

Jurisprudence as a Legal Resource in Indonesia to Handle Cases in Society

Sri Rizki Hayaty, Dedi Iskandar, Nelvitia Purba

Universitas Muslim Nusantara Al Washliyah

sririzki@umnaw.ac.id , dediiskandar@umnaw.ac.id , nelvitiapurba@umnaw.ac.id

Abstract

Jurisprudence is a customary carried out by judges to follow the verdict of judges who have the power of law to exist for the same case. The high court's decision is considered to contain the main points of thought about legal issues that occur in the community. Jurisprudence is the decisions of judges made by courts that already have a fixed legal force on the case that is handled based on the decision of the previous judge on the same case and this is justified by the Supreme Court (SC) as the Court of Cassation, or the Supreme Court itself which already has permanent legal force. So here the judge not only applies the law, but the judge can also and is able to form a law (judge made law). Especially if the rules contained in the law are unclear, or the existing laws are not in accordance with the current circumstances and the law does not regulate the problems at hand. Research methods in this writing was to use normative methods or literature studies where this research was to use various secondary data such as laws and regulations, court decisions, legal theories, and could be the opinions of scholars. It can be argued that this jurisprudence applies to the principle in law that judges should not refuse to adjudicate cases brought against it. Judges as law enforcement and justice are obliged to judge, follow and understand the legal values that live in society, then in handling cases judges can do: apply in concreto existing legal rules (in abstracto) and apply since before and seek for the rules of law based on legal values that live in society in the process of resolving cases that are handled.

Keywords: jurisprudence, values in society, law, adjudicating cases, customary

Background of Problem

The law exists in this world and arises because humans live in society, where the law regulates the rights and obligations in community life and also regulates how to maintain these rights and obligations. In everyday life, people do the association of community life, humans are central. Man, in his activities is the driver of people's lives because man is a supporter of rights and obligations where in these circumstances there is sometimes a dispute where jurisprudence is one of the sources of law to handle cases committed by judges.

Jurisprudence is a customary of judges to follow the verdicts of judges who already have the legal power to exist for similar cases. The high court's ruling is considered to contain the main point of thought on legal issues.

In deciding a case the judge can find his law from various sources of legal law both written and unwritten. The source of written law consists of law, treaty law and jurisprudence. Indonesia, once a former Dutch colony based on the principle of concordancy, adheres to the civil law legal system. Jurisprudence in the civil law system, means the decisions of previous judges who have permanent power and are followed by judges or other judicial bodies in deciding the same case. Indonesia's legal system does not regard the principle of the binding force of precedent (i.e. previous judges' rulings bind other

judges in the same case. (embraced by the Anglo Sakson legal system)) as in the common law system, jurisprudence can be considered a source of law.

In deciding a case the judge can find his law from various sources of legal law both written and unwritten. The source of written law consists of law, treaty law and jurisprudence. Then the unwritten law consists of unwritten customs, and doctrines.

One of the characteristics of the common law system is a law oriented to a case (case-law), in contrast to the civil law system, which is oriented to law (codified-law). But we can know that the laws and regulations cannot regulate in detail and complete in the discovery of the rule of law in various legal events, therefore jurisprudence that will complement the regulation. Jurisprudence does not only fill the legal void, but also a legal instrument in maintaining legal certainty.

Indonesia, as it is known is a former Dutch colony based on the principle of concordancy, adheres to the civil law legal system. Jurisprudence in the civil law system, means the decisions of previous judges who have permanent power and are followed by judges or other judicial bodies in deciding the same case or case. Indonesia's legal system is not about the principle of the binding force of precedent^[2] as in the common law system, but jurisprudence can be considered a source of law.

Jurisprudence which is the decisions of judges or courts that have permanent legal force and have been justified by the Supreme Court (SC) as a Court of Cassation, or the Supreme Court itself which already has permanent legal force. So here the judge does not only apply the law, but the judge can also and is able to form a law (judge made law). Especially if the rules contained in the law are unclear, or the existing laws are not in accordance with the current circumstances and the law does not regulate the problems at hand.

The word jurisprudence comes from the Latin 'jurisprudentia' which means knowledge of law. In Dutch it is 'jurisprudentie', while in French it is 'jurisprudence'. The word 'jurisprudence' in English means the theory of law, commonly called the general theory of law (algemene rechtler). As for pointing to the notion of judicial law in English it is used the term case law or judge law-made law.

According to Sudikno Mertokusumo, jurisprudence is as a judiciary in general (judicature, rechtspraak) which is the implementation of the law in concrete terms there is a demand for rights carried out by a body that stands alone and held by the state and free from any influence or anyone by giving a binding and authoritative verdict.

But Van Apeldoorn stated that jurisprudence, doctrine and agreement are the factors that helped the formation of the law. Lemaire appointed jurisprudence, legal science (doctrine) and legal awareness are as determinants of the formation of law. In the pretic of justice, jurisprudence is the decision of judges who are always used as guidelines for other judges in deciding the same cases.

A. RESEARCH METHODS

The research method in writing this scientific work is using normative methods or literature studies where research uses various secondary data such as laws and regulations, court decisions, legal theories, and can be the opinions of scholars.

B. DISCUSSION

Jurisprudence cannot be separated from the development of legal science in Indonesia. The role of jurisprudence in Indonesia is already so important. In addition to being a source of jurisprudence law becomes a reference for judges in deciding cases. Jurisprudence is a legal product of judicial institutions. The function of jurisprudence itself in the case of judges making rulings is to fill the legal void.

Sudikno Mertokusumo mentioned that the function of jurisprudence itself in the case of judges making decisions is to fill the legal void so that judges should not reject cases because there is no law governing. The legal vacuum can only be resolved and covered through "judge made law" which will be used as a guideline as jurisprudence until the creation of complete and standard legal codification.^[3]

Although jurisprudence has an important function, it is not enough to have a clear legal standing in Indonesia. The basis that is commonly used as a reference is Article 5 paragraph (1) of Law No. 48 of 2009 on the Power of Justice stipulates that judges and constitutional judges are obliged to dig, follow, and understand the legal values and sense of justice that live in society.

Article 22 Algemene Bepalingen van Wetgeving voor Indonesie (AB) stipulates that judges who refuse to make decisions on cases, under the pretext that the law does not regulate them, there is darkness or incompleteness in the law, can be prosecuted for refusing to prosecute cases.”^[4]

This means that if the Act does not declare it, the judge is authorized to make his own rules (eigenregeling). The judge's decision based on article 22 AB is a source of law in the court. The judge's decision will affect the other judges. In addition to influencing other judges, this judge's decision can also affect the administration of the state, the work of a lawyer, and the work concerned with the law. A judge's ruling can be a formal legal source if the ruling is followed by a judge thereafter known as jurisprudence. Jurisprudence can be born in connection with the principle in law that judges should not refuse to adjudicate cases brought against him. Judges as law enforcement and justice are obliged to judge, follow and understand the legal values that live in society, then in handling cases judges can do:

1. Apply in concreto existing legal rules (in abstracto) and apply since before.
2. Seek the rule of law based on the legal values that live in society.^[5]

Because of the development of the times, the contents of a law have faced a lot of obsolescence and outdatedness. The development of the times makes more and more new problems that cover various aspects of life. This problem needs a solution that is more in accordance with its era, and although the solution is in the law, but the law is outdated. This is where the role of jurisprudence in the formation of law is as a renewal of the law. Judges as reformers must have high integrity, honesty, and responsibility.

Jurisprudence exists because of vague laws, which are difficult to interpret. Therefore the judge here acts as an interpreter of the law. Judges through methods of legal discovery, i.e. interpretation and construction have greater freedom.

In terms of the independence of judges, jurisprudence basically does not hurt the values of independence of judges. Jurisprudence as a consequence that it is a smoothing of the law, it contains legal norms that bind judges, so that judges cannot be said not to be independent when the judge decides to consider jurisprudence. Then Jurisprudence is used as a guideline for judges to decide a case. With the guidelines or handles that exist in the jurisprudence, there will be consistency in the attitude of the judiciary and avoid controversial rulings, which in turn will provide guarantees of legal certainty and confidence in the judiciary and law enforcement, both in national forums and especially at the international level.^[6]

The judge's decision with all his considerations that adjust to customary laws in society that are not written in the law will realize legal justice in the community. The public will be satisfied with the judge's decision in accordance with their customary law in accordance with the norms / rules. The judge's ruling is normative which means that the judge's ruling also applies to other similar events that occur in the future. With the same rulings in similar cases, the same legal standards can be enforced in case the law has not been set. With this same legal standard, legal certainty can be created in society. With the creation of legal certainty and legal similarity to the same case, the judge's decision will be predictable and transparent.

Although jurisprudence has an important function, it is not enough to have a clear legal standing in Indonesia. The basis that is commonly used as a reference is Article 5 paragraph (1) of Law No. 48 of 2009 on the Power of Justice stipulates that judges and constitutional judges are obliged to dig, follow, and understand the legal values and sense of justice that live in society.

Because of the development of the times, the contents of a law have faced a lot of obsolescence and outdatedness. The development of the times resulted in the growth of new problems that cover various aspects of life. This problem needs a solution that is more in accordance with its era, and although the solution is in the law, but the law is outdated. This is where the role of jurisprudence in the formation of

law is as a renewal of the law. Judges as reformers must have high integrity, honesty, and responsibility.^[7]

The judge's decision with all his considerations that adjust to customary laws in society that are not written in the law will realize legal justice in the community.

With the creation of legal certainty and legal similarity to the same case, the judge's decision will be predictable and transparent.

C. CONCLUSION

Jurisprudence is one of the sources of formal law in Indonesia.

Jurisprudence is a judge's decision that can be used as a guideline for other judges. With the same ruling in a similar case, the same legal standards can be enforced in case the law has not been regulated. With this same legal standard, legal certainty can be created in society.

Jurisprudence has a big role to play in the development of Indonesia's national law. In order to improve the development of national law, jurisprudence is one of the means of renewal for the formation of law and jurisprudence is also one of the means to realize legal certainty and justice in society.

1. References:

2. **Soetandyo Wigjosoebroto. Pembaruan Hukum Masyarakat Indonesia Baru, Forum Keadilan No.08 (18 Juni 2006) Hal.44-47, Lihat juga Soetandyo Wigjosoebroto Dalam Donny Donardono, Wacana Pembaharuan Hukum Di Indonesia Jakarta : Ford Foundation & HuMa, 2007, Hlm.64**
3. **Asas The Binding Of precedent Yakni : Putusan Hakim Sebelum Mengikuti Hakim – Hakim Yang Lain Dalam Perkara Yang Sama**
4. Sudikno Mertokusumo, Mengenal Hukum (Suatu Pengantar), Yogyakarta: Liberty, 2003
5. Peraturan Hukum Perundang – Undangan Untuk Indonesia, Staablaad 1847 – 23 Pasal 22
6. Oly Viana Agustine. September 2018. “Keberlakuan Yurisprudensi pada Kewenangan Pengujian Undang-Undang dalam Putusan Mahkamah Konstitusi”. Jurnal Konstitusi Vol.15. No.3
7. Mirja Fauzul Hamdi. Agustus 2016. “Kedudukan Yurisprudensi Putusan Mahkamah Konstitusi Dalam Merekonstruksi Hukum Acara” <http://e-jurnal.peraturan.go.id/index.php/jli/article/download/508/pdf>
8. Irfan Iryadi, Teuku Syahrul Ansari, Jumadil Saputra, Teuku Afrizal, Ahmad Syauqi Thirafi, The Role of Jurisprudence as Form of Legal Prescriptions: a Case Study of Notaries in Indonesia, jurnal, https://www.researchgate.net/publication/348337942_The_Role_of_Jurisprudence_as_Form_of_Legal_Prescriptions_a_Case_Study_of_Notaries_in_Indonesia