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Legal Disclaimer of Civil Procedures in Rules as a Failure to Achieve Justice

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Abstract:

The judge is the representative of God in the world to provide justice for Yustiabelen, so that the justice given to the people who seek justice is at least closer to justice. The Supreme Court of the Republic of Indonesia is very precise in providing education and training to judges, both in perfecting their legal knowledge and in refining judge profiles through ethical development. However, although sufficient training education has been provided based on the results of the research, there are many decisions that are far from fair. As this happened in the Decision of the Pamekasan Religious Court with Case Number 894 / Pdt.G / 2020 / PA.Pmk with the main case of a lawsuit for child support. Because the lawsuit involved the Pamekasan Police as Co-Defendant as the Defendant's superior, it turns out that the Plaintiff's claim was declared niet ontvankelijk verklaard or unacceptable without examining the subject matter which was decided after the failed mediation attempt. Such a decision is very detrimental to justice seekers, so that it can be drawn the formulation of the problem of how the Civil Procedure Law is used as the basis, so that the verdict states that the Plaintiff's claim cannot be accepted. After being studied using the normative juridical method, namely by using secondary data, namely in the form of primary legal material, the Pamekasan Religious Court's decision violated the Civil Procedure Law regulated in the HIR (Het Herziene Indonesisch Reglement) regarding the verdict.

Keywords: Judgment, justice, Civil Procedure Law

I. Introduction

The judge's decision will create justice if it contains appropriate legal considerations. Therefore, the Legal Consideration of the Judge's Decision is a crown, as this has been confirmed by the Supreme Court. The crown judge must avoid defects or mistakes.¹ Perfection in understanding procedural law is very important for judges. Procedural law is the spirit in case examination, as a standard or rail in making decisions, so that judges do not change lanes and directions.

In the process of making a decision (not a decision) which incidentally is always carried out by a Panel of Judges not a single Judge, so that the possibility of errors in decisions can be ascertained that it rarely occurs. Moreover, the Chairperson of the Panel of Judges is not a newly appointed Judge, but the Chief Judge is a Judge who has hours of experience in receiving, examining, considering and deciding cases with sufficient time and opportunity.

Meanwhile, Judges always receive education and training to improve their legal knowledge. That organized by the Supreme Court to improve the quality of a judge to the decision that was born really a manifestation symbol Judge namely:

- The nature of Kartika (Star) symbolizes the judge's submission to God Almighty with their respective beliefs according to the basis of civilized humanity.
- The nature of the Chakra (a powerful weapon for upholding justice) symbolizes the nature of justice, both inside and outside of the service. In the service, judges are fair, are not prejudiced or impartial, earnestly seek truth and justice, decide based on the conviction of conscience, and are able to answer to God. Outside of service, judges are mutually respectful, orderly and straightforward, have broad views and seek mutual understanding.
- Candra (month) symbolizes wisdom and authority. In the service, judges must have personality, wise, knowledgeable, patient, firm, disciplined and fully devoted to their profession. Outside of service, judges must be trustworthy, full of responsibility, respectful, graceful, and authoritative.
- Sari (fragrant flower) depicts a judge who is virtuous and behaves impeccably. In his service he is always *tawakal*, polite, motivated to increase his service, wants to progress, and is tolerant. Outside of his service, he is always careful, polite and immoral, pleasant in association, tolerant, and tries to be an example for the surrounding community.

1H. Mahjudi, M.H.I , "Putusan Hakim Adalah Mahkota Hakim" melalui <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/putusan-hakim-adalah-mahkota-hakim-oleh-drshmahjudi-mhi-228>, diakses pada pukul 2010 WIB, 13/10/2020

- Tirta (water) describes the nature of a judge who is full of honesty (clean), stands above all interests, is free from anyone's influence, is selfless, and steadfast. Meanwhile, outside of the official service, he must not abuse his trust and position, not be good-spirited and always be alert.²

The perfection of a judge's personality with the explanation above, is almost perfect in terms of developing law enforcement in the field of imposing decisions. So, the author agrees that the judge is *ius curia novit* (the judge knows all the laws). However, the existence of Judges in Case Number: 894 / Pdt.G / 2020 / PA.Pmk was (*jauh panggang dari api*). The judge in the case has made a decision in violation of the Civil Procedure Law which has been regulated in the HIR (*Herzien Inlandsch Reglement*), in making a decision it cannot be accepted without examining the subject matter of the case.

Article 1 of Law Number 48 of 2009 concerning Judicial Power determines that judicial power is the power of an independent state to administer the judiciary to uphold the law and justice of *Pancasila*, for the sake of the implementation of the State of Law of the Republic of Indonesia. Judicial power is a task that is assigned to the court, the main task of the court is as a place to try or give legal decisions in cases submitted to him in order to give a verdict and judge a judge.

Judicial institutions, both District Courts, Religious Courts, State Administrative Courts and Military Courts as well as special judicial institutions are the main pillars in law enforcement and justice as well as the process of building the nation's civilization. The enforcement of law and justice and respect for humanity are prerequisites for upholding the dignity and integrity of the state. Therefore, judges as the main actor in the judicial process must be guided by the KEPPH (Code of Ethics and Code of Conduct of Judges), judges also need to hone their conscience, maintain integrity, moral intelligence and increase professionalism in enforcement law and justice for the community.

As stated in Article 19 of Law Number 48 of 2009 concerning Judicial Power, it is emphasized that Judges have the position of state officials who exercise judicial power as regulated in law. Judges in that article are judges at the Supreme Court and judges in the judiciary under it in the general court, religion, military and state administrative courts as well as judges at special courts located within the said court. Then the provisions in the article above are emphasized in Article 31 paragraph 1 which states that court judges under the Supreme Court are state officials who exercise judicial powers in the judiciary under the Supreme Court.

The Law on Judicial Powers, as stated above, is another statutory regulation governing the position of judges, where the Judge is also placed as part of the State Administrator. Judges in the law enforcement process occupy an important and very decisive position. This is because, both criminal and civil cases or administrative disputes in the estuary state, the settlement of the case is in the hands of the judge. This means that the judge is the final determinant of the settlement of a dispute or case that occurs between the parties.

Judges in The Black's Law Dictionary are defined as follows:

A public official appointed or elected to hear and decide legal matters in court. The term is sometimes held to include all officers appointed to decide litigated questions, including a justice of the peace and even jurors (who are judges of the facts). But in ordinary legal usage, the term is limited to the sense of an officer who (1) is so named in his or her commission, and (2) presides in a court. Judge is often used interchangeably with court³

Judge is a public official who is appointed or elected to adjudicate and decide legal issues in court. This term includes all officers appointed to decide matters under trial, including justice and even jurors (judges who hear the facts in a trial). But in ordinary legal usage, this term is limited to the sense of an officer (1) so named in his commission, and (2) presiding in court. Judge is often used interchangeably with jury.

Judge in the above definition is to decide about the law on legal issues that are submitted to him. Judges are rules, because with the verdict, the litigant must obey and obey in order to carry out what has been decided by the judge. The decision passed by the judge must truly reflect the value of justice that is acceptable to the community. For this reason, the judge is not a mouthpiece of law or *la bouche de la loi*.⁴

The role of a judge in adjudicating a case, he functions as a law that must be obeyed by the community. So that the form of law that can be accepted by society is one that is able to create an orderly social order, create order and balance, because by achieving order in society it is hoped that human interests will be protected.⁵

The decision of the Pamekasan Religious Court Judge with Case Number: Case Number: 894 / Pdt.G / 2020 / PA.Pmk which was pronounced in a trial which was open to the public on August 25, 2020 was so far from achieving justice, because the Plaintiff's did not understand the case as a case who has been examined and tried. Case Number: 894 / Pdt.G / 2020 / PA.Pmk just appeared a verdict with the injunction that the Plaintiff's claim was unacceptable.

As for the process of a decision on a case according to Article 118 paragraph (1) of the HIR, the first stage that must be carried out by the Plaintiff is to file a civil lawsuit by registering the lawsuit with the court in accordance with their area and absolute competence.

²Rustamaji Muhammad dan Dewi Gunawan, 2011, *Moot Court*, Surakarta, CV. Mefi Caraka, page. 306

³Bryan A. Garner, 2014, *Black's Law Dictionary*, 9th Ed., United States of America, West Publishing co., page.916

⁴Paulus E. Lotulung., 2010, "Mewujudkan Putusan Berkualitas yang mencerminkan Rasa Keadilan", melalui <http://kepaniteraan.mahkamahagung.go.id/kolom-hakim-agung/122-mewujudkan-putusan-berkualitas-yang-mencerminkan-rasa-keadilan-prof-dr-paulus-e-lotulung-sh.html> [10/02/2016]

⁵Sudikno Mertokusumo, 1999, *Mengenal Hukum suatu Pengantar*, Yogyakarta, Liberty, page.71

2. Justice

In line with the objectives of the Indonesian state as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely to protect all citizens and the homeland of Indonesia. The element of protecting all citizens and homeland of Indonesia and realizing social justice is an element that cannot be separated from one another. In the framework of a legal unitary state in Indonesia, it is necessary to include these elements, welfare, order and social justice. Therefore, the Founding Father made a state foundation, namely Pancasila, as a *grundnorm* for the formation of law in Indonesia. Because Pancasila contains all elements of life that can be accepted by all circles, this pluralistic Indonesian society.

The ideal of realizing social justice cannot be separated from the understanding of democracy and understanding of the state based on legal principles. Social justice is an ideal of socio-democratization and a state based on law. Democracy according to the ideology contained in Pancasila and the 1945 Constitution contains both political and socio-economic ideals that will guarantee the greatest possible prosperity of the people.

Likewise, the ideals of welfare based on law are to create public welfare based on social justice for all Indonesian people (a state of material law). Social justice in an atmosphere of prosperity is the highest social ideal of the goal of an independent and sovereign Indonesian state.

Based on principle 1 (first) it is said that "a state based on the One Godhead" according to "a just and civilized humanity" it is understood that the administration of a socially just society is not only based on worldly rational considerations, but is balanced with considerations. moral deity. In this case, it is balanced with divine moral considerations. The collaborative dialogues are not only about issues related to freedom and religious harmony, but also about shared responsibility to develop strong ethical and moral foundations for the practice of all Pancasila principles in realizing a socially just society.

The state of Indonesia, social justice is part of the ideals of the Indonesian nation as embodied in the fifth Pancasila precepts. This means that social justice is something that is idealized for by all people, even clearly formulated in the basis of our country's Pancasila. So, the demand for social justice is very important. However, in the practice of social justice has not yet been realized in line with the hopes and aspirations of society. The reality shows that injustice occurred in many fields and events, especially in the New Order era where the hegemony of the ruling regime carried out injustice in all fields. It also seems that the Reformation momentum has not provided a turning point for efforts to achieve justice in all fields. In the context of such a background, it becomes important to re-examine the meaning of justice.

Social justice for all Indonesian people is not just a slogan, but the fifth precept must also be reflected in the decisions of court judges. To achieve social justice for all Indonesian people, judges as law enforcement agencies have been equipped with various legal disciplines to form professional judges.

The profile of a judge as a law enforcement official who has the authority to make decisions on the cases he is judging on, in carrying out his duties as an official who has the authority to impose laws, cannot be separated from the rules that determine him as a judge. For example, a judge is an official who has the title *ius curia novti*⁶, this is one of the implementations of which is emphasized in article 184 paragraph (1) and article 319 HIR, namely that the judge must make reasons for the decision which are used as the basis for the trial. Even in article 23 paragraph (1) of Law Number 14 of 1970 concerning Judicial Power, as amended by Law Number 35 of 1999 and then amended by Law Number 4 of 2004, namely that decisions must be accompanied by reasons.

Article 27 of the 1945 Constitution states that judicial power is an independent and free power, this means that judges in carrying out their duties and powers are free from any intervention. But in article 27 paragraph (1) of Law Number 14 of 1970 concerning Judicial Power, as amended by Law Number 35 of 1999 and then amended by Law Number 4 of 2004 concerning Judicial Power states that the judge in making his decision must pay attention to the values that live in society.

The judge's profile carries a juridical consequence that the judge must be serious in deciding a case with legal considerations as reasons, so that the judge can provide special legal considerations to resolve disputes of the parties being tried. Based on the aforementioned considerations, based on the Theory of Justice the legal considerations of the judge's decision must be assessed by the public.

Justice that is desired by the public in a case through a judge's decision, if the provisions of point 10 of the application of number 10.4 are: "Judges are obliged to avoid mistakes in making decisions, or ignore facts that can ensnare the defendant or the parties or deliberately make considerations that benefit the defendant or the parties in adjudicating a case they handle", then the value of justice will often be distorted. Moreover, the pattern of judges' supervision of ethical provisions is not accompanied by the imposition of punish and reward.

Abolition of the provisions of point 10 The application of number 10.4 to the Code of Ethics and Code of Conduct of Judges will create unprofessional judges. The sentences in the verdict "For the sake of Justice based on the one and only Godhead" will only become a formal slogan that must be included in every judge's decision. The Sentence *irah- irah* "For Justice Based on One Godhead" cannot guide a judge to behave professionally. Moreover, judges have immunity rights and independence rights that cannot be contested, therefore when one of the litigants expresses their objection, the judge will respond with a sentence, if you are not satisfied with the decision, you can file a legal remedy.

Abolition of the provisions of point 10 The application of number 10.4 to the Code of Ethics and Code of Conduct of Judges, which stipulates that: "Judges are obliged to avoid mistakes in making decisions, or ignore facts that can ensnare

⁶ Achmad Rifai, 2020, *Kesalahan Hakim dalam Penerapan Hukum pada Putusan Menciderai Keadilan Masyarakat*, Nas Media Pustaka, Makasar, page.68

the accused or the parties or deliberately make considerations that benefit the defendant or the parties in adjudicating a case that it handles", if enforced as a rule of thumb, it will clash with the legality principle.

The principle of legality is the main pillar for every country to respect and promote the law (supremacy of law). According to Bassiouni, the objectives of the legality principle include:⁷

- To enhance the certainty of the law x;
- Provide justice and fairness for the accused;
- Achieve the effective fulfillment of deterrence function of the criminal sanction;
- Prevent abuse of power; and
- Strengthen the application of the rule of law.

The principle of legality is always upheld by every country that calls itself a rule of law. Legality is the main principle in a constitutional state, apart from the principle of protecting freedom and human rights. In Indonesia, the legality principal rests on Article 1 paragraph (3) of the 1945 Constitution which states "Indonesia is a state based on law."

3. Decision in Civil Cases

In fact, the version of the verdict is an interlocutory decision, according to Article 185 paragraph (1) HIR, there are 2 (two) types of Judges' Decisions as seen from the time of delivery, namely:

3.1. Final Verdict (*Eind Vonnis*)

A final decision is a decision that aims to resolve a dispute or case in a certain level of justice (court of first instance, high court and Supreme Court). Final Decisions can be declarative, constitutive, and condemnatory.

3.2. Intermediate Decision (*Tussen Vonnis*)

Intermediate Decisions are decisions passed before the final decision is made with the aim of enabling or facilitating the continuation of case examination.

The decision that has been passed in Case Number: 894 / Pdt.G / 2020 / PA.Pmk does not fulfill the provisions of Article 185 paragraph (1) HIR. The verdict has been pronounced with the verdict: "stating that the Plaintiff's claim is unacceptable." This is because to be able to impose an interlocutory decision (the author's opinion) must be preceded by an exception from the Defendant.

Case Number: 894 / Pdt.G / 2020 / PA.Pmk concerned the lawsuit for the maintenance of a minor from a mother who cared for him against the Defendant who is a member of the National Police, as well as being sued as Co-Defendant is the Chief of Police who is the superior of the Defendant.

Trial Case Number: 894 / Pdt.G / 2020 / PA.Pmk has not yet entered the Defendant's response stage, just finished the mediation process and it didn't work. The explanation of the 1945 Constitution states, among other things, "The Indonesian state is based on law (*Rechtsstaat*), is not based on mere power (*machtsstaat*)". Whether because of the fear of being involved as Co-Defendant or the ignorance of the judge who tried the case, what is clear is that Indonesia is *rechtsstaat* not *Machtaat*, so the verdict should be *rechtsstaat*.

Based on the provisions in Article 185 HIR, the decision should have waited for the exception of the Defendant, not necessarily stating that the Plaintiff's claim was unacceptable. Unless the Plaintiff's lawsuit contains errors in the area of the absolute competence of the judicial institution, then immediately when the Judge considers that the Plaintiff's claim is not his absolute competence, the Judge can issue an interlocutory decision stating that the Plaintiff's claim is unacceptable.

This decision was very detrimental to the Plaintiff, where the Plaintiff's loss was caused by the judge's fault in making legal considerations. There are still many similar decisions, Decision on Case Number: 894 / Pdt.G / 2020 / PA.Pmk is only a small example that has harmed yustiablen (justice seekers). Therefore, it is deemed necessary for the Supreme Court to give rewards to judges who have made decisions with appropriate legal considerations and punish judges who have ruled with wrong legal considerations.

It is impossible if the judge renders a verdict with a ruling stating that the Plaintiff's claim cannot be accepted. As for the legal considerations, as this is stated in the Decision on Case Number: 894 / Pdt.G / 2020 / PA.Pmk pages 5 to page 6 which states:

"Considering, that because of the Co-Defendant, namely the Head of the Pamekasan Police, was only the Defendant's superior in his service. And Co-Defendants do not have a legal relationship with the Plaintiff or Defendant in this case, so that the Co-Defendants do not have the code in *judicio* (legal interest) in this case and are not qualified as parties in the a *quo* case, therefore the Plaintiff's claim is categorized as error in persona;

Considering, that because the Plaintiff's claim contains an error in persona formal defect, the Plaintiff's claim must be declared unacceptable (net *onvankelijk verklaard*);

Based on Article 185 paragraph (1) HIR Case Decision Number: 894 / Pdt.G / 2020 / PA.Pmk, the Panel of Judges should not have issued an interlocutory decision before there was an appeal or objection from the Defendant or Co-Defendant who expressed their objection to the Plaintiff's claim. The Panel of Judges may issue an Intermediate Decision without waiting for an exemption if the Plaintiff's lawsuit contains claim material which is absolutely not absolute competence. The Panel of Judges can issue a verdict stating that the Plaintiff's claim is net *onvankelijk verklaard*.

⁷ Cherif Bassiouni, 1999, *Crimes Against Humanity in International Criminal Law*, 2nd revised edition, Kluwer Law International, page. 124.

As for the involvement of the Pamekasan Resort Police, as a result of the provisions of Article 8 of Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants, the husband (ex-husband) is obliged to surrender part of his salary to support his ex-wife and her children. The amount of salary given is 1/3 for the male civil servants concerned, 1/3 for his ex-wife, 1/3 for their children. If it violates these provisions, then based on Article 16 PP No. 10 of 1983, will be subject to severe disciplinary sanctions.

The signal provided by Article 8 of Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants has consequences, the Defendant's superior as the leader of the Defendant must be involved to apply legal sanctions if after the Religious Court's decision on child support lawsuit was granted and the Defendant did not fulfill the contents of the decision.

In the principle of Civil Procedure Law involving parties who have a legal relationship in the case, including fulfilling the principle of "point d'interdiction point d'action".⁸ Therefore, legally the Pamekasan Resort Police has sufficient reasons to be involved as the party that will provide the sanctions specified in Article 8 of Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants.

The verdict in the Case Decision Number: 894 / Pdt.G / 2020 / PA.Pmk does not reflect the profile of the judge and the integrity of the judge. A good judge, who is broad-minded, steeped in legal knowledge, is fair, and independent, and is "clean". Judges should be the chosen ones from the best sons and daughters, who are educated through an extra-rigorous education process and with excellent class, and who are continuously honed to sharpen their skills. Judges are also required to have multidimensional experiences in various fields and undergo a continuous spiritual process to become a person with integrity who cannot be seduced by anything, be it property, power, or other worldly pleasures. Judges are also expected to always have policies, wisdom and an instinct for justice in order to remain sensitive in deciding every case. This qualification is in Article 6A of Law No.3 of 2009 concerning Second Amendment to Law no. 14 of 1985 concerning the Supreme Court is formulated as: "Judges must have integrity and personality beyond reproach, be honest, fair, professional, and have experience in the field of law."

4. Legal Principles and Principles in Law Enforcement

4.1. Principles of Accountability

The Supreme Court in the 2010-2035 Judicial Reform Blueprint in chapter III on Vision, Mission and Organization page 8 discusses accountability only in relation to the organization, not related to the performance of judges in making decisions so that accountability can be accounted for. In the Blueprint, it is stated that:

However, the guarantee of independence does not mean that there should be no party other than a party from the judiciary with the authority to deal with anything related to judges and courts. This does not mean that only Judges are allowed to recruit judges, only Judges can determine court budgets and so on. For the sake of carrying out checks and balances and for accountability, the involvement of other parties / institutions to take care of certain matters relating to the court is clearly needed. But once again, this must still be in the corridor of the guarantee of judicial independence.⁹

The principle of accountability does not touch anything related to the accountability of judges in adjudicating a case, as confirmed in the Supreme Court Blueprint, namely that regarding the lack of judges, the Supreme Court announces more broadly about empty seats in the Supreme Court, publishes the names of candidates, the background behind them, the stages in the recruitment process, the criteria used and the reasons for making a decision (if a candidate has been selected).¹⁰

The weakness of the performance of the Supreme Court that it does not address the judge errors in decisions, even in the blue of the Print recommendation stated as follows:¹¹

- The Supreme Court needs to push for the enactment of the Law on the Judicial Commission to, among other things, regulate the authority of the Judicial Commission to "try" judges suspected of deviant behavior and the authority to impose certain sanctions on judges who commit deviant behavior;
- In addition, in the Judicial Commission Law, it is necessary to emphasize that the "trial" process for judges suspected of having deviated behavior must be carried out openly, except for minor offenses. In addition, the decisions must contain clear considerations that are accessible to the public;
- To ensure that there are guidelines for imposing disciplinary sanctions, the Supreme Court judge's code of conduct needs to regulate the severity of sanctions for each type of violation of the code of conduct;

The 2010-2035 Judicial Reform Blueprint has actually caught the attention of the public, particularly regarding the independence and accountability of the judiciary.¹² This is because the independence and accountability of the judiciary, including the independence of judges, are like two sides of a coin. The two of them cannot be separated because they complement each other. Independence alone without accountability will cause judges to do whatever they want,

⁸ Harahap Yahya M., 2017, *Hukum Acara Perdata Gugatan, Persidangan, Penyitaan, dan Putusan Pengadilan*, Ed.II, Sinar Grafika, Jakarta 13220, page. 167

⁹ Mahkamah Agung, 2010, *Cetak Biru Pembaharuan Peradilan 2010-2035*, Jakarta, page.8

¹⁰ *Ibid*, page. 14

¹¹ *Ibid*, page. 126-128

¹² Hukum Online, 2017, "Independensi dan Akuntabilitas Peradilan Harus Sama-Sama Diperjuangkan" melalui <http://www.hukumonline.com/berita/baca/lt590003b7ba91b/independensi-dan-akuntabilitas-peradilan-harus-sama-sama-diperjuangkan> [29/07/17]

accountability without independence will make judges easy to intervene in power. In a national seminar on 'Independence and Accountability of Judiciary in Indonesia' which was held in Medan, Tuesday (25 April 2017). This event was held by the Judicial Commission, PP Muhammadiyah, and Muhammadiyah University of North Sumatra (UMSU) in connection with the discussion of the Bill on the Position of Judges.¹³

The independence of the judiciary is based on trust which functions as a protection against an institution or a holder of judicial power as the enforcer of justice from possible intervention by other parties. Independence is important so that the judiciary can carry out its functions properly and correctly. Independence in this context means that the power of justice must be free from any interference from outside parties. Judicial accountability is important to ensure that there are rules for conflicts of interest, mechanisms for preventing bribery, and monitoring the behavior of judges. The accountability mechanism aims to ensure judges act independently, impartially and professionally in the adjudication process. Accountability has elements of transparency, responsibility and the ability to respond to public needs.

As for accountability, based on the results of research at the Supervisory Board of the Supreme Court of the Republic of Indonesia, it turns out that the principle of accountability is linked to article 52 and article 53 of Law Number 48 of 2009 concerning Judicial Power. Whereas the principle of accountability requires judges to be able to carry out their duties to exercise judicial power professionally and responsibly. This is manifested, among other things, by treating parties in litigation in a professional manner, making decisions based on adequate grounds, and efforts to keep abreast of developments in actual legal issues. Likewise, with the judicial apparatus, the tasks they carry must also be carried out responsibly and professionally.

4.2. Judge Logo

Article 3 of the Code of Ethics and Code of Conduct for Judges determines that the nature of the Judge is reflected in the Judge's symbol known as "*Panca Dharma Hakim*", this is also included in the Articles of Association and Bylaws, namely in article 16 that the IKAHI (Indonesian Judge Association) symbol is oval in shape which contains:

- Kartika.
- Chakra.
- Candra.
- Sari.
- Tirta.

The Supervisory Body of the Supreme Court of the Republic of Indonesia on the IKAHI symbol, gives the following meanings:

Kartika: a star that symbolizes the One Godhead.

In understanding this Kartika symbol, a judge must be a human being who believes and has devotion to God Almighty, in accordance with their respective religions and beliefs according to the basis of fair and civilized humanity. With this symbol, a judge is expected to be a person who is obedient in carrying out his religious teachings well, so that the judge can be close to God, and able to receive the light of justice from God (divine justice) and then transform it into social justice based on just and civilized humanity. (human justice). Because the judge is also called God's representative, the judge is expected to be able to provide justice that is close to God's justice (divine justice);

In every judge's decision there is an order of "For the sake of Justice based on the one and only Godhead" meaning that the decision will be accountable not only to the parties in the case, the wider community, but also to God Almighty. And before making a decision, a judge should contemplate to get guidance from God Almighty so that he is able to give a fair decision.

Chakra: is a powerful weapon of the God of Justice which is able to destroy all evil, injustice, and injustice.

This chakra is interpreted fairly. In understanding this symbol, a judge is required to have the courage to enforcement justice. In the service of a judge, he must be fair, not prejudiced or one-sided (take sides), sincere search for truth and justice, to decide based on the belief conscience, ready to account to God. Outside of service, judges must respect each other, be orderly and straightforward, have a broad view, and seek mutual understanding;

Candra: the moon that illuminates all dark places, the light of light in the dark.

Candra means wise / dignified;

In understanding this symbol, judges in the field must have a personality, wise, knowledgeable, patient, firm, disciplined, full of devotion to the work. Outside of service, judges must be trustworthy, full of responsibility, respectful, graceful and authoritative.

Sari: The flowers are fragrant and fragrant people's lives.

Sari is defined as *Budi Luhur* or behavior beyond reproach.

In understanding this symbol, judges in the field must be *tawakal*, polite, want to increase their dedication in their duties, eager to advance (increase judicial value), and be considerate. Outside of service, judges must be careful in socializing, polite and maintaining morality, pleasant in social interactions, tolerant, and always be an example for the surrounding community.

Tirta: water that cleans all the dirt in the world.

Tirta is interpreted honestly;

In understanding this symbol, a judge in service must be honest, independent (independent), standing above all parties with conflicting interests, not discriminating against people, free from influence from anyone, quite selfish, steadfast.

¹³ Ibid

Outside of service, a judge may not abuse his trust and position and position, must not be capable of being in a position of spirit (in a negative connotation), and must be vigilant.

The nature of the judge is reflected in the Judge Symbol known as "*Panca Dharma Hakim*", namely: Kartika, which is to believe and be devout to God Almighty, in accordance with each religion and belief according to the basis of fair and civilized humanity; Chakra, which is the quality of being able to destroy all evil, injustice and injustice; Candra, which is wise and dignified; Sari, which is virtuous and of conduct beyond reproach; and Tirta, namely honesty.

The meaning of the Judge Symbol can be found in the Code of Ethics that was ratified by the XIII IKAHI National Deliberation (MUNAS), stipulated in Bandung on March 30, 2001. It may be considered, if the Judge Symbol was born at the same time as the AD / ART of the Judge Association since March 20 1953, as a milestone in the birth of an organization for judges with a national character called the Association of Judges and hereinafter known as the IKAHI (Indonesian Judge Association), an eight-year gap since the anniversary of the Supreme Court, namely on 19 August 1945.

The clothes worn by each judge in carrying out daily tasks at the court office, the logo of "*Panca Dharma Hakim*" is always pinned to the left side of his clothes. This symbolizes that the judge's personality and behavior should at least reflect the "*Panca Dharma Hakim*" logo.

4.3. The Principle of *Ius Curia Novit*

The position of the judge has an important role, both in applying positive law and finding law.¹⁴ This role is so important, so that the judge's decision can fill the legal vacuum. Judges are not allowed to reject a case on the grounds that "there is no legal basis for it". This principle became known as *Adagium ius curia novit*, where the judge was considered to know all the laws.

The principle of *ius curia novit* is a principle which states that judges are considered to know all laws. A different opinion states that the principle of *ius curia novit* is a principle that obliges a judge to decide a case that is submitted to him. Every case submitted to a judge, regardless of whether there is a governing law. Therefore, it requires skilled judges to reconstruct the law. Construction is a tool for judges to create law (*Rechtscheping*),¹⁵ meaning that if a case is submitted to a judge, but the judge does not find a legal rule related to a case, the judge will use the construction to create a new legal rule.

The relationship between the principle of "*ius curia novit*" and construction is, if a case is submitted to a judge, but the judge does not find any legal rules relating to the case, then, according to the principle of "*ius curia novit*" The judge is obliged to continue to decide on the case by creating a law (*Rechtscheping*) with a tool, namely construction.

Ius curia novit becomes the basis for a court or judges are prohibited from rejecting a case on the grounds that the law is not regulated or the law is incomplete. Article 22 AB (Algemene Bepalingen van wetgeving voor Indonesie) or the General Regulations Concerning Laws for Indonesia, states that judges who refuse to try cases can be convicted. "Judges who refuse to make a decision on a case, on the pretext that the law does not regulate it, there is darkness or incompleteness in the law, can be prosecuted for refusing to try a case.

It is also with this principle that there is a rejection of testimony because of expertise with regard to the application of law, because regarding the application of law is the domain of the judge. Meanwhile, the parties or the court may ask for testimony from a witness because of the expertise regarding the substance of the case being examined and becomes the basis for the judge in making his decision. For example, a case related to information technology, then an examination requires expertise on the issue being examined, even though in deciding how the law becomes the judge's competence.

Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, stipulates that, "The court is prohibited from refusing to examine, try and decide a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and put him on trial. " This article does not mention the possibility that the law or regulations are incomplete, so that the prohibition against judges rejecting cases is also imposed. However, the principle of *ius curia novit* does not mean that all cases must be examined and decided in a court wherever they are, because judges are bound by the competence of the type of case being tried.

The provisions regarding judges can accept, examine, judge and decide, although based on the principle of *ius curia novit* it can be concluded that judges can adjudicate a case, this competence is limited by the provisions of article 50 of Law Number 8 of 2004 concerning Judicial Power which stipulates that the General Court having absolute competence to examine, hear and decide on said civil case, is to use an additional sentence, namely "unless a statutory regulation stipulates otherwise."

The universal principle in a rule of law (*rechtstaat*), the position of the judge has an important role. Neither in applying the positive law (*trias politica* in Ajara Montesquieu) and find an empty law (*rechtvinding*)¹⁶ This role is so important that the judge's decision can fill the vacancy of the judge. Judges are not allowed to reject a case on the grounds that "there is no legal basis for it". Or the Judge mistakenly applied the law. This principle became known as *Adagium ius curia novit*, where the judge was considered to know all the laws.

4.4. The Principle of Seniority in the Trial

Law Number 48 of 2009 concerning Judicial Power, Article 11 stipulates that:

- The court shall examine, hear and decide cases with the composition of a panel of at least 3 (three) judges, unless the law stipulates otherwise.
- The composition of judges as meant in paragraph (1) consists of a chief judge and two member judges.

¹⁴ Achmad Rifai, *Loc.Cit.*

¹⁵ Sudikno Mertokusumo. *Op. Cit.*, page.147

¹⁶ Sudikno Mertokusumo, 2009, *Penemuan Hukum sebuah Pengantar*, Liberty, Yogyakarta, hlm.38

Elucidation of article 11 paragraph (2) of Law Number 48 of 2009 concerning Judicial Powers is implemented with due regard to rank or seniority.¹⁷ Seniority based on the meaning compiled in the Big Indonesian Dictionary means priority status or level obtained from age or length of work or a higher state in rank, experience, and age.^{18,34} So that the judge is appointed as Chairman

The panel in a trial case, is not a judge who has just been appointed as a judge. This means that a trial of a case which must consist of at least 3 (three) judges is chaired by a judge who has longer experience than its members.

The appointment of a senior head of a panel of judges will avoid mistakes in the application of the law, considering that senior judges have a lot of experience in hearing and deciding cases. This is different from judges who have only been carrying out their duties for a few years, such a system becomes the rationale for avoiding mistakes in deciding a case.

5. Overview of Judges in Some Countries

5.1. Wisconsin

Wisconsin founded a judicial conduct organization in 1971 by the Supreme Court under the name the Wisconsin Judicial Commission.¹⁹ This institution maintains the dignity of judges from deviant behavior against the judge's code of ethics. However, in 1978 the Wisconsin Judicial Commission became an independent institution outside the Supreme Court.

Wisconsin Judicial Commission. as an independent institution, it is quite effective in supervising and taking action against judges who commit irregularities. Judges must comply with all actions taken by the Wisconsin Judicial Commission, such as sanctions written warning, stern warning, suspension and permanent dismissal.²⁰

5.2. Netherlands

The Supervisory Agency in the Netherlands, the implementation of judge supervision is carried out by an institution called the NCJ (Netherlands Council for Judiciary). This institution was founded in 2002,²¹ due to the need for the judiciary to focus on its judicial duties. The background of the establishment of the NCJ (Netherlands Council for Judiciary), when traced from its establishment, is different from the establishment of the Supervisory Board of the Supreme Court of the Republic of Indonesia or the Judicial Commission. Where in Indonesia, the birth of these two institutions or bodies is because judges often make their decisions violate the law and the values of justice.

The establishment of the NCJ (Netherlands Council for Judiciary) in the judiciary in the Netherlands in the interest of protecting judges from deviating from the law or to safeguard unfair decisions. NCJ (Netherlands Council for Judiciary) was established for the benefit of the judiciary itself. This is evident from the duties and powers of the NCJ (Netherlands Council for Judiciary), namely:

5.2.1. Statutory Task

- Preparation of The judiciary budget
- Allocation of Fund to the Court
- Operational support
- Support to recruitment and selection procedures
- Promotion of quality And uniformity of law
- General advisory Task regarding new legislation

5.2.2. Non-statutory Task

- Spokes person of The judiciary
- International Cooperation²²

The birth of the new NCJ (Netherlands Council for Judiciary) in 2002, while the Dutch began to dominate Indonesia politically since 1816. In that year the British returned the colonies to the Netherlands, when the Dutch colonized Indonesia politically.²³ This means that the existence of a judge in giving a decision on a case or dispute that is submitted to him does not have a problem for justice seekers, this means that the public is quite satisfied with the judge's decision.

On its website, NCJ (Netherlands Council for Judiciary) has determined that the mandatory duties and responsibilities are: Statutory duties and responsibilities, which consist of:

- Financial-economic policy.
- Management.

¹⁷ Pengadilan Negeri Banda Aceh, Tata Cara Pemeriksaan Administrasi Persidangan, melalui <http://pn-bandaaceh.go.id/wp-content/uploads/tata-cara-pemeriksaan-administrasi-persidangan.pdf> [29/06/17]

¹⁸ Kamus Besar Bahasa Indonesia, melalui <http://kbbi.web.id/senioritas> [29/06/17]

¹⁹ Komisi Yudisial, 2014, Studi Perbandingan Komisi Yudisial Di Beberapa Negara, Jakarta, Sekjen Komisi Yudisial Indonesia, hlm.

²⁰ Ibid.

²¹ Ibid, page.88

²² Ibid, page. 89-90

²³ Kompasiana, 2014, How long did the Dutch colonize Indonesia, through the Dutch, they only started to dominate Indonesia politically since 1816, when the British finally returned the colonized lands to the Dutch. Since then the Dutch colonized Indonesia politically. Read more: http://www.kompasiana.com/tya.napitupulu/seb-Actually-berapa-lama-belanda-colonized-indonesia_54f41bf87455137b2b6c8794 [10/02/2016]

- Quality.
- Integrity.
- Advice on legislation.²⁴

6. Closing

6.1. Conclusion

With the law enforcement process that relies on the principle of accountability of a judge, which is strengthened by the judge's logo with the symbols Karfika, Cakra, Candra, Sari and Tirta, as well as the profile of judge *Ius curia novit*, and the principle of seniority in accepting, examining and deciding cases. It is impossible for a judge to weigh and decide on a wrong case. Moreover, judges always receive education and training within a certain period of time to increase their knowledge and skills in legal knowledge.

6.2. Suggestion

It is necessary to carry out an intensive examination of the judge's product in receiving, examining and deciding a case by giving a complaint and burdening the judges in order to create a fair decision.

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