

The Role of Supreme Court Judges as the Agent of Change in Improving the Quality of Decisions in the Realisation of Law and Legal Reform

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Judicial issues in Indonesia are often in the spotlight because judges' decisions are often regarded as not considering substantive truth but rather tend to consider normative truth. This article is intended to elucidate what the role of supreme court judges is in order to become the Agents of Change in realising the substantive decisions that become the foundation of legal and judicial reform in Indonesia, especially the decisions that are substantive and able to become jurisprudence for making the law decisions in the future. Supreme court judges, as the judge, supervisor, regulator, advisor and executor of administrative duties, have a strategic role in encouraging and creating law and legal reform in Indonesia.

Key words: *Supreme Court Judge, quality of decisions, law and legal reform.*

Introduction

The law is always related to connection with human life, so when we talk about the law, it cannot be separated from talking about human life as well (Becker Kane, 2017; Mertokusumo, 1988) This is in line with the expression from Cicero that when there is a society, there is the law, and the law lives in the midst of society (humans). Human and law have an adjacency that is distinctive and inseparable (Bloomer & O'Dowd, 2014; Salman & Susanto, 2004).

In their life, humans have always had interests, which in fact already started since the human was born in the world. Humans' interests in their life together in the society can be in harmony, different and even in disagreement with one and another. In order that the contradictory interests do not develop into a prolonged conflict, it is necessary to have

guidelines or rules of life. The guidelines or rules of life function to determine the way humans should act or behave in a society so that they will not harm themselves or others. The guidelines regarding the appropriate behaviours in living together in the society are called rules/norms, which can be in the form of religious norms, decency norms, courtesy norms and law norms. These rules/norms are expected to function to reduce or even eliminate conflicts in order to create order in society. Among the four norms, the law norms (often referred to as law only) have the power of binding because of the unequivocal threat of sanctions for those who break them.

Conflicts between the members of society can be resolved through the courts or also can be resolved outside the court. According to Daniel S. Lev (Bonneau & Rice, 2009; Warassih, 2005) as excerpted by Esmi Warassih, law culture in Indonesia in the settlement of conflicts has its own characteristic, which is the settlement through compromisable and peaceful ways. If the settlement of conflicts is carried out in the court, then judges are the ones who have the duty and authority to solve them. The judges, in running their duties and authority to enforce the law and justice, must be based on Pancasila and search for the basic laws and principles that became the foundation of their decisions (Mertokusumo, 1982).

The basic values of the law that must be upheld, according to Radbruch's opinion as quoted by Satjipto Rahardjo (Rahardjo, 1996) are: the values of legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerechtigkeit*). The entire three basic values contain a *Spannungsverhältnis*, which refers to a tension between one another. If law enforcement prioritises the value of legal certainty, the value of justice will be shifted, and vice versa, if law enforcement prioritises the value of justice, the value of legal certainty will also be shifted, while the basic value of expediency tends to have economic nuances (Burgess, 2012; Cann & Wilhelm, 2011).

Supreme Court judges, as one of the law enforcers in Indonesia, have a very vital role in realising the decision that can guarantee legal certainty, which is equitable and beneficial to human beings or society. This is normal because the existence of law is for the benefit or the advantages of human and not vice versa, human for the law. Supreme Court Judges through their decisions are expected to be a reformer figure (*agent of change*) in the law, legal reform and the law enforcement in Indonesia (Chatamarrasjid, 2008). The problem that arises is what the role of the Supreme Court Judge as an agent of change to improve the quality of decisions in realising law and legal reform is.

Method

The study was designed with a qualitative approach to the hermeneutic technique. The study was conducted on documents related to the decisions of judges from the first level up to the

Supreme Court. The decision was then analysed hermeneutically to find a decision making strategy by the judge and a judicial analysis of judicial decisions related to and relevant to existing decisions. This research examines criminal court decisions that occur in the Kudus Regency and is then appealed until a review at the Supreme Court level. The results are used as a reference on how justice and decision making strategies for judges are fair and wise.

Results and Discussion

Supreme Court Judges as the Agent of Change to Improve the Quality of Decisions

Judges at various levels of justice (including Supreme Court judges) are the main actors in the justice system who play a very strategic role in law enforcement activities, in addition to other factors such as statutory regulations, facilities and infrastructure, and public awareness and compliance (Terms, 2015). Therefore, judges must have a high morality, honesty, accountable spirit, and commitment to uphold the truth and justice in giving decisions on the cases they face (Chatamarrasjid, 2008) This requires much attention because some observers such as Denny Indrayana (PPSDMS, 2009) stated that the chaotic condition of law enforcement does not lie in the legal constitutions themselves that have lack of power in regulating, but this legal disorganisation occurs because the enforcement authorities themselves lack the integrity in carrying out the supremacy of law.

As the main actor of the judiciary, the position and role of judges as law enforcement officers are very important. Therefore, the duties and authority possessed by judges must be carried out within the framework of law enforcement, truth, and justice in accordance with statutory regulations and an ethical code indiscriminately without discriminating people, where everyone is equal before the law (equality before the law).

The judge's obligation to uphold the truth and justice must be accounted horizontally to all humans, and vertically accountable to God Almighty. Law enforcement, in addition to being determined by statutory regulations, facilities and infrastructure, public awareness and compliance, is also very dependent on the human resource factor or the law enforcement officials. The road to law enforcement and justice as envisioned is still long, steep and winding. Therefore, it is not surprising that until today, the practice of authority abuse in the judiciary (the practice of judicial mafia or judicial corruption) continues to occur even more widespread, resulting in disappointment and injuring the sense of justice and the seekers of justice (Flemming, Holian, & Mezey, 1998; Kassow, Songer, & Fix, 2012).

The statement that the court is the last bastion to get justice even though it is still limited only as a discourse and has not been proven in reality because there are a lot of controversial court decisions and many decisions that are considered contrary to the sense of justice of the

society. By paying attention to the central role of human resources in law enforcement and justice, judges, including those in the Supreme Court, must have intellectual abilities, integrity, professionalism, honesty, and morality. As a consequence, in carrying out their duties, the Supreme Court judges will be able to perform their duties as the agent of judicial power, well, right and just. Therefore, Supreme Court judges not only act as an enforcer (warrior) of law and justice at the cassation and review level, but are also able to play as the agent of change in encouraging the acceleration of Supreme Court reform.(Chatamarrasjid, 2008).

The way judges make decisions on the cases they deal with depends on the perspective from which the judges see the law. Essentially, in issuing their decisions, judges are influenced by 2 (two) schools, which are: First, the Conservatism pioneered by the positivists, who believe that judges' decisions are based solely on the written legal provisions (statutory regulations). This school sees law as a norm institution that must be understood by analysing the texts or pronouncement of written laws or regulations. In order to study these normative texts, the very important matter is the use of legal reasoning that is in accordance with principles, dogmas, doctrines, and legal principles, especially those that apply universally in (modern) law.

The theory/school of positivism, according to Satjipto Rahardjo (Rahardjo, 1996) was carefully developed by the Pure Theory of Law from Hans Kelsen who is famous for "*Reine Rechtslehre*". The Pure Theory of Law rejects ideological teachings and only accepts laws as they are, i.e. in the form of existing regulations (Sidharta, 2003) Second, Progressivism which was pioneered by the realists, who believe that the judges' decision is not based solely on written legal provisions but must also be based on the empirical knowledge and experience they have. This school sees the law as a social institution that is inseparable from other social structures. Law is not understood as a text in laws or written regulations but as a social reality contained in people's lives. Hence, law is not understood textually normative but contextually. In line with that, legal approach is not only based on legal logic but also based on social logic in the context of searching for the meaning (Lin, 2012).

The knowledge and empirical experience of a judge plays an important role in the decisions he makes. For this reason, judges must master the science of law, legal theory and legal philosophy, in addition to mastering the statutory regulations. Moreover, judges must also be able to play a role in legal discovery and legal creation so that their decisions can reflect the complete legal ideals, which are: justice, legal certainty, and expediency (Monteiro, 2007).

Judges' decisions that are just guarantee the legal certainty and provide benefits that will be achievable if the judges uphold the provisions of Article 28, 32 and 33 of Law No. 4 of 2004 concerning Judicial Power. Essentially, in making their decisions, judges must explore,

follow, and understand the legal values and sense of justice that live in the society. Judges must also have the integrity and personality that is irreproachable, honest, fair, professional and experienced in the field of law, as well as carrying out their duties and functions by maintaining the independence of the judiciary (Mutaqin, 2018).

One roof coaching by the Supreme Court is an effort to realise the independence of judicial power and create impartial court decisions. The blueprint that is created in order to support the Supreme Court to carry out one-stop coaching of judicial institutions has been made comprehensively. This is intended to establish the priority steps in reforming the judiciary. With the judge's decisions that reflect and realise justice without taking sides with one of the litigants, then the decisions will be authoritative. The judge's decision will also be authoritative and accepted by the parties if the legal reasons that are used as the basis for taking the decision are of good quality and adequate (Pomeranz, 2010).

John Chipman Gray stated that the judge's function in adjudicating a case/ dispute is *".....their function (judge) is not mainly to declare the law, but to maintain the peace by deciding controversies, which is to say, by determining the legal rights and duties of the parties. When a controversy comes before a judge, he must decide the case, he lays down a rule that settles the rights and duties of the parties; that rule is the law and yet the rights and duties of the parties were not known by them. That is the way the parties are treated and have to be treated by the courts"*. (Benditt, 1978).

Judges' decisions can bring about justice if in interpreting the written regulations, the judges are not merely reading regulations, but also reading reality or what is happening in the society. This is what is called progressive interpretation (Rahardjo, 2008). This is very much in accordance with the mandate of Article 28 paragraph (1) and (2) of the Judicial Power Law which reads:

- “(1) Judges are required to explore, follow and understand the legal values and sense of justice that lives in the society.
- (2) In considering the severity of a crime, judges must also pay attention to the good and evil nature of the defendant”.

In giving meaning or interpreting a law or agreement, it is not sufficient for judges to only utilise intellectual intelligence (Intelligence Quotient = IQ) because thinking through IQ is only linear and deterministic (Rahardjo, 2005) Interpreting or giving meaning to a word or a sentence in a law or agreement still needs to pay attention to ESQ (Emotional and Spiritual Quotient). Therefore, the way of thinking or analysing a law or agreement must be carried out using the concepts of IQ, EQ and SQ.

The way of thinking between EQ and SQ models are indeed different, but it turns out that EQ and SQ have an equally important content to be able to synergise with one another. Through a long reflection, the synergy between EQ and SQ, or called ESQ, will be able to produce a decision that is better, right and fair. If judges would like to change their habits in passing their decisions, which initially rely only on the meaning or interpretation of the articles of legislation leading to decision making that pays attention to social reality in the society and uses intellectual, emotional, and spiritual intelligence, then their decisions will become more qualified, as expected by the public and the seekers of justice (Mutaqin, 2018; Randazzo, Waterman, & Fix, 2011).

The Realisation of Law and Legal Reform through the Quality Decisions of Supreme Court Judges

One of the reform agendas in Indonesia is reform in the field of law. Theoretically, reform in the field of law is directed at three main demands, which are: first, the availability of legal instruments that govern the aspects of state and community life, and also serve as the guidelines and guidance for administration of justice. Second, the implementation of transparent and responsible law enforcement in accordance with the values of justice, honesty and truth under the protection of God Almighty. Third, the creation of law enforcement officers that are responsible, fair, honest and able to become a role model in compliance with the law.

The judiciary is a strategic institution with a central position not only as an object of reform but also as a subject of reform. As an object of reform, it means the judiciary is a part and target of change and a part that must be improved. As a subject of reform, it means that the judiciary becomes an agent of change and at the same time as an institution of control over various deviant acts that occur both outside the judiciary and within its own environment.

Judges who can be the subject of reform through their quality decisions will be able to change the image of the judiciary, which initially did not get the public trust to gradually gain the public trust. Legal reform is defined as a reform in a limited concept, which literally means a reform in the legal system, because the word legal comes from the word “*lege*” which means the law and *lege* is commonly called *ius constitutum* or positive law because the formulation has been clear and certain. In this concept, legal reform will take place as a legislative activity which generally only involves the thoughts of politicians. Reform in legal reform tends to limit itself to the reform of laws or articles and paragraphs in the existing laws only (Wignyosoebroto, 2002).

Every statutory product and judicial decision must always be constantly examined, reviewed through critical review, and updated (reformed) when deemed necessary for the sake of the

public interests (Wignyosoebroto, 2002). The concept of law should be interpreted by its broad meaning as law and not interpreted narrowly as regulations. The law not only is a substantive-normative (sub) system but also has a structural component (politics-based organisation) and a component of culture (social values and norms based on the social culture of the community). Therefore, law reform can be interpreted as a legal reform in a broad sense, which is not just an update to the Law but also to an update in the field of structure, substance and culture (Hakimi & Sa'adat, 2020).

The reform of the national law above is very important to be carried out, namely in order to accelerate the restoration of public confidence in the law and law enforcers and to ensure that the Indonesian Law is able to face the challenges of globalisation (Dewi, Khairun, & Baried, 2019; Isnaini & Utomo, 2019; Meyera, 2019). The national legal reform agenda in Indonesia requires more time and effort to be implemented. An integrated and comprehensive legal reform agenda in the field of legal structure, substance or nature of the law and legal culture is expected to have an effect on legal protection and enforcement (Winarta, 2008).

The legal reform above will be achieved if the Supreme Court Judges' decisions manifest justice, guarantee legal certainty and provide benefits, which essentially can be achieved by exploring, following, and understanding the legal values and sense of justice that live in society (Adamu & Para-Mallam, 2012). The decision is of high quality because the Supreme Court Judges have the integrity and personality that are irreproachable, honest, fair, professional, and experienced in the field of law, and carry out their duties and functions by maintaining the independence of the judiciary (Hermens, 1982).

Conclusion

Judges' decisions that are just, guarantee legal certainty and provide benefits will be achieved if in making their decisions, the judges decide, follow, and understand the legal values and sense of justice that live in the society. In addition, judges also have the integrity and personality that are irreproachable, honest, fair, professional, and experienced in the field of law, and carry out their duties and functions by maintaining the independence of the judiciary. With such decisions from the Supreme Court judges, the judges not only act as an enforcer (warrior) of law and justice at the level of cassation and reconsideration, but also have the capability to act as an agent of change in encouraging the acceleration of Supreme Court reform. Nevertheless, judges' decisions always have legal consequences for both parties. If judges want to make a decision, they will always attempt to make the decision accepted by the society as much as possible; thus, the decision is of high quality and at the same time will be authoritative. The Supreme Court judges' quality decisions will be able to realise law and legal reform.



The suggestion proposed from this study is that the judges' decisions should reflect justice and truth in order to be qualified and authoritative so that the legal reasoning that is employed as the basis in taking the decision is of good quality and adequate as expected by the law and sense of justice voiced by the society . In addition to using logic rules, judges need to see or pay attention to the logic of social reasonableness, which refers to whether the judges' decisions to take are already in accordance with the reasonableness in the society, and judges also need to look at the logic of justice, which cannot be able to be performed simply by reading the rules, since it takes a contemplation and deeper interpretation regarding the regulations that are read. Therefore, decisions are able to be taken if judges also utilise emotional and spiritual intelligence (ESQ) in addition to using intellectual intelligence (IQ).

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