



The Philosophy of Justice, Biological Justice and Their Practices in Judgment Decisions

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Abstract- Justice is one of the objectives of the law that the judge wants to uphold. Because justice is subjective and individual, it cannot be separated from place, time, and others which greatly affect the sense of justice of judges. Fairness becomes even more important when 'questions of law' are applied to 'questions of facts'. Justice is defined as a value for creating ideal relationships between humans. They have the right according to law and morality as stated in the popular doctrine "fiat justitia ruat caelum" which means that justice must be upheld even though the sky is falling. Biological justice is a normative entity committed to realizing human dignity. Biological Justice Theory offers a broader understanding of the meaning of justice

Keywords: philosophy of justice , biological justice ; judge's decisions .

I. PRELIMINARY

Philosophy of Law provides answers about the real law, the purpose of law, why it is necessary to obey the law and the nature of justice.¹ Philosophy of law is an alternative that is considered appropriate for obtaining concrete solutions to legal problems that are closely related to society's problems.² There is a common law saying, ubi sociates ibi ius (where there is community, there is law). This proverb arises because humans were created to be in society and protect each other's rights and obligations. Every human being has different interests, and in many cases, sometimes there is friction that causes disputes. So that the problems faced can be resolved and the interests of various parties are protected. Therefore, humans make legal provisions that must be obeyed. If there are parties who violate, it will be subject to sanctions (sanctions).

The concept of law, judge, and God's justice basically wants to return the judge to his nature, namely as God's representative who represents divine values and the embodiment of God's justice in every decision. The process of returning home, of course, requires the judge to carry out a spiritual procession with full awareness. Closer to God, studying transcendent teachings and values, carrying out orders and staying away from His prohibitions, and striving for the growth and development of divinity, consciousness in everyday life is a real manifestation of the spiritual process i concerned.³

Judges must have hard competency (broad knowledge, multidisciplinary) and soft competency (religiosity and morals). These two types of competences will always guide judges in upholding law and justice. By binding procedural law instruments, judges will apply the value of justice in material law according to the settlement of cases. A judge who has a combination of scientific capacity, religiosity, and morals will not rigidly apply the law so that the resulting decision can provide justice and benefit to the disputing parties. This can happen because a judge who has a combination of competences will assess every case submitted to him in a professional, careful, and full of responsibility, both vertically to God and horizontally to the community.

The basic philosophy of biological justice is a normative entity that is committed to guiding humans towards a just, prosperous and happy life. This stems from the basic assumption that the law is for humans, not the other way around.

¹Amran Suadi, *Philosophy of Law Reflections on the Philosophy of Pancasila, Human Rights and Ethics*, Kencana Prenada Media Group, Jakarta, 2019, P. 16

²Sukarno Aburaera, et al., *Philosophy of Law Theory and Practice*, Kencana Prenada Media Group, Jakarta, 2013, P. 46

³Muhammad Taufiq, *Substantial Justice, Cutting the Chain of the Legal Bureaucracy*, Student Library, Yogyakarta, 2014, p. 25

Biological justice positions itself as a force of self-liberation from legalistic-positivistic types, ways of thinking, principles, and legal theories. In the application of material law (*tathbiq al-ahkam*), legal justice takes precedence over formal / normative justice. In this context, for law enforcement, creative and innovative steps are needed, and if necessary, mobilization of laws and rule breakers can be carried out. This is because whatever is done must be based on the logic of propriety and social justice, not merely the logic of regulation.

There are two important parameters to measure how urgent the "theory" of biological justice is, which will be discussed further in this paper. The first parameter relates to the theory and rationale for biological justice. Apart from that, secondly, the implementation of the concept of biological justice in practice, especially in judges' decisions taken in court.

PROBLEM

Based on the description above, two things that will be explored more deeply related to biological justice are as follows:

- a. What is biological justice from the perspective of philosophy of law?
- b. How is the application of biological justice in the practice of judges' decisions ?

II. DISCUSSION

A. Biological Justice in the Perspective of Legal Philosophy

Biological justice is a normative entity that is committed to leading humans to a just, prosperous and happy life. This stems from the basic assumption that law is for humans and not the other way around. Based on this, the birth of law is not for itself, but for something broader, namely for human dignity, happiness, welfare, and dignity. Therefore, when a problem occurs in a law, the law must be reviewed and corrected, not humans who are forced to be included in the legal scheme.

One of the values of God's justice is equality, which is closely related to justice, propriety and justice. This value must be more operationalized in order to be implemented by law. The value of fairness, for example, must illustrate how the compromise between individual rights and obligations. Individual rights (nature, shape and size) must be adjusted to the obligations and responsibilities they carry. Therefore, the law can apply it through the "theory of rights" which defines the rights of the plaintiff in accordance with the obligations and responsibilities that they carry.

As an institution or a place for people to seek justice, courts are not like producers who produce decisions, pursue quantity and target settlement of cases, and do not consider the application of procedural law and material law anymore. If so, it is clear that the resulting verdict will be far from a sense of justice .

Essentially fair means putting things in their place (*itsbatu as-syai 'ala as-shayi'*), which reflects honesty and moral justice because it means putting everything in its proper place,⁴ By giving to anyone what is their right, which is based on the principle that all people are equal before the law.⁵

The relationship between judges and God's justice function is implementation, whereas law in the sense of statutory regulations is corrective. This is because the value of God's justice is universal and absolute, so the judge only applies it. Whereas law as a human product is inseparable from weaknesses and shortcomings here and there, so judges need to make corrections if this is contained in laws and regulations related to concrete cases.

If according to the judge, the law contained in statutory regulations has not fulfilled the sense of justice for the case being tried, then the judge is obliged to deviate from these provisions by exploring the

⁴Jimly Asshiddiqie, *Constitution of Social Justice* , Kompas Book, Jakarta, 2018, p. 45

⁵The Supreme Court of the Republic of Indonesia, *Study of System Development, Mechanisms, Supervisory Work Procedures , Assessment of Quality and Performance of Judges* , LeIP Publisher , Jakarta, 2005, p. 43

values of public justice. Such action does not violate the law; rather it is regulated as regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers.⁶

There are various examples of cases that occurred when the judge handed down a decision, but there was disappointment in the community because the decision was deemed to have injured the sense of justice. There are cases of wives who are illegally married to men (nikah siri). As time goes by, they lead happy lives with abundant wealth. For legal certainty, the wife managed to obtain a marriage certificate from the local Office of Religious Affairs (KUA), not from the KUA where they were married. Until then, based on the existing Marriage Book, they divorced at the Religious Court. After obtaining the Divorce Certificate, the wife filed a joint property lawsuit. However, at the same time, the husband reported his (ex) wife to the police for having committed identity forgery. Long story short, the District Court ruled that the wife faked her identity to get a marriage certificate at the Office of Religious Affairs. This results in the wife who has been living with her (former) husband for a long time being unable to obtain her rights from the marital assets because she has committed an illegal act.

Another case that has shocked the legal world in the country is the legal case against Mbok Minah, a 55-year-old grandmother who was accused of stealing cocoa beans and was eventually sentenced to three months of house arrest. The problem started when Mbok Minah took 3 cocoa beans that fell to the ground and brought them home to be used as seeds, and for this attitude, Mbok Minah was sued in court.

Without justification or even blame, the four cases above are examples of cases that have been decided by the court, but the public has not felt fair with the decisions. This condition certainly raises the question, why did this happen? As a forum for society to find justice, courts must strive to implement a sense of justice appropriately because justice is one of the important goals of law.

Ideally, when the court has ruled, there will be peace in society because one of the nine functions of the law compiled by Charles Sampford is to "maintain social peace," restoring social order. The nine functions of the law are as follows:⁷

- a. Dispute resolution;
- b. Strengthening or "re-institutionalizing" existing practices in the community by establishing rules that are equivalent to those practices and by providing the means for their "facilitation" ;
- c. Changes in existing practices by legislatures and, occasionally, courts;
- d. Guidance or more education, by the legislature and the courts;
- e. Regulation, administrative control of various private institutions by the bureaucracy;
- f. State participation in social and economic affairs by the bureaucracy;
- g. Retaliation of punishment or revenge against people who are deemed to have done something wrong, strengthening existing social values - by courts and correctional institutions;
- h. Maintaining social peace (or, more violently, "social order" or "social control") - by police and prisons insofar as they isolate some and deter some potentially violent individuals; and
- i. The legitimacy of existing social institutions - should be achieved by the courts.

In society there is a dichotomy between legal certainty and legal justice. At its peak, one must choose which one should prioritize between legal certainty and legal justice. Actually, those two things don't need to be contested. Legal certainty and a sense of community justice must be realized simultaneously in every legal problem resolution. These two elements, coupled with the principle of decency, are the main principles in upholding the rule of law in the context of legal ideals.⁸ Legal certainty must be placed in the framework of justice itself because the purpose of justice according to Radbruch is to promote goodness in human life, so it must color the law.⁹

In their function as justice giver, judges often face unregulated legal issues. Many laws and regulations are inherited from colonialism and laws that have just been enacted but do not keep up with the development of society which is full of dynamics of change. On the other hand, the judiciary, in this

⁶Law Number 48 of 2009 concerning Judicial Power

⁷Muh. Guntur, *Legal Certainty and Sense of Justice in Society Towards a New Indonesia* , (2nd International Symposium on Indonesian Anthropology Journal, Padang, July 2001), pp. 6

⁸*Ibid.* , P. 7

⁹Yunanto, *Translating Justice into Judges' Decisions* , in *Progressive Law Journal* 7, Nom. 2 (October 2019), p. 200

case the judge may not refuse to examine, hear and decide cases brought to them because the law does not exist or is unclear.¹⁰

In carrying out their duties and functions, judges must adapt the law to the development of society. If the law cannot be implemented according to its meaning, the judge is obliged to interpret it so that a decision that is taken meets a sense of justice and is in accordance with the purpose of the law. This needs to be done because the judge is always faced with concrete events, and the judge must make decisions accompanied by considerations that can be accepted rationally.¹¹

Legal justice is a condition that cannot stand alone. This is because justice as part of the law accumulates with reactions that provide stimulation to the conditions surrounding the facts which are closely related to the environment in which the event occurs. Justice as a value becomes relative and depends on conditions.

The word "fair" in Arabic 'adl, means "in the middle", impartial, treat each other equally, straight, consistent, and balanced or equal and appropriate.¹² The encyclopedia of Islamic law explains that etymologically al-'adl means not taking sides, not taking sides or equating one another (al-musawah).¹³

The author observes that there are four stages of the mechanism of the human body organism which are appropriate when associated with biological justice processes, as follows:

- a. Converting reactions from stimuli to a condition;
- b. Connect with the environment;
- c. Has a metabolic process;
- d. Being able to produce something from this process so that there is a product in the form of a "fact question".¹⁴

Therefore we believe that each judge's decision regarding justice may differ from one another depending on the reaction of the stimulus and the legal event locus. Therefore, justice that is applied to legal facts includes the process of biological justice, which allows unequal understanding of justice even though it is the same in legal matters but may differ in matters of fact.

According to the author, justice is self-actualization derived from the metabolism between the problems of the facts and legal issues, and be very strategic in human life. Justice must flow with the lifeblood itself because, without justice, this life is already dead before real death comes.

B. Biological Justice in Judge Decisions

A philosopher named Taverne once said: "Give me judges and prosecutors who are honest and smart, then even with a bad law, I will produce a fair verdict."¹⁵ This illustrates how important the integrity of law enforcers is in deciding cases. Thus, justice will be difficult to achieve if law enforcement officials do not have high and respected oral attitudes.

A judge must not act unfairly, not to be careless in deciding the case, and should not be cheating. Judges are required to be careful, extra careful, and not fall into behavior that ignores law and truth. This is even more dangerous when a judge wants to pursue a position or wants to earn a certain amount of respect outside of his professional duties. This causes judges to easily ignore the correct application of procedural law in hearing cases.

The central point of justice is in the person of the judge himself. Thus the figure of a judge must have several elements, namely:

- a. Have extensive knowledge;
- b. Cannot fall into temptations that ignore truth and justice;
- c. Honest and with high integrity;
- d. Free from influence and intervention from various parties (independent).

¹⁰Edi Rosadi, *Just Judge's Decision*, in *the Badamai Law Journal* 1, No.1 (April 2016), pp. 383

¹¹*Ibid*.

¹²Rifyal Ka 'bah, *Islamic Law in Indonesia*, Yarsi University, Jakarta, 1999, p

¹³Abdul Aziz Dahlan, *Encyclopedia of Islamic Law*, Ikhtiar Baru van Hoeve, Jakarta 2000, p. 25

¹⁴John M. Reiner, *Organism as an Adaptive Control System*, Practice-hall Englewood Cliffs, New Jersey, 1968, p. 139

¹⁵Winardi and Sirajuddin, *Political Law*, Setara Press, Malang, 2019, p. 69

A court decision consists of three parts: a chief decision, legal considerations, and a dictum or order. The essence of the Head's decision is the philosophy and purpose of the decision itself. Historically, the head of the verdict changed, among others: " In Naam des konings or on behalf of the people ", then it changed to "In the name of justice" and now it has become " For the sake of justice based on the One Godhead" . The philosophy of the meaning of justice at the head of the verdict is actually realizing true justice.¹⁶

The first and foremost duty of the judge in his position as the connecting axis is to synergize between God's law and justice. It is common in our understanding that many laws are made not in the name of the interests and benefits of the wider public. However, it is for the benefit of a few people, eliminating the legal side itself. Legislation actually makes it difficult for the community to run their business, and to some extent causes the community to become inferior before the law. The law is in fact to serve mankind's greatest interest.

Judge is a title given to people who have knowledge of something of high value. In Islamic literature, the term judge, which is often referred to and used in a philosophical sense, is a person who seriously digs and seeks the truth about facts and provides law and justice for these legal events.¹⁷ Judges as apparatus have a strategic role, especially in Indonesia as a rule of law, because the judge decides every case brought to him. Judges must produce decisions that are fair, legal and certain and bring benefits to those who seek justice.

Questioning a judge's decision means questioning the judge and his duties as law enforcer and law creator. Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power regulates that the exercise of judicial power is delegated to the judiciary and is determined by law, with the main task of receiving, examining, and deciding as well as completing every case submitted. to him.

A judge may not refuse to try a case presented to him on the pretext that the law does not exist or is unclear. Judges are considered wise people, where people ask questions, then they are considered to know the law (*Ius Curia Novit*), even though they may not know. In essence, the judge is expected to consider and decide who is right. The principle of *recht weigeren* (prohibited from refusing to decide cases) because judges do not only rely on written law but also unwritten law.

Judges must be responsible for their decisions, either vertically / transcendental or horizontally/socially. Therefore, the judge's decision must be argumentative and explain why he arrived at the decision.¹⁸ Therefore, every judge's decision must contain the legal basis on which the judge decides the case, not just taking over without stating the reason why the judge took over the judge's consideration.

The responsibility of judges for their decisions lies in their legal considerations. Therefore, legal considerations must be prepared using proper legal reasoning and legal reasoning. With a court decision that is justifiably grounded, it is hoped that the parties can accept the decision so that people who feel their rights have been violated by others can regain their rights. People who feel they have violated the rights of others must return these rights.¹⁹

The judge's duty does not stop at decision making. Don't just be a judge who resolves cases, but a judge who gives justice and helps justice seekers and tries his best to overcome all obstacles and obstacles in order to achieve justice that truly provides a sense of justice for the community. The Supreme Court of the Republic of Indonesia has determined that a judge's decision must consider all aspects of a juridical, philosophical and sociological nature .²⁰

Consideration of juridical aspects in judge decisions is the main aspect, considering that judges will adhere to the applicable law in deciding cases. The philosophical aspect is an aspect that is the core of truth and justice, while the sociological aspect pays attention to cultural values that live in society.²¹

¹⁶Yunanto, *Translating Justice into Judges' Decisions* , in *Progressive Legal Journal* 7, No.2 (October 2019), pp. 199

¹⁷Abdul Kadir Muhammad, *Indonesian Encyclopedia*, (Jakarta: Gramedia, 1983), p. 1208

¹⁸Sudikno Mertokusumo, *Development of Civil Law in Indonesia* , (Yogyakarta: Genta Publishing, 2019), pp. 142

¹⁹Yunanto, *Op.Cit.* , P. 199

²⁰*Ibid* . p. 200

²¹*Ibid* . p. 201-202.

The discourse of justice in the Indonesian legal tradition is still about whether court decisions in Indonesia reflect a sense of justice in society? This question arises as a reasonable answer from the experience of the community which considers that the decisions taken do not reflect a sense of justice in society.

The most prominent example that can be put forward is the number of loud voices shouting dissatisfaction with the verdict for corruptors who have earned billions of state money, even up to trillions of rupiah. The sense of justice is torn apart when people logically compare the verdicts of corruptors with sandal thieves, chicken thieves, and other thieves who are often beyond their legal sense. The tendency of court decisions on corruption cases is currently very stagnant. One example is a sentence of 2 to 4 years in prison, even though the incurred losses to the state are enormous. Not to mention monetary compensation fines and fines that are not paid are replaced by imprisonment for several months.

Justice seekers certainly yearn for judges who are professional and have high integrity in deciding cases. Thus, decisions not only contain aspects of legal certainty but also have dimensions of legal justice, moral justice and social justice. The reason is that justice is the main goal to be achieved from the dispute resolution process in court.²²

A judge's decision in deciding a case is often seen by the public as a decision that deviates from the objectives of law and justice.²³ As stated above, justice is an inseparable part of law because law is a fundamental justice. The law must be enforced by providing legal certainty and justice for justice seekers.²⁴

Basically justice is obtained by humans freely and it is their right when they are formed as fetuses in their mother's womb. In the judicial process, there should be no pressure or pressure to react in carrying out a legal attitude because this condition causes the judge to be unable to explore the nature of justice as expected by justice seekers. Let the judges give justice in free conditions without pressure from anyone because in reality justice has become a metabolism that flows in law that must be implemented into a legal fact. It remains only for the judge to bring it up again and formulate it in the form of a court decision that is capable of achieving legal objectives as put forward by Gustav Radbruch.²⁵

In addition to a number of court decisions that are considered by the public to only fulfill formalistic justice such as the example above, there are also examples of judges' decisions that become permanent jurisprudence because they contain legal breakthroughs and substantial justice. Among them is the Decision of the Supreme Court of the Republic of Indonesia Number 2078 K / Pdt / 2009 which contains a legal provision that the legal relationship between vehicle owners and parking entrepreneurs is a custody agreement so that parking managers are responsible for the loss of vehicles stored and compensate for losses suffered by vehicle owners. The legal adage in the decision has canceled the exoneration clause in the parking agreement.²⁶

If we analyze the considerations given by the judge in the decision above and are related to the theory of justice put forward by John Rawls, which states that justice is fairness, then the judge's decision on this parking case has provided a sense of justice because it turns out that the parking agreement only benefits the parking manager and does not provide a balance of rights and obligations that should exist.²⁷

In this condition, the judge's wisdom is needed, not just having the knowledge of law. Furthermore, this wisdom cannot be discovered by a person in an instantaneous condition, but through the depths of intuition and divine morality, as well as the deepest discernment of one's conscience. Therefore, an understanding of biological justice will further sharpen the analysis of judges in deciding cases so that justice is truly conveyed to justice seekers.

²²Bambang Sutiyoso, *Justice Reform and Law Enforcement in Indonesia*, UII Press, Yogyakarta, 2010, p. 4

²³Winardi and Sirajuddin, *Political Law*, Setara Press, Malang, 2019, p. 65

²⁴*Ibid.*, P. 63

²⁵The three objectives of law put forward by Gustav Radbruch are justice, expediency and legal certainty. Justice is the most popular theme and is considered the highest goal of law.

²⁶Edi Rosadi, "A Just Judge's Decision," *Badamai 1 Legal Journal*, No. 1 (April 2016), p. 386

²⁷*Ibid*

III. CONCLUSIONS

Based on the description above, the authors produce the following conclusions and suggestions :

a. The theory of biological justice is a normative entity that is committed to leading humans to a just, prosperous, and happy life. This stems from the basic assumption that law is for humans and not the other way around. The author argues that legal justice is a condition that cannot stand alone. Legal justice in human life is felt as blood that flows in the veins of life itself. So justice is obtained from the results of metabolism in building laws, and the results are able to realize the happiness of life for humans.

b. The application of the theory of biological justice is essential. The judge is obliged to explore and understand the legal values that live in society. The judge's duty does not stop at decision making. Don't be a judge who only determines cases, but a judge who provides justice and helps justice seekers. The theory of biological justice will make it easier for judges to make decisions on the cases they face. Sensitivity to the parties' "human" problems can be an important consideration when making decisions.

IV. RECOMMENDATIONS

Judges face various obstacles in accepting, examining, trying and resolving cases at hand. One of the important issues faced by many judges is how to apply a sense of justice in judges' decisions to actually realize the objectives of the law.

Therefore, every judge must have an understanding and knowledge of this biological justice. Biological Justice Theory was born from the writer's anxiety over various judges' decisions to uphold justice.

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