice are an inseparable package to create justice through institutions. - judicial institutions (criminal). There is a lot of discrimination in law enforcement practices in courts where the power factor is a determining factor, even money/material issues, social status, position, or a person's class are also considered by judges in imposing a sentence. It is deeply regretted(Susanto & Bastianon, 2019)

In judging someone, the judge must be open to constructive criticism and truth, and must not base his decision on his feelings. Judges must also really pay attention to and understand the circumstances, events/facts for the occurrence of a crime, the background factors of the defendant, the consequences of the sentence imposed, as well as life values (ethics/morals and religious norms) that develop in public. The ability of judges to place themselves among justice seekers provides a guarantee for the judge concerned to produce scientifically justifiable decisions that can be accepted by perpetrators, victims and the community. The National Criminal Code Drafting Team after conducting a comparative study of the Criminal Code of several countries concluded that before a judge imposes a sentence(Muladi, 1995), is as follows:

- a. maker error,
- b. The motive and purpose of committing the crime,
- c. How to commit a crime
- d. The inner attitude of the maker,
- e. Life history and socioeconomic conditions of the maker,
- f. Attitudes and actions of the maker after committing a crime,
- g. The criminal effect on the future of the maker,
- h. The public's view of the crime committed,
- i. The effect of the crime on the victim or the victim's family,
- j. The crime was committed with a plan.

There are 3 (three) types of judge's decisions, namely in terms of the decision, in terms of content and in terms of the presence or absence of the parties at the time the decision was handed down (M. Yahya Harahap, 1986), is explained as follows:

- a. From the point of view of the decision, it consists of:
 - 1) Final verdict. The final decision is a decision that ends a dispute or case at a certain level of justice, such as a contradictory decision, a verstek decision, a resistance decision (verzet), an immediate decision, a decision to accept a principal rebuttal (verweertenprincipale) and a rebuttal (exeptiefverweer), an appeal decision, cassation decision. The final decision is divided into 3 (three) kinds, namely condemnatoir, declaratoir, and constitutief.
 - a) A condemnatory decision is a decision that is punishing for one party to do something or not to do something, or to submit something to the opposing party to fulfil the achievement. Condemnatory decisions are charged to the defendant, where it is the defendant who is obliged to fulfil his achievements.
 - b) Declaratoir decision, namely a decision that states a condition that is legal according to law, therefore the decree of the declaratoir decision reads "to determine". Declaratoir decisions occur in the following decisions, for example, the decision on the application for divorce, the decision on divorce due to the divorce agreement, the decision on the determination of the right to care for the child by the mother, the decision on the determination of legal heirs, the decision on determining the existence of joint assets, the decision on voluntary cases and so on. , the decision is void, rejected and not accepted, the decision for divorce is not due to talk the talk, the verstek decision, the decision to annul the marriage and so on.
 - c) Constitutive decisions, namely decisions that create new legal conditions that are valid according to the previous law, have not yet occurred. The constitutes ruling reads "declare".
 - 2) The verdict is not final. A non-final decision is also called an interim decision or an intermediate decision. A non-final decision is a decision whose function is to expedite the case examination process.
- b. In terms of content, it consists of:
 - 1) The decision granted the lawsuit. A decision whose content is a lawsuit is granted if the claim is grounded or not against the rights. The decision granted the plaintiff's claim in part and refused not to accept the rest, namely the final decision in which some of the arguments for the lawsuit were proven and some were not proven or did not start the conditions (positive and negative mixed decisions). The decision grants the plaintiff's claim in its entirety, namely a decision that fulfils the terms of the lawsuit and proves the arguments for the lawsuit (positive decision).
 - 2) A decision whose lawsuit is not accepted. A decision whose content is a lawsuit is declared not acceptable if the lawsuit is against the rights or the law. The decision does not accept the plaintiff's application, namely the plaintiff's claim/applicant's application is not accepted due to the non-fulfilment of legal requirements, both formal and material (negative decision).
 - 3) A decision whose lawsuit was rejected. The decision which contains the claim is rejected if the claim is unfounded. The decision to reject the plaintiff's claim, namely the final decision handed down after going through all stages of the examination, but it turns out that the plaintiff's arguments are not proven (negative verdict).
- c. Judging from the presence or absence of the parties at the time the decision was handed down, it consisted of a verstek decision, an invalid decision and a contradictory decision.
 - 1) Verstek decision, namely the decision that was handed down because the defendant/respondent was not present at the trial even though it had been officially summoned, while the plaintiff/applicant was present.

- 2) Dismissal verdict, namely a decision stating that the lawsuit/application is void because the plaintiff/applicant was never present even though it has been officially summoned and the defendant/respondent is present in court and asks for a verdict.
- 3) The contradictory decision, namely the final decision which at the time it was handed down/pronounced in a trial was not attended by one of the parties or the parties.

2. Obstacles Faced by Judges in Making Decisions in Court

Punishment can simply be interpreted as punishment. The punishment referred to is related to the imposition of a crime and the reasons for the justification of a criminal being imposed on a person whose court decision has permanent legal force (*Incracht van gewijsde*) is declared legally and convincingly proven to have committed a crime. Of course, the right to impose a crime and the reasons to justify a criminal sentence and its implementation are fully in the hands of the State. In essence, crime is protection for society and acts that violate the law, namely that crime is expected to be something that will bring harmony and crime is an educational process to make people acceptable again in society. So the purpose of criminal law is to fulfil a sense of justice (Djazuli, 2003).

In the theory of punishment, one of the goals of punishment is to make people a deterrent to committing crimes. In this case, the judge explained that the sentencing given by the defendant, namely the judge explained that if the deterrent problem of a defendant depends on each individual because of the defendant's actions and being sentenced, the punishment given makes the perpetrators deterrent but some defendants are not deterred by the punishment given. repeat the crime (Pranoto Putra & Iqbal, 2020). Sentencing as an act against a criminal can be justified normally not mainly because the punishment has positive consequences for the convict, the victim as well as other people in society. From this, it can be seen that the punishment was not intended as an attempt to revenge, but as an effort to foster a criminal as well as a preventive measure against the occurrence of similar crimes. Sentencing the defendant the judge has several considerations before deciding the case (Lintogareng, 2013).

The settlement process in the examination of criminal cases that are delegated and submitted by the public prosecutor to the District Court, basically the examination process is carried out following the provisions outlined in the Criminal Procedure Code where a trial schedule is determined and the appointment of the head judge at trial. The presiding judge of the trial opened the trial by stating that the trial was opened and the judge ordered the defendant, the evidence and evidence as well as the necessary witnesses to be prepared to be presented at the trial, including the prosecutor as the public prosecutor and the lawyer (advocate) accompanying the defendant, if desired by the defendant following with their economic capacity, except for a criminal penalty of more than 5 years, a lawyer (advocate) is prepared by the state (Maggalatung, 2014).

An alarming phenomenon in the field of law enforcement and justice in court is that legal justice is no longer in line with community justice. The direct impact of this incident was the loss of public trust in the state and the emergence of community initiatives to create their courts which often resulted in vigilante action. Of course, the deep concern is that legal reform is still running slowly and has not yet provided a sense of justice for the community. Some issues that deserve attention concerning the legal field include the judicial system which is seen as less independent and impartial; inadequate legal instruments that reflect social justice; inconsistency in law enforcement; there are still legal interventions; weak legal protection for the community; lack of comprehensive control over law enforcement; and the uneven level of professionalism of law enforcers (Elisabeth Nurhaini Butarbutar, 2011).

In this regard, it can be seen that there are obstacles for judges in creating legal certainty, justice and expediency. These constraints can be broadly divided into internal constraints and external constraints.

a. Internal Constraints

Internal constraints are obstacles that affect judges in creating legal certainty, justice and benefits that come from within, and are related to the human resources (HR) of the judges themselves. The internal obstacles of judges in creating legal certainty, justice and expediency, based on the findings that were held, consisted of the following:

1) Appointment of Judges

In the context of law in Indonesia, the appointment of judges refers to the prevailing laws and regulations, including the Law on the Supreme Court; Law on General Courts; and the Law on State Administrative Courts. The requirements to be appointed as judges, both in various judicial circles and in the Supreme Court are the same. The difference lies only in age and experience[38].

Weaknesses in the system of recruitment/appointment of judges are caused, among others, by the following: (1) the system of recruitment/appointment of judges which still tends to be closed and less oriented towards obtaining good judges' resources; (2) there is a recruitment/appointment of judges who have indications of collusion, corruption, and nepotism; (3) lack of guidance and training for existing judges, especially for those who are still prospective judges; (4) the mechanism and promotion of the position of judges is not clear; (5) the number of courts and the number of judges are not following the needs, especially if it is related to the number of cases that must be handled; (6) lack of a firm supervisory mechanism for judges; (7) the awarding of awards to outstanding judges is not yet optimal;

2) Judge Education

Considering the weight of responsibility, judges must be selected from quality education, have a noble character, have high dedication. As law enforcement and justice, judges must be able to stand upright and be independent in providing justice. Education and training (training) is an integral part of the career development system for judges. Judge education and training held in a classical form can produce judges graduates who have high quality, but the reach of the participants is limited to the number of participants who attend the class concerned. Judges at district courts in Indonesia show that the level of formal education of judges is still lagging. It is recognized that the level of education of judges is not always a measure for assessing the quality of decisions,

3) Mastery of Legal Studies

Ideally, judges must master the development of legal science. Mastery of legal science is something that cannot be ignored by judges in carrying out their daily duties. This is also related to the implementation of the selection of prospective judges, namely to prevent the escape of prospective judges who do not have the quality in mastering legal knowledge. To achieve this, judges must master technical legal theories, such as interpretation and legal construction, which in principle provide space for judges to find the law in a case being examined and motivate judges not to be hung up on the sound of the provisions of the articles. Article death is a rule of law. Even in the context of deciding a case by a judge, it is also known as *contra legem*,

4) Judge's Morale

Judges must have professional abilities as well as high morals and integrity to be able to reflect a sense of justice, provide benefits and legal certainty. In addition, judges must have the ability to communicate and carry out their roles and status that are acceptable to the community, judges must also have good faith and piety as stated in the final report of the National Law Commission of the Republic of Indonesia in 2003. A strong moral personality, which must be possessed by judges is none other than honesty; being able to be yourself; responsible; have moral independence; have moral courage, and have humility.

5) Judge's Welfare

The work of the judges demands extra hard attention, but so far it has not received serious attention from the government. Judges must be proportionally rewarded so that judges who have good achievements can be rewarded according to what they have done. The form of the award can be in the form of transfers and promotions to higher positions. According to

SoekotjoSoeparto, Coordinator of Inter-Agency Relations of the Judicial Commission, it is necessary to immediately improve the welfare of judges to spur performance. It is time to improve the welfare of judges to get more serious attention(Tim Redaksi, 2018).

b. External Constraints

External constraints are obstacles that affect judges in creating legal certainty, justice and benefits that come from outside the judges themselves. This is related to the judicial system and law enforcement. The external obstacles of judges in creating legal certainty, justice and expediency, based on the findings that were held, consisted of the following:

1) Independence of Judicial Power

The objective of administering judicial power is to foster independence in the context of realizing a quality judiciary. The exercise of judicial power is carried out by increasing integrity and knowledge. The independence of judicial power is a universal principle. This can mean that in carrying out the judicial process, judges are free in examining and adjudicating cases and free from interference from extra-judicial powers. In principle, the judge is independent, but the independence of the judge is not absolute(Siahaan, 1984).This is because in carrying out their duties, judges are micro-limited by Pancasila, the Constitution, statutory regulations, the will of the parties, public order and decency. In addition, in carrying out their duties, at a macro level, the independence of judges is limited by the government system, political system, and economic system(Mertokusumo, 1996).

According to the author, the basic capital that must be owned by a judge in maintaining his independence needs to be supported also with adequate expertise. Judges who can maintain their independence will be able to function as good law enforcers in carrying out their duties and authority. This independence brings judges to always be guided by fair and accountable legal principles.

2) Formation of Law

Until now there has been no unification of procedural law, especially civil regulations, they are still pluralistic, that is, they are scattered in various existing regulations. This is due to the lack of political will from the government and legislative bodies to make separate regulations on civil procedural law. One of the strategic steps that can be taken in creating judges' decisions that reflect legal certainty, justice and expediency are to reform various regulations relating to judicial power in general and civil procedural law in particular.

3) Applicable Justice System

The reform of the judicial system involves various aspects, starting from the aspect of improving human resources, namely improving the quality of judges and improving aspects of judicial administration. Improving the quality of judges can mean that judges' decisions that are honest, fair and follow legal developments will only be born from good personal figures and have legal knowledge. The ideal picture of a judge is only born if it is supported by a court institution's financial administration system and conducive legal politics.

4) Society participation

In improving law enforcement, it is important to intensify public/community participation. This is based on the reason that the community has a role in overseeing the course of the judiciary as stated in the law on judicial power. Community participation does not only involve non-governmental organizations (NGOs) but individuals in the community. To create a judge's decision that reflects legal certainty, justice and expediency, awareness of community participation is highly expected. The condition of the awareness of community participation is very supportive. On the other hand, if the awareness of public participation is absent and low, then what is expected will not be realized.

5) Judge Oversight System

Internal supervision of judges is carried out by the Supreme Court as regulated by the Law on Judicial Power and the Law on the Supreme Court. Supervision of judges by the Supreme Court can be divided into two, namely supervision of supreme judges who are within the MA and supervision of judges at the courts of the first instance and the appellate level. Meanwhile, external supervision of judges' behaviour carried out by the Judicial Commission is expected to cover the weaknesses of internal supervision carried out by the Supreme Court. Basically, the basic principles of the Code of Ethics and the Code of Conduct for Judges are implemented in the following ten rules of conduct, behave fairly, behave honestly, behave wisely and wisely, be independent, have high integrity, be responsible, uphold self-respect,

IV. CLOSING

According to the Law on Judicial Power, judges' considerations are the thoughts or opinions of judges in making decisions by looking at things that can relieve or burden the perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision. The judge is the personification of the judiciary, in deciding on a case in addition to being required to have the intellectual ability, a judge must also have high morals and integrity so that it is expected to reflect a sense of justice, guarantee legal certainty and can provide benefits to the community. In judging someone, the judge must be open to constructive criticism and truth, and must not base his decision on his feelings. Judges must also really pay attention to and understand the circumstances, events/facts for the occurrence of a criminal act, the background factors of the defendant, the consequences of the sentence imposed, as well as the values of life (ethics/morals and religious norms) that develop in public. The ability of judges to place themselves among justice seekers provides a guarantee for the judge concerned to produce scientifically justifiable decisions that can be accepted by perpetrators, victims and the community. Before a judge imposes a crime, things that must be considered are the maker's mistake, the motive and purpose of committing the crime, the method of committing the crime, the maker's inner attitude, life history and socio-economic conditions of the maker, the attitude and actions of the maker after committing a crime, the influence of the crime on the future of the maker, the public's view of the crime committed, the influence of the crime on the victim or the victim's family, the crime was committed with a plan. The obstacles faced by judges in making decisions in court are divided into two types, namely internal constraints and external constraints. Internal obstacles, for example, the appointment of judges are still limited, the education of judges is still lagging, wrong mastery of the science of law, the morale of judges is low, the welfare of judges is not paid attention to. Meanwhile, external constraints include the independence of judicial power which is very dependent on the conscience of the judges themselves, the formation of laws that have not been unified, the prevailing judicial system is still not transparent, awareness of community participation is still low,

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