ABSTRACT

Disparity can occur due to judges’ perspective differences in interpreting a legal concept that has implications for decisions. The emergence of disparity in a judge’s decision can be an indicator and manifestation of the failure of a system to achieve equality in the rule of law and at the same time reduce the confidence of justice seekers in the court system. This study aimed to examine and analyze the factors that underlie judges in issuing decisions related to civil disputes so as to cause disparity and legal implications for the disparity of judicial decisions. The research method used was normative juridical research. The research was conducted by examining library materials which include primary legal materials sourced from various laws and regulations and court rulings and secondary legal materials in the form of explanations used to analyze primary legal materials in the form of expert, academics, practitioners or judges’ views through documents, books, and scientific works. Then, the legal material was identified and analyzed to achieve the objectives of this study. The results showed that there were several disparities in judges’ decisions related to civil disputes both horizontally and vertically. It is expected that this research can provide input for judges in making a decision so that legal certainty can be created.

Keywords: Disparity, Decision, Judge.

INTRODUCTION

Judge's decision is a statement in which the judge, as an official of the state authorized, make at the hearing and aims to end or resolve a case or dispute between the parties (Bambang Sugeng and Sujayadi, 2012, p. 85). Judges' decisions in the courtroom do not merely end the dispute between two or more parties, they also do not merely give rights to one party and impose obligations on the other party, or just punish one of the parties that litigate to carry out the contents of the decision. But the judge’s ruling can also be the beginning of a new dispute, a continuation of injustice. Therefore the judge's decision does not necessarily bring justice to the parties. Judges' decisions can even present widespread suffering and distrust. Suffering and distrust in a judge's decision are not only triggered by an unfair process and decision, but also because there is a disparity between one or more relatively similar cases; process disparity, legal interpretation disparity, treatment disparity, and final decision disparity.

Judges' decisions in terms of practical and theoretical visions are decisions pronounced due to their position in court proceedings after going through procedures for procedural law generally made in written form with the aim of resolving or ending the case (Bambang Sugeng and Sujayadi, 2012, p. 85). Each decision, which is stated in written form, must be signed by the judge and members participating in the examination and substitute registrar who participated in the hearing. What was said by the judge in the trial must be exactly the same as what was written, to prevent any difference from what was said in the trial with what was written (Fauzie Yusuf Hashibuan, 2007, p. 82-83).

Disparity can occur due to differences in judges' perspectives in interpreting a legal concept that has implications for decisions. Especially in civil decisions that need special attention because it involves a person's fate, rights, and good name.

The emergence of civil disputes is caused by violations of a person's rights as stipulated in civil law which causes harm to the parties concerned. Therefore, those who feel disadvantaged submit a case to the judge to obtain an appropriate settlement. The judge must find the real truth of what was stated and demanded by the parties (Djamanat Samosir, 2012, p. 20-21). The existence of civil law aims to regulate the legal relationship between one person with another person in social life because the law functions as a regulator of people's behavior and actions in social and state life (Abdul Hamid, 2016, p. 131).

One of the fundamental areas that is currently in the spotlight is the crisis in the decision of district court judges. The crisis is an abnormal condition, because various institutions that are prepared to manage the processes in society are not able to carry out their functions properly (Rachmad Safa'at, 2016, p. 35).

As a state of law, Indonesia should always uphold human rights by guaranteeing all citizens at the same time their position in the law and government with no exception. Ideally as a rule of law, Indonesia adheres to the system of rule of law over the rule of law, that is, the law has the highest authority in the country. In several judges' decisions related to civil disputes, disparity often occurs both horizontally and vertically regarding whether or not a claim is filed by a plaintiff. Horizontal disparities can occur between first-level court decisions, appellate court decisions with other appeal-level decisions, and between cassation-level decisions and other cassation-level decisions. The vertical disparity can occur between the decision of the first instance court and the next level. From here it will be seen a serious problem, because it is an indicator and manifestation of the failure of a system to achieve equality in the rule of law and at the same time will weaken public confidence in the system of administering civil law.

The number of civil disputes that were submitted to the district court and those that were appealed to the high court which continued at the cassation stage in the Supreme Court of the Republic of Indonesia attracted the researchers to conduct a disparity analysis of the decisions of the district court judges, the high court and the cassation level.
Research on judicial decision disparities related to the object of civil disputes is a normative juridical study to find out how judges of a judicial institution implement the rule of law and legal reasoning in the context of examining, adjudicating and deciding civil disputes. By examining these aspects, this research is expected to be able to answer the question of whether there is a stable legal standard used by judges in deciding similar cases, or in fact obtaining the fact that there is actually a disparity tendency (difference) in its implementation. It is very important to emphasize consistency for judges to give fair and useful decisions and ensure legal certainty, meaning that judges as God's representatives must pay attention to and apply applicable legal norms and legal principles and minimize and even nullify decisions that conflict with each other, another case of a kind, both horizontally (against court decisions produced at the same court level) and vertically against court decisions resulting at the first court level, appeal and cassation).

This research was carried out in relation to horizontal disparity of judges' decisions, namely the difference between horizontal and equal court decisions (disparities of judges of the first court) and vertical disparities of judges' decisions, which was between first and subsequent court decisions (disparity of judges' decisions between first court with cassation).

The existence of horizontal disparity in decisions can be observed from two judges' decisions on the resistance efforts submitted by people who have almost the same case position, namely case number: 1503/Pdt.G/2008/PN.Jkt.Sel. and case decision number: 66/Pdt.G/2008/PN.Jkt.Sel. Despite having almost the same case position, the panel of judges who tried the two cases gave different decisions, thus giving different legal consequences.

In the case number: 1503/Pdt.G/2008/PN.Jkt.Sel., The Panel of Judges who examined and tried the case made the plaintiff in opposition win. So as a result of the law, ownership status of a plot of land and building remained the property the plaintiff in oppositionand the Bank was not entitled to execute the object of the loan agreement.

Whereas in case number: 66/Pdt.G/2008/PN.Jkt.Sel., The Panel of Judges who examined and tried the case rejected the plaintiff in opposition. Therefore, due to its legality, the plaintiff in opposition had no right to control or own their land and building, and the Bank had the right to execute the object of the loan agreement. Furthermore, related to vertical decision disparity, it can be observed in the verdict of the first level judges with case register number: 698 K/Pdt.Sus-PHI/2016.

Based on the background above, the researchers examined the factors that underlie the judge in issuing decisions related to civil disputes that cause disparity and legal implications for the disparity of decisions in civil disputes. A study certainly has the objectives and benefits to be obtained from the research results. In formulating research objectives, the researchers stick to the problems that have been formulated. The purpose of this study is to find out the factors that underlie the judge in issuing a decision that causes disparity and legal implications for the disparity of the judge's decision in civil disputes.

This research is expected to provide theoretical benefits and practical benefits:

Theoretical Benefits, It is expected that the results of this study can contribute to the development of legal science in general and can develop the concept of law enforcement arrangements particularly to prevent disparities in judges' decisions.

Practical benefits, This research is expected to provide input for law enforcers, especially judges who are directly or indirectly involved in the process of dropping decisions in court so as to prevent disparities in judges' decisions.

To answer the legal issues in this study, a legal study was conducted. Legal research is an activity of know-how in legal science, legal research is carried out to solve legal issues that are faced (Peter Mahmud Marzuki, 2016, p. 60). The research method used in this study was a normative juridical research method. Normative juridical research methods, also called library legal research, is legal research conducted by examining library materials or secondary data (Soerjono Soekanto and Sri Mamudji, 2013, p. 13).

This secondary data included primary, secondary and tertiary legal materials. To get research results that can be justified scientifically, the researcher used the theory of justice, the theory of authority, the theory of legal protection and the theory of legal certainty.

The research began by reviewing and analyzing in advance some of the decisions of the district courts in Jakarta. Furthermore, an analysis was carried out on some of the regulations that underlie the decision made by the judges. Then this study continued by analyzing the disparities between the judges' decisions. In analyzing the problem, the writer uses the statutory approach. According to Peter Mahmud Marzuki, the Statute Approach is an approach using legislation and regulation. Product in the form of beschikking/decree is a decision issued by administrative officials that are concrete and specific, for example a presidential decree, ministerial decree, regent's decision, and the decision of a particular body cannot be used in the legal approach (Peter Mahmud Marzuki, 2016, p. 137).

In this study, the location of the study was conducted in a district court in Jakarta. The type of data used in this study was secondary data. To obtain valid secondary data, this research required 3 (three) Legal Material Sources, there were Primary Legal Material Sources, Secondary Legal Material Sources, and Tertiary Legal Material Sources.

The analysis technique used in this research was descriptive analysis, which revealed a problem, situation or event as it is based on the findings in the research in the form of narration. The analytical descriptive analysis technique was used to reveal problems, circumstances or events related to the disparity of judges' decisions in civil disputes. This technique was also used to describe the statement of the source in writing or verbally to be studied and analyzed in full and in-depth about the problem studied. Then the results of research that were based on the theory of justice, the theory of authority, the theory of legal protection and the theory of legal certainty were explained descriptively to get conclusions from the discussion of the problem.
FACTORS UNDERLYING JUDGES IN ISSUING DECISIONS RELATED TO CIVIL DISPUTES THAT CAUSE DISPARITIES

In the study of disparity there is always more than one object being compared. The difference between the two shows the disparity. In a judge's ruling, the word disparity is often denoted merely by the difference in sanctions proposed, even though it should have a broader meaning. Disparity can be related to differences in the perspectives of judges in interpreting a legal concept, which in turn could have implications for the rendering of the decision (Zeric K Smith, 2014, p. 6).

The problem of disparity in the decisions of judges in Indonesia has not received much attention, except for criminal decisions that have been discussed and investigated in the last two decades. Basically, the community places high hopes on judges and the justice system, considering that the judiciary is the main (though not the only) medium for justice seekers. However, many judges' decisions that invite criticism and cynicism that leads to distrust of society because they feel they do not get justice.

The problem of horizontal disparity in judges' decisions in civil disputes as happened in two cases with the same legal problem, namely the case verdict number: 1503/Pdt.G/2008/PN.Jkt.Sel. and case verdict number: 66/Pdt.G/2008/PN.Jkt.Sel. (dispute over the execution of the object guaranteed credit agreement). While the vertical disparity of judges' decisions in civil disputes, can be examined in the first-level judge's decision by case register number: 236/Pdt.Sus.PHI/2015/PN.Jkt.Pst and cassation-level decision with case register number:698 K/Pdt.Sus-PHI/2016 with the same object (labor dispute).

In the case number: 1503/Pdt.G/2008/PN.Jkt.Sel., The panel of judges handed down the verdict with the following:

IN EXCEPTION
Refuse all RESPONDENT IN OPPOSITION! Exceptions.

IN PROVISION
Reject the request for provision from both the PLAINTIFF IN OPPOSITION and RESPONDENT IN OPPOSITION.

THE PRINCIPAL CASE:
1. Receiving requests for resistance from the PLAINTIFF IN OPPOSITION;
2. Declare PLAINTIFF IN OPPOSITION are correct and in good faith.
3. Declare that the PLAINTIFF IN OPPOSITION is the legal owner of a parcel of ownership rights no. 04666 / West Cilandak, located in the Special Capital Region of Jakarta, South Jakarta City, Cilandak District, West Cilandak Village, covering an area of 1,373 M2 (one thousand three hundred seventy-three) square meters, dated January 10, 2000, Measurement Letter Number 09.02.07.03. 05078/2000 dated January 6, 2000, Land Identification Number (NIB) 09.02.07.03.05078, registered under the name of DJAWAHIR Hajj, along with local residential buildings known as Jalan PangeranAntasari RT. 05 RW. 01, Cilandak Barat;
4. Declaring Deed of Power of Attorney Imposing Mortgage Right September 1, 2006 No. 8 made before FENNY TJITRA, the Notary Public in Jakarta is legally flawed and has no legal force;

Declare Deed of Credit Agreement Using Guarantee No. 5 dated 1 September 2006 made before FENNY TJITRA, Notary in Jakarta was legally flawed and had no legal force;

Declare Deed of Credit Agreement Using Guarantee No. 6 dated September 1, 2006 made before FENNY TJITRA, Notary in Jakarta was legally flawed and had no legal force;

Declare Deed of Credit Agreement Using Guarantee No. 7 dated September 1, 2006 made before FENNY TJITRA, Notary in Jakarta was legally flawed and had no legal force;

Declares the Underwriting Right Certificate on October 16, 2006 Number 3267/2006 issued by the Head of the South Jakarta Municipal Land Office cq. The Head of the Land Rights and Land Registration Section is legally flawed and has no legal force;
5. Punish RESPONDENT IN OPPOSITIONI and RESPONDENT IN OPPOSITIONII both individually or jointly to pay for this case fee;

Whereas in case number: 66/Pdt.G/2008/PN.Jkt.Sel., the panel of judges handed down the verdict with the following rules:

IN PROVISION:
- Reject demands Provisionil of plaintiff in opposition;

IN EXCEPTION:
- Refuse the Exception of the Disputed Participants

THE PRINCIPAL CASE:
- Refuse the plaintiff in opposition's refutation for all;
- Punish the plaintiff in oppositionfor paying a court fee of Rp.1,959,000 (one million nine hundred fifty nine thousand rupiah).

In the case ruling number: 1503/Pdt.G/2008/PN.Jkt.Sel., The Panel of Judges who examined and tried the case favored the plaintiff of Opposition. So as a result of the law, the ownership status of a plot of land and building remains the property of the plaintiff of Opposition and the Bank is not entitled to execute the object of the land collateral.
Whereas in case number: 66/Pdt.G/2008/PN.Jkt.Sel., The Panel of Judges who examined and tried the case rejected the plaintiff in opposition. Therefore, due to its legality, the plaintiff in opposition had no right to control or own their land and building, and the Bank had the right to execute the object of the loan agreement.

The reasons that become legal considerations for the Judge in making the case decision number: 1503/Pdt.G/2008/PN.Jkt.Sel. at the trial, among others, that:
- The Resistance submitted by the plaintiff of Opposition is based on the existence of a request for seizure of the execution of the mortgage rights submitted by the Bank on a plot of land and building owned by the plaintiff in opposition.
- Application for execution of mortgage rights submitted by the Bank is based on evidence of a deed of credit agreement using a guarantee, power of attorney to charge mortgage rights and Mortgage Certificate with an attachment to the Deed of Granting Mortgage, signed by the debtor, creditor and guarantor.
- When the credit agreement was signed using a guarantee dated September 1, 2006 and the Mortgage Certificate Number 3267/2006 dated September 29, 2006, it turned out that the guarantor as one of the parties who signed the deeds had died on September 24, 2002, resulting in the deed Credit agreements are legally flawed and have no legal force
- To the resistance proposed by the plaintiff of Opposition, the Panel of Judges granted it.

While the reasons that become legal considerations for the Judge in making the case decision number: 66/Pdt.G/2008/PN.Jkt.Sel. at the trial, among others, that:
- Rebuttal submitted by the plaintiff in opposition was based on the existence of a request for seizure of the execution of the mortgage rights submitted by the Bank on a plot of land and building owned by the plaintiff in opposition.
- Requests for the confiscation of mortgage of responsibility submitted by the Bank were based on evidence of a Credit Opening Agreement, Deed of Recognition of Debt, Deed of Power of Attorney Imposing Mortgage Rights, Deed of Granting Mortgage Rights and Certificate of Mortgage Rights.
- This rebuttal was filed because the plaintiff in opposition had never signed the Credit Opening Agreement, the Deed of Recognition of Debt, the Deed of Power of Attorney Imposing Mortgage Rights, the Deed of Granting Mortgage Rights and the Mortgage Certificate with the Bank. - With regard to the objection filed by the Rebuttal, the Panel of Judges had rejected it on the grounds that the plaintiff in opposition could not prove the arguments of its rebuttal which basically states that the plaintiff in opposition did not submit the object of confiscation of execution to the respondent in opposition as the Credit/Debt Guarantee CV. LJT as well as the argument of the Rebuttal which stated that the plaintiff in opposition was not a Commander in CV. LJT.

To make it easier to see the decision disparity in the two cases above, the researchers summarized it in the following table:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Position Case</td>
<td>The plaintiff in opposition as a third party whose identity and signature was forged by the co-respondent in opposition to being a guarantor for a loan to the Bank to borrow Rp.3,500,000,000 (three billion five hundred million rupiah) without the knowledge of the plaintiff in opposition.</td>
<td>The plaintiff in opposition as a third party whose identity and signature was falsified by the respondent in opposition to serving as a guarantor for a credit facility loan in the amount of Rp1,200,000,000 (one billion two hundred million rupiahs) from a bank without the knowledge of the debtor.</td>
</tr>
<tr>
<td>2.</td>
<td>Loan Collateral</td>
<td>Original Certificate of Ownership No. 04666, Covering an area of 1,373 M2 (one thousand three hundred seventy-three) square meters;</td>
<td>Original Certificate of Ownership No. 598/ Cilandak Barat with an area of 378 m2, Ownership Certificate No. 600/ Cilandak Barat with an area of 17 m2, and Certificate of Ownership No. 851/ Cilandak Barat with an area of 145 m2, all three are in the name of Disputant.</td>
</tr>
<tr>
<td>3.</td>
<td>Judge's Decision</td>
<td>Granting the plaintiff in opposition in part Declaring plaintiff in opposition was true and well-intentioned Stating the plaintiff in opposition was the legal owner of a plot of land to be executed by the bank. Declaring legal defects and did not have legal force over all the Deed of the Agreement involving H. Djawahir who is deceased. Rejecting the remaining demands of the plaintiff in opposition Punishing the respondent in opposition I and respondent in opposition II in a joint responsibility to pay court fees.</td>
<td>Refusing plaintiff in opposition’s demands for all. Punishing the plaintiff in opposition to pay court fees</td>
</tr>
</tbody>
</table>

Of the two civil cases that have the same position case, but the ruling of different decisions above, there appears to be a horizontal disparity in the decision by the Judge in observing, assessing and interpreting the position of the case. In the case of signature forgery in the two cases above, the Judge would be easier to determine the original or fake in the case ruling.
1503/Pdt.G/2008/PN.Jkt.Sel. Because when signing the agreement by HI who was made the guarantor and joined the signature in the agreement had died several years before the agreement was signed. However, in case of 66/Pdt.G/2008/PN.Jkt.Sel., The Panel of Judges has more difficulty in determining whether it is genuine or fake because for this, it is the duty of the police to make sure, in this case, the landowner as the plaintiff in opposition must be able to convince the Panel of Judges with the forgery of the signature.

Furthermore, related to the disparity in the verdict of judges in civil disputes vertically, the first-level panel of judges with case register number: 236/Pdt.Sus.PHI/2015/PN.Jkt.Pst has handed down the verdict with the following rules:

**Passing:**

1. Grant the plaintiff in opposition’s claim in part;
2. State that the respondent in opposition has taken actions that are contrary to the provisions stipulated in the Joint Work Agreement (PKB) between Garuda Indonesia (Persero) Tbk for the 2012-2014 period and the 2014-2016 period.
3. State the provisions on the change in retirement age nominal of Cabin Crew of PT. Garuda Indonesia (Persero) Tbk from the age of 56 to 46 years given by the Defendant as the application form for changing the normal retirement age of the Cabin Crew of PT. Garuda Indonesia (Persero) Tbk, from the age of 56 to 46 years is contrary to the provisions of the Collective Labor Agreement (PKB) of PT. Garuda Indonesia (Persero) Tbk 2012-2014 period and the Collective Labor Agreement (PKB) of PT. Garuda Indonesia (Persero) Tbk for the period 2014-2016;
4. State the form of the provisions for normal retirement age Female Cabin Crew PT. Garuda Indonesia (Persero) Tbk from the age of 56 to 46 years made and signed by the Plaintiffs submitted to the Respondent was declared invalid and null and void by law and did not have binding legal force for the parties who made it and were considered to have never existed.
6. Refuse the Plaintiff’s claim for other than the rest;
7. Charge the cost of cases arising from this case to the state in the amount of Rp.381,000 (three hundred eighty-one thousand rupiah).

Whereas in the case appeal case number: 698 K/Pdt.Sus-PHI/201, the panel of judges handed down the verdict with the following rules:

**PASSING:**

- Grant the cassation request from the Cassation Petitioner of PT. Garuda Indonesia (Persero) Tbk, mentioned;
- Cancel the decision of the Industrial Relations Court at the Central Jakarta District Court Number: 2236/Pdt.Sus-PHI/2015/PN.Jkt.Pst., March 7, 2016.

**PASSING ITSELF:**

1. Refuse the plaintiff in opposition’s claim to all;
2. Impose court fees to the state.

The reasons that become the legal considerations for the first judge in making the case decision number: 236/Pdt.Sus.PHI/2015/PN.Jkt.Pst were:

- The Panel of Judges has granted the Plaintiff’s claim on the basis of the Company’s actions to determine the change in the nominal retirement age from 56 to 46 years based on the application form for changing the normal retirement age from 56 to 46 years filed by the Plaintiff as an Employee is contrary to the provisions of article 1 ILO Convention No. 111 concerning Discrimination in Employment and Occupation jo. Article 5 and Article 6 of Law No. 13 of 2003 concerning Equal Opportunities and Treatment jo. Article 57 Collective Labor Agreement (PKB) between Garuda Indonesia (Persero) Tbk 2012-2014 period and the Collective Labor Agreement (PKB) of PT. Garuda Indonesia (Persero) Tbk for the period 2014-2016, therefore it must be considered invalid and null and void by law.

While the reasons that become the legal considerations for the Judge at the cassation level in making the case decision number: 698 K/Pdt.Sus-PHI/2016 include:

- The Panel of Judges has rejected the Plaintiff’s claim with consideration, the 46-year-old offer for cabin crew who deviates from 56 years is the plaintiff’s choice and cannot be qualified as an act of discrimination and does not conflict with ILO Convention 111.

In the decision of the court of first instance the Panel of Judges who examined and tried the case number: 236/Pdt.Sus.PHI/2015/PN.Jkt.Pst., Had won the lawsuit filed by the Plaintiffs. So as a result of the law, the Plaintiffs can still work until the retirement age 56 years. Whereas in the decision of the cassation level registered in the case register number: 698 K/Pdt.Sus-PHI/2016, the Panel of Judges who examined and tried the case rejected the petition filed by the Plaintiffs. So that the legal consequences of the Plaintiff must stop working until the retirement age of 45 years.

The disparity in judges' decisions both horizontally and vertically as mentioned above is caused by many factors. Not infrequently these factors often make the judge lose his identity. Interventions or influences can come from the judges.
themselves, the parties to the litigation, and can even come from the judiciary itself (Adies Kadir, 2018, p. 13). These factors include subjective and objective factors. The subjective factor is the moral of a judge, namely in the case of examining and deciding a case depending on the personal morals of a judge. Whereas the objective factors are more influenced by the culture, education and intelligence of a judge in examining and exploring the actual legal regulations and legal facts to then be used as a consideration in passing a decision. These subjective and objective factors will certainly affect the disparity of judges' decisions in civil disputes both horizontally and vertically, because the decisions to be imposed are highly dependent on the judge's ability to examine, assess and interpret the position of the case, especially in observing and interpreting the evidence presented by the parties before the trial.

LEGAL IMPLICATIONS FOR THE DISPARITY OF JUDGES' DECISIONS IN CIVIL DISPUTES

A judge has such great authority in law enforcement, truth and justice. That authority requires high responsibility, because the decision must be held horizontally to the public and vertically to the Almighty God.

Interpretation of different legal concepts among judges in examining a case will lead to disparities that have implications for rendering decisions. So that after the losing party compares the verdicts handed down to those imposed on others then feel cheated by the uncertainty or irregularity of the court.

The disparity in judges' decisions will lead to legal uncertainty that is detrimental to the parties who litigate in court. So that will make those in losing side do not respect the law, even though the appreciation of the law is one of the results to be achieved in the goal of settlement through the judiciary.

Occurrence of colonialism affected the legal system in the colonies. The Dutch had colonized Indonesia and arguably the most successful of the other colonizers, in the sense that the occupation was still leaving its mark on the legal order that we use today. In general the public justice process does refer to material and formal law. However, if the Indonesian legal system is classified into a particular system, then researchers have other views about it. Indonesia is not classified in the Civil Law and Common Law systems. The legal system in Indonesia is codified, but the codification does not fully regulate community relations, because customary law and Islamic law still apply long before the formation of the Indonesian state.

The existence of horizontal disparity in the case Decision Number: 1503/Pdt.G/2008/PN.Jkt.Sel. and Case Number: 66/Pdt.G/2008/PN.Jkt.Sel. (disputes over the execution of credit collateral object guarantees), and Disparity of verdicts of judges vertically on the judges' verdicts for the first instance of case number: 236/Pdt.Sus.PHI/2015/PN.Jkt.Pst and case decision verdict rate: 698 K/Pdt.Sus-PHI/2016 (labor disputes) according to researchers should not occur, to provide legal certainty for justice seekers. In Case Number: 1503/Pdt.G/2008/PN.Jkt.Sel., uneducated people should also be able to know or argue that the signing of an agreement which includes the signature of a deceased party is impossible. For this reason, the agreement is said to be legally flawed because the parties' signatures have been falsified. Likewise in Case Number: 66/Pdt.G/2008/PN.Jkt.Sel., although it is true that the Rebuttal fails to refute the argument which states that the Disputant as the Founder of CV. LJT and including the Military Command, it does not mean that the signatures of the Contestant as an agreement in the Agreement to Open Credit with the Most Contested I cannot be faked. The surrender of guarantees made by the Contestant is to the Disputed, not to the Participant of the Disputed I. However, the guarantee has been abused by the Disputed to be submitted to the Disputed I as debt collateral, with an agreement that falsified the signature of the Rebuttal. In this case, carefulness, honesty, and conscience of the Panel of Judges are needed in upholding the law, which is true to be said right and wrong must be decided wrong. The importance of the independence of judges is also emphasized by Montesquieu, saying that: "In the rule of law, judicial power is emphasized, because in judicial power lies the guarantee of individual independence and guarantees of human rights (Charles Louis De Scondat Montesquieu in A. Ahsin Thohari, 2004, p. 45).

Likewise, there is a vertical decision disparity between the judges' decision in the first instance of case number: 236/Pdt.Sus.PHI/2015/PN.Jkt.Pst and case verdict rate decision number: 698 K/Pdt.Sus-PHI/2016 (employment dispute). The appellate judge should reconsider the evidence and witnesses presented at the trial of the first instance, which has given consideration of discrimination by the company by issuing provisions aimed only at female employees while the provisions regarding changing retirement age from 56 years to 46 years are not applied to male employee. Likewise, it must also be considered by the cassation judge that the 46-year-old offering for cabin crew who deviates from 56 years is not the plaintiff's choice, but because of the pressure applied by the company.

Equality of perception in the application of law will realize legal certainty. The realization of legal certainty will prevent or avoid the disparity and inconsistency of decisions because judges have applied the same legal standards to cases or cases that are the same or similar to cases that have been ruled or tried by previous judges, so that decisions on cases can be predicted by justice seekers. With a consistent ruling, a sense of justice and legal certainty can be realized.

Legal certainty will facilitate the process of law enforcement, due to the realization of consistency in the application of the law, then the decision will be easy to carry out their duties. Consistent application of law can also foster jurisprudence as a source of law and legal development, because laws are not always complete and fully regulate everything. The role of the judge in this case is to fill the legal vacuum when the law does not regulate by creating laws, both formal and material law.

In case decision Number: 66/Pdt.G/2008/PN.Jkt.Sel. this the verdicts handed down are not in accordance with the basic philosophy of law related to the case. The ideal of law is justice, but it must also be able to provide legal protection and certainty for justice seekers. The public as debtors who will experience the execution of guarantees is of course in a weak position, which
can only rely on court decisions. If in a court ruling can no longer provide justice, protection and legal certainty, where else will they seek justice.

A judge has a very important position and role in accepting, hearing and deciding every case submitted to him by evaluating written evidence and witnesses presented by the parties, therefore the judge is bound by legal norms and various theories relating to proof (Salim HS and Erlies Septiana Nurbani, 2018, p. 215).

It has become a fact that in the inheritance system not all use the civil law (BW) even though it is regulated in such a way, but customary law and Islamic law still apply in certain areas. So that this fact becomes one of the bases in assessing that the current legal system is not classified as a Civil Law (European Continental) system, one of which is codified, then the second existence of jurisprudence gives a clear distinction that in the characteristics of the system Civil Law is not known as such. However, the existence of jurisprudence in the legal system in Indonesia is not an Anglo Saxon group whose judicial actions are Judge Made Law. So that researchers argue that the legal system in Indonesia does not adhere to the legal system of Civil Law or Anglo Saxon in absolute terms, the legal system in Indonesia is a combination of two major schools of Anglo Saxon and Civil Law.

In the opinion of researchers, the concept of legal arrangements for judges in deciding a case is more effective if it puts forward judicial considerations rather than judges' personal considerations, even though the verdict is packaged in a bundle of various legal institutions so that it is impressed that the verdict is truly based on applicable laws and regulations. The strengths of the Decision that prioritize jurisprudence include:

1. Legal certainty
2. Psychology Judges in ruling decisions are not burdened, because decisions are based on jurisprudence
3. The existence of decision disparity can be further reduced.

It is true that judges cannot be intervened by higher judges in deciding a case. In the case of jurisprudence this should not be interpreted as an intervention from a higher judge to a lower level judge.

Shetreet in his discussion of sentencing guidelines given by the chief judge gave an analogy of how when the judges gather in a room and tell each other and mutually consult each other about their respective cases, can it be said to violate individual judicial independence? People think that with these conditions the parties lose their right to submit arguments. However, here it is the same as a judge going to the library and consulting with others about his case. Does it affect individual judicial independence? According to Shetreet this cannot be easily answered (Simon Shetreet, 1985, p. 643).

Regarding judges who accept the decisions of other judges violating the principle of independence of judges, Utrecht stated that the opinion of a judge makes the rules if a member of a decision which is then followed by another judge is a misunderstanding. A judge who follows a decision of another judge, does not mean that the judge mentioned first explicitly gets an order from the other judge so that according to his decision. Because according to Utrecht, according to Article 1917 of the Civil Code the judge’s decision only applies to both parties whose case was settled by that decision. According to this provision, the judge's decision is not generally accepted, but does not close to be followed (Ernst Utrecht and Moh. Saleh Djindang, 1957, p. 125).

As long as jurisprudence is not intended to influence the decisions of judges and judges to be biased, in the sense of judges taking sides, it can only be said that there are violations of the independence of judges, as in the case of the Tancho jurisprudence case used in the case of Nike II which emphasizes the need for "good faith" elements in trademark registration. Tancho's decision by President Soeharto at that time was deliberately forced to be used as jurisprudence so that the judge would not be independent in giving a ruling (Sebastian Pompe, 2012, p. 646-651)

Judges are bound by jurisprudence as long as it is in line with the legal ratio of a jurisprudence, with the intention that it must be considered. When it is not appropriate the judge can still refuse to apply the norms in the jurisprudence, but must provide the reasons, for the achievement of justice. So still the concept of attachment is persuasive, but it must be considered.

CONCLUSION

Factors that cause disparities in judges' decisions in civil disputes both horizontally and vertically are dependent on the ability of the judges to examine, assess and interpret the position of the case, especially in examining and interpreting evidence presented by the parties before the trial. Society as justice seekers is in a weak position, which can only rely on court decisions. If in a court ruling can no longer provide justice, protection and legal certainty, where else will they seek justice. Judges in deciding a case are more effective if they put forward jurisprudential considerations rather than judges' personal considerations, even though the verdict is packaged in a bundle of various legal institutions so that it is impressed that the verdict is truly based on applicable laws and regulations. In dropping the verdict the judges prioritize jurisprudence as long as it is in line with the legal ratio of a jurisprudence, with the intention that it must be considered. When it is not appropriate the judge can still refuse to apply the norms in the jurisprudence, but must provide the reasons, for the achievement of justice.

REFERENCES


---

Heru Sugiyono
*Faculty of Law*
*Universitas Pembangunan Nasional “Veteran”* Jakarta, , Indonesia
Email: heru.sugiyono@yahoo.com

Robinsar Marbun
*Faculty of Law*
*Universitas Pembangunan Nasional “Veteran”* Jakarta, , Indonesia
Email: robinsar.marbun@gmail.com