

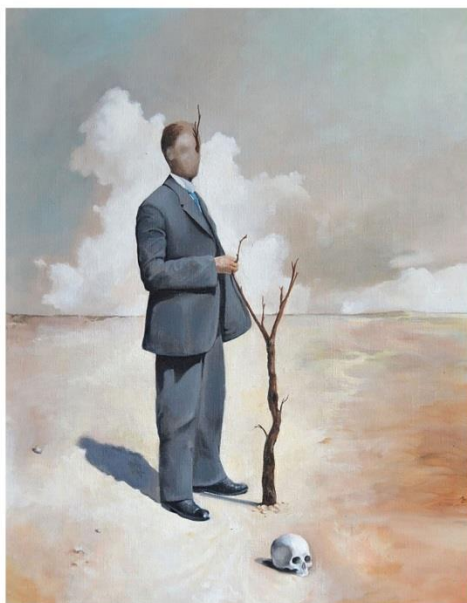
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Pick up justice in a civil law dispute: between culture and justice

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Abstract

This article aims to analyze the forms of justice in civil disputes between legal cultures and bureaucratic justice in Indonesia via comparative qualitative research methods. As a result, the court institution has proven unable to meet the expectations of justice seekers. Many factors did cause the court in its history to be like that. The conclusion of this article is that there are indications that judges do not have enough courage to make decisions that are different from the normative provisions of the law so that substantial justice is always difficult to materialize through judges' decisions.

Keywords: Procedural, Normative, Formal, Justice, Substantial.

Recoger justicia en una disputa de derecho civil: entre cultura y justicia

Resumen

Este artículo tiene como objetivo analizar las formas de justicia en disputas civiles entre culturas legales y justicia burocrática en Indonesia a través de métodos comparativos de investigación cualitativa. Como resultado, la institución judicial ha demostrado ser incapaz de cumplir con las expectativas de los buscadores de justicia. Muchos factores hicieron que la corte en su historia fuera así. La conclusión de este artículo es que hay indicios de que los jueces no tienen el coraje suficiente para tomar decisiones que son diferentes de

las disposiciones normativas de la ley, por lo que la justicia sustancial siempre es difícil de materializar a través de las decisiones de los jueces.

Palabras clave: Procesal, Normativo, Formal, Justicia, Sustancial.

1. INTRODUCTION

Conflict Resolution is a process of interpersonal communication used by two conflicting parties to reach a good and satisfying agreement point (KNUDSEN & BALINA, 2014). The modern justice system as a means of integrating perceptions between two or more parties in conflict as well as distributing justice is proven to be very much a barrier. As for the factors that cause it is because modern justice is loaded with the burden of formalities, procedures, bureaucracy, and a strict methodology. Therefore, justice distributed through the judiciary is given through bureaucratic decisions for the public interest, therefore, it tends to be rational justice. So it is not surprising that the justice obtained by modern society is nothing but bureaucratic justice (COULSON, 1987).

Dispute resolution using the court has proven to cause a lot of dissatisfaction with the parties to the dispute and the wider community. Public dissatisfaction is expressed in the form of a cynical, scornful, and blasphemous view of the court's performance because it is deemed not to humanize the parties to the dispute, keep the parties from disputing from justice, the place where the judge's decision is traded,

and other blasphemy directed at the judicial institution (MERTOKUSUMO, 1988).

The business community that requires legal certainty and security in their investment and trading activities when a dispute arises regarding their business, is very worried about the condition of the judiciary which is considered to be such chaotic. Against the backdrop of such conditions, there is a desire from the business community, in particular, to then turn and choose another model in dispute resolution. Although the form of settlement chosen is classified as still closely allied with the mechanism of the judiciary, other forums chosen are considered to provide alternatives and freedom to the parties in determining the resolution of their business disputes. In turn, the chosen model is expected to provide more opportunities to get a more humane and marital sense of justice (WHATLING, 2016 & MAHMOOD, ARSHAD, AHMED, AKHTAR, KHAN, 2018).

DAWSON (1996) reminded that to distribute justice should not be concentrated only on one institution called the court. DWORKIN (2001) provides a very good example, namely that there should be justice in many rooms. The Alternative Dispute Resolution (ADR) idea has been stored for a long time since the wave of the Access to Justice Movement (AJM) movement, especially the third wave that requires an alternative route outside the state court. The problem is that people can experience justice or injustice not only through state-sponsored forums but also through the locations of primary activities. The location of these primary activities can be in the form of institutions such as houses, neighborhoods, workplaces, business

agreements, and so on (including various special settlement settings rooted in these locations) (FRIEDMAN, 1975).

2. METHODOLOGY

The existence of a judicial institution as one of the distributors of justice cannot be separated from the acceptance and use of modern law in Indonesia. Modern law in Indonesia is accepted and carried out as a new institution that is brought in or imposed (imposed) from the outside. Whereas honestly, judging from the socio-cultural optics, the modern law we use remains a kind of foreign body in our body. Therefore, to overcome the difficulties experienced by the Indonesian people due to using modern law is to make modern law a positive rule of being cultural rules (SYAHRANI, 1988).

The problem is because the liberal modern legal system is not designed to think about and provide broad justice to the community but to protect individual independence. Besides that, because the liberal legal system is not designed to provide substantive justice, a person with material excess will get more justice than those who do not (WARASSIH, 2001 ; NIKKU, & RAFIQUE, 2019).

If we continue to hold on to the liberal doctrine, then we will keep circling in a whirlpool of difficulties to bring or create justice in society. In order to break away from the liberal doctrine, the idea of people or parties to seek and find justice through alternative forums outside modern court institutions is actually an attempt to reject the

closed way of legal thinking. This is because justice seekers still feel strongly, no matter how strong as in the nineteenth century, liberal philosophy in law today is still very large in giving shares to the difficulty of establishing substantial justice (SALAMAH, 2009 ; SHABBIR, ABBAS, AMAN, ALI, 2019).

3. RESULTS

As stated earlier that modern law in Indonesia is accepted and carried out as a new institution brought in or imposed from the outside, namely through colonial policy in the Dutch East Indies. Whereas a transition from the status as a colonized nation to an independent nation is truly a crucial moment. In the legal life of the Dutch East Indies, the Indonesian people did not take full responsibility in the matter of enforcement, development, and maintenance of the law, but only as spectators and objects of control by law. Whereas since the day of independence, the Indonesian people have been fully involved in all aspects of law enforcement, from manufacturing to implementation in the field. In that connection, RAHARDJO (2000) stated, it was not easy to change the legal behavior of the Indonesian people who had been colonized into an independent nation, because fifty years was not enough to make a perfect change.

The court here is not interpreted solely as a body to judge, but as an abstract understanding, namely the matter of giving justice. The matter of providing justice means those related to the duties of a court

or judge in giving justice, namely giving the concrete concerned to those who request justice, what is their right or what is the law. The existence of the court as an institution that functions to carry out the judicial process in accepting, examining, and adjudicating community disputes, its duties are represented by the judge. Therefore, public trust in the law and judicial institutions in this country is determined by the credibility and professionalism of judges in carrying out their duties in resolving disputes and enforcing justice.

So, judges are required to totally involve themselves when making decisions, not just relying on their expertise regarding legislation. According to VAGO (2011), a judge is expected to always put himself in law, so that the law for him is the essence of his life. Judges should not consider the law as a series of prohibitions and orders that would reduce their independence, but instead, the law must be something that fills its independence. Therefore the law is not merely a regulation or law, but more than that: behavior. The law is indeed important in the rule of law, but not everything and the process of giving justice to the community does not just end through the birth of the article always of the law.

As stated earlier, that in the legal system anywhere in the world, justice is always the object of hunting through its court institutions. However, the deterioration and deterioration in the hunt for justice through modern law is due to the game of procedure which raises the question of whether the court is a place to seek justice or victory?

Justice is indeed an abstract item and therefore hunting for justice is a hard and tiring effort. Meanwhile, the court as an institution

for distributing justice has become a modern institution designed specifically along with the emergence of a modern state around the eighteenth century. Therefore, the work of adjudicating is no longer only to judge substantially as it did in the past when Khadi Justice, namely a court that is not oriented to the fixed rules of formally rational law, but to the substantive law that departs from ethical postulates, religion, politics, and other considerations of benefit. After becoming a modern institution, the court is the application of strict procedures.

Based on the optics of legal sociology that is more concerned with the function of the body that carries out the function of adjudicating, then in order to find justice and where justice is decided, the factor of the institution or justice breaker body that is recognized to be unimportant. Decisions about justice can be done anywhere in the community, no need to be in court. Therefore, enforcing and finding justice must not only be done through the formal structure of the court institution. The function of adjudicating can be carried out and takes place in many locations, so Marc reveals as justice in many rooms. On the basis of this, choosing an arbitration forum or mediation to resolve business disputes is a tendency to shift the interest of justice seekers. from using litigation lines to courts to other channels whose format is more formally unstructured.

However, the latter form is believed by its users to be able to produce substantial justice. Whereas for decades the people in a number of countries, including in Indonesia, give confidence to court institutions to manage the disputes that are being faced, in the hope

that they will get justice as normatively and explicitly stated in the statutory provisions. However, the fact is that the court institution has proven unable to meet the expectations of justice seekers. Many factors did cause the court in its history to be like that.

4. CONCLUSION

In upholding law and justice, the following should be the guiding apparatus involved in law enforcement, especially judges as the spearhead of the distribution of justice to the public. First, dare to look for a new rule (rule-breaking) and not allow themselves to be restrained by the way to implement the old and traditional law which clearly hurts the sense of justice; Second, in the capacity of each law enforcer (whether as a judge, prosecutor, bureaucrat, advocate, educator, etc.) is encouraged to always ask the conscience about the deeper meaning of the law. What is the meaning of the rules, procedures, principles, doctrines, and others? Third, the law should be carried out not according to the principle of logic, but with a feeling of caring and a spirit of compassion for our suffering nation.

The feeling of caring and the spirit of involvement in the process of law enforcement and justice must be primarily owned by a judge, because the position of judge is an honorable position so that judges are prominent and respected members of society. Attached to its predicate as a respectable human being, it is inevitable for a judge to cover himself with spiritual and moral ethics in carrying out his

duties as God's representative in the world in providing justice. This spiritual and moral ethic is reflected in the soul, spirit, and value of mission sacre humanity. A sacred calling and accountability of humanity in upholding justice and law (law enforcement), tolerant, so that it can accept and give in cultural differences (multicultural), and based on religious life.

If the judge no longer uses spiritual and moral ethics as a vertical and horizontal backrest in carrying out his duties, it is not surprising that the crisis has struck the judiciary. As a result of a serious crisis experienced by the judiciary, the consequent consequences that are no less serious are the decline of trust and the loss of court authority in the eyes of the public. Even the courts in Indonesia have been highly questionable in their independence in examining and deciding on a case. The perception of the justice seeker community is that the courts in Indonesia are no longer a place to seek justice, but as a place to seek victory in all ways, and as a place to buy and sell decisions.

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