

The Role of Judges in Realizing the Three Basic Legal Values Reviewed from Gustav Radbruch's View

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Purpose:

Judicial power is necessary in a legal state. Judicial power functions to enforce the law by force. Forced law enforcement aims to achieve legal objectives. According to Gustav Radbruch, the law aims to fulfill a sense of justice, certainty, and benefit in living together.

Methodology:

The fundamental values of law which, according to Gustav Radbruch, include justice (philosophical), legal certainty (juridical), and benefits for society (sociological)

Findings:

Gustav Radbruch's view of the three primary legal values is very important for judges in deciding cases. In realizing these values, judges should remain neutral, independent, and free and not be interfered with by political or government interests.

Implication:

Officials implementing judicial power should uphold the philosophical, juridical, theological, and moral meaning of irah-irah "for the sake of justice based on belief in the Almighty God" in every decision they pronounce. Conflicts in upholding justice, expediency, and legal certainty should not make every law and decision useless for a society that believes in justice.

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INTRODUCTION

Judicial power is necessary in a legal state. Judicial power functions to enforce the law by force. Forced law enforcement aims to achieve legal objectives. According to Gustav Radbruch, the law aims to fulfill a sense of justice, certainty, and benefit in living together.

Living together can occur in groups, associations, and countries on a large scale. So that living together can take place in harmony, it is essential to have laws or rules that regulate living together. Therefore, after a long process, Indonesia was declared a legal state as regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 1 Paragraph (3) after the third amendment. Confirming this constitutional provision means that all aspects of life in society, state, and government must always be based on law.

Law, as a common rule, can only operate within a system. Lawrence W. Friedman argued that whether law enforcement is effective depends on the legal system, which includes three components or sub-systems: the law component's structure, substance, and legal culture. In simple terms, Friedmann's theory is difficult to refute. However, fewer people realize that Friedman's theory is based on his sociological perspective (sociological jurisprudence). He wants to explain with the theory of the three sub-systems of structure, substance, and legal culture that legal culture is the basis of all aspects of the legal system (Lawrence, 1984).

From Friedmann's view, one of the things that makes a law applicable is the existence of a legal structure. The legal structure is an institution created by the legal system with various functions to support the system's operation. This component makes it possible to see how the legal system provides services for regularly processing legal materials.

As a legal state, Indonesia has law enforcement institutions: the Supreme Court and special courts, the Prosecutor's Office, the Constitutional Court, the National Human Rights Commission, the Corruption

Eradication Commission, the Business Competition Supervisory Commission, and the National Narcotics Agency. In this article, the author reviews more about the Supreme Court. The Supreme Court is the actor of judicial power as intended in the 1945 Constitution of the Republic of Indonesia. Meanwhile, judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the sake of implementation of the Legal State of the Republic of Indonesia.

METHODS

Judicial power is exercised by officials called judges. According to the Big Indonesian Dictionary (KBBI), a judge is a person who hears cases in a court or tribunal. Meanwhile, Article 1, point 8 of the Criminal Code states that a judge is a state judicial official authorized by law to adjudicate. What is meant by adjudicating is a series of legal actions to receive, examine, and decide criminal cases based on the principles of freedom, honesty, and impartiality at a court hearing in terms and according to the methods regulated in this law (Solahuddin, 2010). Judges must maintain judicial independence in carrying out their duties and functions.

Based on the definition of a judge as outlined above, concerning the three primary legal values, it is essential to understand the role of judges in realizing these values. Because a judge is an official who decides on a case, applying these three fundamental legal values can be seen in every decision made by the judge after receiving and examining a case.

RESULT AND DISCUSSION

1. Three Basic Legal Values According to Gustav Radbruch. Gustav Radbruch is a modern legal thinker who tries to combine three classical approaches, namely, a philosophical approach which focuses more on the study of law as a set of moral values and abstract ideas, including the study of morals and justice; a normative legal science approach which focuses more on understanding law as a complete system which includes a set of legal principles, legal norms, and legal rules; and a sociological/empirical approach which focuses on law as a set of realities, actions and behavior. According to Gustav Radbruch, the three fundamental values of law include justice (philosophical), legal certainty (juridical), and benefit to society (sociological). Gustav Radbruch started with the view that society and order have a close relationship. They are even said to be two sides of a coin. It shows that every community (society) in it needs order. Society always has several standards that help actualize this order, including laws, morals, and customs (Raharjo, 1996).

Legal Justice. The three fundamental legal values Gustav Radbruch put forward are standard priority standards in law enforcement for judges. Justice is the glue that holds civilized society together. A regulation is put in place to ensure that every member of society and state officials take the necessary steps to maintain social relations and shared goals, or vice versa, to avoid dangers that could undermine the order of justice.

According to Gustav Radbruch, law is the bearer of the value of justice, and justice has a normative and constitutive essence for law. It is normative because justice must be an absolute aspect of law. Rules that do not include justice do not deserve to be called law. It also considers Gustav Radbruch's priority principle, which holds that justice must come first, then expediency, and then legal clarity, to apply the law effectively and equitably to achieve legal objectives (Raharjo, 1996).

Legal Benefits. Utilitarianism was first developed by Jeremi Bentham (1748-1831). The problem faced by Bentham at that time was how to judge whether a social, political, economic, and legal policy was morally good or bad. In other words, how to assess a public policy that has a moral impact on many people. Based on this thesis, Bentham found that the most objective basis is to see whether a particular policy or action brings benefits or beneficial results or, conversely, harm to the people involved (Sonny, 1998).

If we relate what Bentham stated to the law (read Policy), the good and bad of the law must be measured by the good and bad consequences of applying the law. A new legal provision can be good if the consequences resulting from its implementation are goodness, maximum happiness, and reduced suffering. Conversely, it is considered harmful if its implementation results in unfair consequences losses, and only increases suffering. So, no experts claim this utility theory is the economic basis for legal thinking. The main principle of this theory is regarding the purpose and evaluation of law. The aim of the law is the most excellent welfare for the most significant number of people or all people, and legal evaluation is carried out based on the consequences resulting

from implementing the law. Based on this orientation, the content of the law provisions regarding the regulation of the creation of state welfare (Rasjidi & Putra, 1993).

The next adherent of Utilitarianism was John Stuart Mill. In line with Bentham's thoughts, Mill believes an action should aim to achieve as much happiness as possible. According to Mill, justice originates in the human instinct to reject and avenge the damage suffered by ourselves and anyone who gets our sympathy. Hence, the essence of justice includes all the moral requirements essential for humanity's welfare (Salman, 2010). Mill agrees with Bentham that an action should aim to achieve happiness, whereas an action is wrong if it produces something opposite.

Furthermore, Mill stated that standards of justice should be based on utility. However, the origins of awareness of justice are not found in utility but in the stimulus for self-defense and feelings of sympathy. According to Mill, justice originates in the human instinct to reject and avenge the damage suffered by ourselves and anyone who has our sympathy. The feeling of justice will rebel against damage and suffering, not only based on individual interests but more broadly to other people whom we equate with ourselves so that the essence of justice includes all the moral requirements essential to humanity's welfare (Rahardjo, 2006).

Legal Certainty. Legal certainty, as one of the goals of the law, is a component of efforts to achieve justice. Implementation of legal enforcement of an activity, regardless of who carries it out, is a form of true legal certainty. Everyone can predict what will happen if society takes specific legal actions if there is legal certainty. Legal certainty is required to apply the principle of equality before the law.

Subjects (conditions), provisions, or provisions are a form of legal certainty. The law must be specific and fair. Because a code of ethics must support reasonable orders, it must be a rule of conduct and justice. The law can only do its job if it is fair and implemented with certainty. Only normative answers, not sociological ones, can be given with legal certainty (Rato, 2010).

Gustav Radbruch's view is that legal certainty refers to certainty regarding the law itself. Law, or more specifically, legislation, produces legal certainty. Gustav Radbruch believes that favorable laws that control human interests in society must always be respected, even if the favorable laws are unjust.

2. The Role of Judges in Justice. As previously explained, judges are officials who exercise judicial power. Judges are state judicial officials who are authorized by law to adjudicate. In carrying out their duties, judges have independence and responsibility. Contextually, judges' freedom has three essences in exercising judicial power, namely: judges are only subject to law and justice; no one, including the government, can influence or direct the decision that the judge will hand down; and there are no consequences for the judge's personality in carrying out his judicial duties and functions (Rifai, 2010).

Apart from judges having contextual freedom, judges in examining and adjudicating cases face the fact that the existing written law cannot always solve the problems they face, considering that even though the codification of laws appears complete, it is never perfect because thousands of unexpected problems will be presented to them. Judge (Mertokusumo & Pitlo, 1993). So, judges often have to find the law itself (*Rechtsvinding*) to complement existing law in resolving concrete events presented to them to be used as a basis for deciding a case. On their initiative, judges must explore and discover the law in society (Dirjosisworo, 1983).

Legal discoveries made by judges in examining and deciding cases must be legal discoveries that have authority. Judges must be able to make good decisions to become a reference for current legal reforms, so judges must always equip themselves with legal knowledge, theory, and philosophy. Judges may need to read the law normatively. He must look at the law deeper, more comprehensively, and further ahead. He must be able to see the things behind a written provision, what thoughts are there, and what the community feels about justice and truth about it. If this is not done, it can result in a tendency for disintegration in understanding law regarding ontology, epistemology, and axiology (Darmaji, 1998).

Because the duties and roles of judges are so crucial in justice, a judge must always reflect morally on the implementation of his duties and responsibilities to God Almighty so that the decisions taken can follow the intentions "for the sake of justice based on the belief in God Almighty." Apart from being accountable for carrying out their duties based on the laws of this world, judges must also be held morally accountable following the divine law of true justice.

3. Standard Priority Standards for Judges in Deciding Cases. As previously stated, the priority standards for judges in deciding a case are justice, expediency, and legal certainty. According to Gustav Radbruch, the three primary legal values are priority standards, prioritizing justice, expediency, and, finally, legal certainty.

Judges play a critical role. He is an enforcer of law and justice and a state official with the noble task of realizing the rule of law, providing legal certainty and benefits to society through his legal decisions in court. As explained previously, many of the material laws judges use in certain courts have yet to be translated into law. Therefore, concerning deciding cases, judges must always base it on the applicable law broadly, which includes law as positive law. These habits live in society, jurisprudence, and expert opinions (legal doctrine) (Arianto, 2012).

A judge's decision is a legal discovery in a unique sense, containing the meaning of the process and work carried out by the judge, which determines what is right and wrong according to the law in a concrete situation, which is tested by conscience. In order to increase the role of Judges as agents of change in realizing correct and fair decisions, a Judge, in this case, the Supreme Court Judge, is required to apply a legal discovery approach method that can fulfill the community's sense of justice (Arianto, 2012).

When deciding a case, the three primary legal values often cannot be fulfilled. Sometimes, justice clashes with legal certainty, and vice versa. There are also cases where expediency clashes with justice and legal certainty. In these circumstances, a judge's accuracy and thoroughness are required. Judges must be able to see the problems that occur not only according to normative truth but must also see material truth.

There are judge's decisions that could be more useful. As is known, the court is a place for people to seek justice so that they can benefit. However, this is often not considered by judges. Some decisions are known as 'sissy decisions' because they have no benefits and do not even have certainty. In this type of decision, the judge only considers fairness.

In the legal system adopted by the Indonesian state, justice is indeed the most important thing. Therefore, every decision issued by the court always states the instructions 'for the sake of justice based on belief in the Almighty God.' However, according to Gustav Radbruch, justice alone is not enough. The aim of the law must be to provide benefits to society in addition to providing legal certainty. Justice that is not followed by expediency is false justice that undermines justice itself.

The primary legal values Gustav Radbruch put forward are legal values in society. The judge must properly judge the case submitted to him; he must not reject a case because the law does not exist or needs to be clarified, but he is obliged to try it. As a law enforcer, he must explore, follow, and understand the legal values that exist in society. When adjudicating a case submitted to him, a judge must know the facts and events.

Therefore, before handing down its decision, the Panel of Judges must first find out the facts and events revealed by the parties and the evidence presented at the trial. Regarding this last matter, the Panel of Judges must consolidate and qualify these events and facts to find concrete events/facts. After the Panel of Judges finds the events and facts objectively, the Panel of Judges tries to find the law precisely and accurately regarding the events that occurred. If the legal bases put forward by the parties in the case are incomplete, then the Panel of Judges, because of their position, can add to/complete the legal bases as long as they do not harm the parties in the lawsuit.

It is a desecration of the purpose of the law if a court decision is a 'sissy decision' that does not provide benefits, nor does it provide legal certainty. Such a situation will result in a loss of public trust in seeking justice where justice is available, namely judicial bodies authorized by law. A law that only cares about justice and ignores benefits and certainty is a law that does not care. Judges, through their decisions, must be able to respond to the interests of the community and not create decisions that create ambiguity for people seeking justice.

The declaratory and constitutive foundations for a judge's authority and the judge's independence in accepting, examining, and deciding on a case have been regulated in existing laws and regulations. The legal substance that regulates these authorities is correct. Therefore, judges, as part of the legal structure, must be able to translate the substance of existing law in order to create changes in legal culture in society. Thus, judges have an essential role in running the legal system in Indonesia as specific agents of change for the law. It is miserable that in the future, jurisprudence will be cited by law enforcers from decisions that have permanent legal force. However, these decisions are useless because they only advance justice and ignore other fundamental legal values.

In the judicial process, when applying the law in concrete cases that are examined and tried, judges must be able to bring "legal justice" closer to "moral justice" so that in the judicial process, justice can be realized. Judges'

independence of judicial power must be directed according to its primary objective in the judicial process, namely adjudicating disputes or cases. The meaning of adjudicating means giving "justice" or justice. Therefore, the judge's decision was given executorial instructions "for the sake of justice based on belief in the Almighty God." These considerations are necessary for the judge's decision to have legal force so it will be implemented.

A judge's decision that cannot be implemented (non-executable) or a decision that does not fulfill a sense of justice is the same as not being valid for justice seekers because the goal that justice seekers hope for in court proceedings is other than that the law can be enforced and in that way justice can be realized, However, if due to specific reasons the decision cannot be implemented, then there will be no benefit or use for the parties to the dispute.

CONCLUSION

In carrying out their duties, judges play an important role in law enforcement in Indonesia because it is strictly regulated by law. Judges, as officials implementing judicial power, are given independence and independence by law to find the law if the existing positive law is incomplete as a guide in deciding a case. The judge's confidence must be built from existing legal facts and all the clues to obtain a legal decision that considers more profound matters regarding a law's ontology, epistemology, and axiology.

Gustav Radbruch's view of the three primary legal values is very important for judges in deciding cases. In realizing these values, judges should remain neutral, independent, and free and not be interfered with by political or government interests. Officials implementing judicial power should uphold the philosophical, juridical, theological, and moral meaning of *irah-irah*, "for the sake of justice based on belief in the Almighty God," in every decision they make. Conflicts in upholding justice, expediency, and legal certainty should only make some laws and decisions beneficial for a society that believes in justice.

REFERENCES

- Arianto, H. (2012). Peranan Hakim dalam Upaya Penegakkan Hukum di Indonesia. *Lex Journalica*, 9(3), 18014.
- Darmaji, S. (1998). *Kedudukan Hakim dalam Ilmu dan Filsafat*. (Jakarta: Mandar Maju).
- Dirjosisworo, S. (1983). *Pengantar Ilmu Hukum*. Jakarta: PT. Raja Grafindo.
- Lawrence, M. (1984). *Friedmann, American Law: An Introduction, New York: W.W. Norton and Co.*
- Mertokusumo, M. S., & Pitlo, A. (1993). *Bab-Bab Tentang Penemuan Hukum*. Jakarta. Citra Aditya Bakti.
- Raharjo, S. (1996). *Konsep Ilmu Hukum*. Citra Aditya Bakti, Bandung.
- Rahardjo, S. (2006). *Hukum dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro)*. Uki Press.
- Rasjidi, L., & Putra, I. W. (1993). *Hukum sebagai Suatu Sistem, Remaja Rosdakarya*. Bandung: Remaja Rusdakarya.
- Rato, D. (2010). *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. Laksbang Presindo, Yogyakarta.
- Rifai, A. (2010). *Penemuan Hukum oleh Hakim: Dalam Perspektif Hukum Progresif*. Jakarta. Sinar Grafika.
- Salman, H. O. (2010). *S, Filsafat Hukum (Perkembangan & Dinamika Masalah)*. Bandung: PT. Refika Aditama.
- Solahuddin, K. U. H. P. (2010). *Kitab Undang-Undang Hukum Pidana dan KUHLAP Kitab Undang-undang HUKUM Acara Pidana*. Jakarta: Visimedia.
- Sonny, K. (1998). *Etika Bisnis Tuntutan dan Relevansinya*. Jakarta: Kanisius.