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Reconstruction of Regulation of the Authenticity of Judges in Assessing Authentic Deeds as a Tool of Evidence in Civil Disputes in Court is Not Based on Values of Dignified Justice

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Abstract
The urgency of the need for the reconstruction of the judge's authority in assessing the evidence can be carried out because the basic nature of the Authentic Deed is indeed perfect and binding, but not coercive and decisive. Therefore, the author will examine the authority of the judge in deciding the case and relate it to the theory of dignified justice. This study aims to analyze and find the reconstruction of the regulation of the authority of judges in assessing authentic deeds as evidence in civil disputes in court based on the value of dignified justice. The research method used in this study uses the Constructivism Paradigm. To carry out the constructivism research paradigm, construction is carried out through interactions between and among respondents and objects of observation using a hermeneutic approach. Hermeneutics etymologically has the meaning of interpretation or interpretation. The researcher wants to carry out an interpretation or interpretation of the system of regulation of the authority of judges that applies in accordance with Law Number 48 of 2009 concerning Judicial Power towards proving authentic deeds in civil law which will then be compared with the reconstruction of regulation of the authority of judges who have justice and dignity. The approach used is sociological juridical research which is supported by juridical facts, namely studying and reviewing the provisions of positive law in Indonesia relating to Judicial Power, especially the authority of Judges. The legal theory used as an analysis is the legal theory of progressivism which is associated with the Dignified Justice Theory. The findings of this study are that the regulation of the authority of judges in assessing authentic deeds as evidence in civil disputes in court is not yet based on the value of dignified justice because Indonesia still uses other countries' legal systems under the articles of the Civil Code, the Law on Judicial Powers Reconstruction of regulations on the authority of judges in assessing deeds authentic as a means of documentary evidence that expands the position of an authentic deed which is perfect and binding, but does not have the nature of being coercive and decisive in civil disputes in court based on the value of dignified justice adapted to the development of the modern legal system. Reconstruction of legal norms Article 1870 of the Civil Code.
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A. INTRODUCTION

Judiciary is a process carried out by an institution that is authorized to examine, decide and adjudicate to resolve cases that are carried out in a certain manner, using formal legal procedures that have been regulated in procedural law for the sake of upholding law and justice.[1] The institution or body or agency[2] that implements the justice system referred to here is a court institution. In Indonesia, there are 4 (four) types of judicial bodies that are under the Supreme Court, namely[3] General Courts, Religious Courts, Military Courts, and Administrative Courts. State Business. Yahya Harahap said that the four judicial environments which are under the Supreme Court are the administrators of state power in the judicial sector.

Therefore, constitutionally it can act to administer justice to uphold the law and justice (to enforce the truth and justice) in its position as a state court (state court system).[4] In general courts, the District Court as the court of first instance is located in the District Capital The city that is the territory of his jurisdiction. The High Court as the court of appeal[5] is domiciled in the Provincial Capital with authority covering the territory of the Province.

[1] Elisabeth Nurhaini Butarbutar, Kebebasan Hakim Perdata Dalam Penemuan Hukum Dan Antinomi Dalam Penerapannya, Mimbar Hukum Volume 23, Nomor 1, Februari 2011, page. 61.
[2] Hornby, *The Oxford Advanced Learners Dictionary*, (New York: Oxford University Press, 1974),page. 704.
[3] Pasal 25 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

[4] Yahya Harahap, Hukum Acara Perdata (Tentang Gugatan, ersidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan)", Sinar Grafika, Jakarta, 2010. page. 180-181.
[5] Undang-Undang Nomor 2 Tahun 1986 tentang Peradilan Umum jo. Undang-Undang Nomor 8 Tahun 2004 jo. Undang-Undang Nomor 49 Tahun 2009 jo. Putusan MK Nomor 37/UNDANG- UNDANG-X/2012

Court judges are officials who carry out the duties of Judicial Power. Judges have the authority to examine, decide, and resolve criminal cases and civil cases at the first level.[1] In addition, judges must judge on the basis of simplicity, speed, and low cost. Every judge is prohibited rejected the case brought against him. If refuses the case, the judge can be prosecuted for having violated the Code of Ethics[2] and his duties. This is regulated in Article 10 of Law Number 48 of 2009 concerning Judicial Power.[3]

The main basis for the existence of judges and the existence of independent judicial power is contained in Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads, "Judicial power is an independent power to administer justice in order to uphold law and justice." This article is basically related to legal certainty.[4]

The judge must be fair. Be fair is the order of Allah SWT. This has been mentioned in the Al-Quran Surah An-Nisa Verse 58, which reads:

"Innallāha ya`murukum an tu`addul-amānāti ilā experthā wa iżā ḥakamtum bainan-nāsi an taḥkumụ bil-'adl, innallāha ni'immā ya'iẓukum bih, innallāha kāna samī'am baṣīrā"

It means: *"Indeed, Allah commands you to convey messages to those who are entitled to receive them, and when you establish laws among people, you should determine them fairly. Verily, Allah is the best who teaches you. Surely Allah is All-Hearing, All-Seeing."*

The freedom of judges is an important principle in the concept of a rule of law.[5] The decision of the University of Indonesia Symposium on the Concept of a Rule of Law in 1966 has explained that the implementation of an independent judiciary is a hallmark of a rule of law. According to Budiardjo, one of the characteristics of a rule of law state is the principle of administering judicial power that is independent and constitutionally guaranteed.[6] Judges are required to maintain the independence of the judiciary[7] and try cases without discriminating against people.[8] Judges are required to explore, follow, and understand legal values and sense of justice that exists in people's lives.[9]

B. RESEARCH METHOD

The research method used constructivism paradigm, sociological juridical research approach[10], descriptive juridical research type, primary and secondary data types, library data collection methods, observations and interviews[11]. Qualitative data analysis methods.[12]

C. RESEARCH RESULTS AND DISCUSSION

1. The Value of Justice's Authority of Judges to Assess Authenticity as Evidence in Civil Disputes in Court

Law is closely related to justice. There is even an opinion by some people that the law must be combined, so that the law really becomes a law that upholds justice. If a law in the process of solving a problem refers to justice, then that is where the law can be said to have meaning. Only through a just legal system can people live peacefully towards physical and spiritual well-being.

The law as ius shows that the law appears to be true as the true law, while the law as lex is a law. There is a

[1] Pasal 50 Undang-Undang Nomor 2 Tahun 1986 Tentang Peradilan Umum
[2] Kode Etik dan Pedoman Perilaku Hakim dapat dilihat pada Keputusan Bersama Ketua Mahkamah Agung RI dan Ketua Komisi Yudisial RI Nomor: 047/KMA/SKB/IV/2009 – 02 SKB/P.KY/IV/2009
[3] Pasal 10 Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang KekuasaanKehakiman
[4] Pasal 24 Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
[5]Bambang Setyabudi , Anis Mashdurohatun, Reconstruction of Legal Protection Regulations for Debtors and Third Parties in Credit Agreements with the Object of Fiduciary Based Guarantee, Sch Int J Law Crime Justice, Dec, 2022; 5(12): 520-526.
[6] Ibid
[7] Bernhard Limbong, Pengadaan Tanah Untuk Pembangunan, Margaretha Pustaka, Jakarta, 2015, page. 220-221
[8] Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, JPH: Jurnal Pembaharuan Hukum, Volume 8, Number 3, December 2021.
[9] ibid
[10] Mahyuni, Land Acquisition of Toll Roads for Public Interest in The Kendal District, Jurnal Akta, Volume 6 Issue 1, March 2019,pp. 153-158, Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017, see too Sukarmi et.al, Impact of Traffic Congestion on Economic Welfare of Semarang City Community, Journal of Xidian University ,Volume 16, ISSUE 2, 2022.
[11] Carto Nuryanto, Gunarto, Anis Mashdurohatun, Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice, The 5th International Conference and Call for Paper Faculty of Law 2019, Sultan Agung Islamic University, 2019,pp.91-95. See too Wawan Setiyawan and Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corupption Crime. Law Development Journal, Volume 3 Issue 3, September 2021, pp.621 – 629.
[12] Bimo Bayu Aji Kiswanto, Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, Law Development Journal, Volume 3 Issue 2, June 2021, pp. (223 – 231). Bambang Suprabowo, et.al, Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values, J.Eng. Applied Sci, Volume. 14, Issue. 12. 2019.pp. 4176-4182, Anis Mashdurohatun, Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]. pp.32-49. Irwansyah, Ahsan Yunus, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, Mirra Buana Media , Yogyakarta. 2020.

positivism view which says that there is injustice in the law caused by the law as a lex, meaning that the law is not fair, on the grounds that laws are always abstract, whereas cases always appear as they are and are concrete.[1]

While law as ius or iustitia are legal principles that concern the public interest which can provide a sense of justice to society. The law is only called law insofar as it is fair. In other words, justice is a constitutive element in all notions of law, because law is seen as part of human ethical duties in this world.[2] This implies that humans are obliged to form a good life together by managing it fairly. In addition, in practice, if the law is not relevant to justice, then the law is not useful.[3]

Judges are actors of state power who are free from intervention in any form to administer justice in order to uphold law and justice based on provisions in Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution).[4] In the context of administering justice, judges are given the authority to examine and decide cases brought to court. Provisions in Article 1 Paragraph (5) Law Number 48 of 2009 concerning Judicial Power states that:[5]

"Judges are judges at the Supreme Court and judges at judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and judges at special courts that are within the court environment."

Regarding the judiciary, Article 2 of Law Number 48 of 2009 concerning Judicial Power states regarding judicial provisions, namely that:

1. Trials are conducted "For Justice Based On The One Almighty God";
2. The state judiciary implements and enforces law and justice based on Pancasila;
3. All courts throughout the territory of the Republic of Indonesia are state courts regulated by law;
4. Trials are carried out simply, quickly, and at low cost.

The main basis for the existence of Judges in examining and deciding cases submitted to court and the existence of independent Judicial Powers is contained in Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads:

"The judicial power is an independent power to administer justice in order to uphold law and justice"

Based on this, in the context of law enforcement and justice, the judiciary is held as a medium for the existence of law enforcement and justice. Law enforcement and justice are the reasons why trials are held and not the other way around.[6]

Judicial power according to the 1945 Constitution of the Republic of Indonesia is an independent power exercised by a Supreme Court and judicial bodies under it within the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court, to administer justice to uphold law and justice. In order to realize an independent judiciary and a clean and authoritative judiciary, it is necessary to organize an integrated justice system. Article 10 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power also explains that the Court is prohibited from refusing to examine, try and decide on a case. Filed under the pretext that the law does not exist or is unclear, but it is obligatory to examine and adjudicate it.[7]

The word "justice" in English is "justice" which comes from the Latin "iustitia". The word "justice" has 3 (three) different meanings, namely:[8]

1) Attributively, law means a just quality,
2) As an action, law is an act that determines rights, rewards, or punishments,
3) In terms of actors, law, namely public officials who have the right to determine the requirements before a case is submitted to court.

Whereas in Indonesian the word "justice" is defined as "fair". In Arabic, fair is a derivative of the word "al'adl" which means something good, an impartial attitude, safeguarding one's rights and the right way of making decisions.[9]

About the word "Fair" is interpreted as balanced, impartial, and gives rights to those who are entitled to receive them without the slightest reduction, and puts everything in its place. As well as saying the correct sentence without being feared except Allah SWT. Then he determines a truth for problems to be solved

[1] Theo Huijbers, Filsafat Hukum, PT Kanisius, Yogyakarta.2010., page. 69.
[2] Theo Huijbers., page. 71
[3] Theo Huijbers., page. 72.
[4] Anis Mashdurohatun, et.al. Authority Of The Constitutional Court In The Dispute Resolution Of Regional Head Elections, Lex Publica, Vol. VI, No. 1, 2019, pp. 52-60. Faisal Sadad, The Ideal Regulatory Construction Of Jointly Owned Waqf Land Based On Justice Values, Journal of Islamic, Social, Economics and Development (JISED), Volume: 4 Issues: 17 [March, 2019] pp. 89 - 103]
[5] Pasal 1 Ayat (5) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman
[6] Pasal 24 Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
[7] Pasal 10 Ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman
[8] Norbert Jegalus, Filsafat Sosial, (Bahan Ajar), (Kupang: Universitas Katolik Widya Mandira,2007), page. 9
[9] Ibid., page. 10

according to the rules set by religion. So that the act of justice is an action based on truth.[1] Regarding justice it is stated in Q.S An-Nisa Verse 58, which reads:

"Innallāha ya`murukum an tu`addul-amānāti ilā experthā wa iżā ḥakamtum bainan-nāsi an taḥkumụ bil-'adl, innallāha ni'immā ya'iẓukum bih, innallāha kāna samī'am baṣīrā"

It means:

"Indeed, Allah orders you to convey the mandate to those who are entitled to receive it, and (orders you) when stipulating laws among people so that you determine fairly. Verily Allah gives you the best teaching. Verily, Allah is All-Hearing, All-Seeing."

The Civil Procedure Code[2] is a legal regulation that regulates how to guarantee compliance with material civil law through the intercession of judges. According to Wirjono Prodjodikoro, Civil Procedure Code is a series of regulations that contain the manner in which people must act before and before the court and the manner in which the courts must act, one another to carry out civil law regulations.[3] In other words, procedural law Civil law is a legal regulation that determines how to guarantee the implementation of material civil law. More concretely it can be said, that procedural law civil law regulates how to apply for rights, examine, and decide and implement the decision.

2. Reconstruction of the Regulatory Authority of Judges to Assess Authenticity as Evidence in Civil Disputes in Courts Based on Values of Dignified Justice

In the Civil Procedure Code, there are principles of civil procedural law in Indonesia, including namely;

1. Judges are Passive

This principle includes several things, namely:

a. The judge is waiting (Nemo Judex Sine Actore)
   The initiative to file a case rests with the interested parties, not the judge. Furthermore, the possibility of terminating the ongoing case process is the free right of the parties. The judge has no authority to block him even though he has already started an examination.
b. The judge hears the entire suit
c. Judges are prohibited from passing decisions on something that is not demanded or granting more than what is required. The judge must decide all charges.
d. The judge pursues formal truth
   It is sufficient for the judge to only pursue formal truth, namely truth which is only based on the evidence presented before the court hearing. Whether the evidence is true or not, the judge must accept as a true thing, if one party admits the truth of the evidence submitted by the other party, even though they do not believe it.
e. The parties are free to submit or not submit legal remedies verzet[4], appeal and cassation against the court decision

2. Court hearings are open to the public

Basically, court hearings are open to the public. The aim is to guarantee the implementation of an impartial judiciary, so that the judiciary is under public supervision.

3. Hearing Both Parties to the Disputing Parties.
   They must be treated equally, they must be given equal opportunities because they have the same position (Audi Et Alteram Partem). The judge must hear the testimony of both parties. Evidence must be submitted in front of a court session attended by both parties in which case Verstek[5]decision (without the presence of the defendant) is not a violation of this principle. Because the decision is made after the person concerned has been properly summoned, but does not attend the trial and does not send his power of attorney. In fact, there is a lawsuit, of course, because it has reasons and sufficient evidence has been submitted.
4. There is no obligation to represent the parties to the dispute. You may represent the attorney, but you may also not represent.
   In contrast to the system of proceedings before the Raad van Justitie (R.v.J) which requires the parties to be represented by legal experts.

[1] Rendra Widyakso, Konsep Keadilan Menurut Al-Qur'an, Calon Hakim Magang di Pengadilan Agama Semarang
[2] Hardi Widioso, HR Mahmutarom, Anis Mashdurohatun, A Juridical Review of the Truth of Criminal Stelsel that has not been oriented on the Basis of Balance in the Penal Code, Saudi Journal of Humanities and Social Sciences,June2019; 4(6): pp. 441-445
[3] Hukum Acara Perdata, Laila M. Rasyid, Herinawati Cetakan Pertama: Tahun 2015, UnimalPress, Lhokseumawe
[4] It has been stated previously in Article 125 of the HIR that against a decision not present (verstek) a resistance (verzet) can be filed, this is the legal basis for verzet remedies. Verzet (resistance) is a legal remedy that can be taken by the defendant when a verstek decision is issued which is not preceded by the plaintiff's appeal, if the plaintiff first makes an appeal, the defendant may not submit a verzet, but the defendant is allowed to appeal. See Article 8 of Law no. 20 Years 1947. Mukti Arto, Practice., p.251.
[5] Verstek's decision is a decision taken in the event that the defendant never attends the trial even though he has been summoned officially and properly. Accessed through Ahmad Mujahidin, Renewal of Civil Procedure Code of Religious Courts and Sharia Courts in Indonesia (Jakarta: Indonesian Judge Association IKAHI, 2008), p.346

5. The decision must be accompanied by reasons
   In order to prevent arbitrary actions from occurring on the part of judges, the judge's decision is required to contain the reasons used as the basis for adjudicating. A decision that contains insufficient or incomplete reasons or considerations (onvoldoende gemotiveerd) is the reason for requesting an appeal or cassation against the decision, so that it is annulled.
6. Civil Procedure with Funds In Principle
   Civil proceedings are subject to fees, namely the clerk, summons, notifications and stamp duty. Those who can't afford it (poor) can submit a request to the Head of the District Court to proceed for free.[1]
7. Trials are held simply, quickly and at low cost.
   Judges in order to obtain certainty and the truth of the event itself according to Sudikno Mertokusumo, has several meanings in terms of proving, namely:
   1) Proving in a logical sense, namely giving absolute certainty, because it applies to everyone so that it does not allow for opposing evidence
   2) Proving. in, meaning, conventional, in. Even here proving means also giving certainty, it's just that certainty is relative or relative in nature.
   3) Prove in a juridical sense, the proof here only applies to parties who are in a lawsuit or who obtain rights from them. Thus, proof in a juridical sense does not lead to absolute truth, because there is a possibility that if the confessions, testimonies or letters are not true or fake or falsified, then it is possible to have opposing evidence.

Mochtar Kusumaatmadja explained that law is a means of social renewal based on an assumption that there are provisions or order in development efforts or in other words that reform is something that is desired, that is deemed (absolutely) necessary. Law as a means of renewal is that law in the sense of rules or legal regulations indeed functions as a tool (regulator) or a means of development in the sense of channeling the direction of human activity towards desired by development and renewal.[2] To guarantee legal certainty, the government creates legal rules that strictly regulate every act of its citizens, namely by creating laws.

Legal discovery is not a new science, but has been known and practiced for a long time by judges[3], legislators and legal scholars whose job is to solve legal problems. In Dutch literature, many people have written about this legal discovery (rechtsvinding). Not infrequently legal scholars also make legal discoveries unwittingly.

Legal discovery is basically an activity in legal practice (judges, legislators and so on). However, legal discovery cannot be separated from legal science (theory). Even though historically the theoretical practice of law was born earlier than the science of law, in its development the practice of law requires a theoretical basis from the science of law, on the other hand the science of law requires material from the practice of law. So in practice the practice of law and the science of law need each other.

What is meant by legal discovery is usually the process of forming a law by a judge, or other assigned legal apparatus for the application of general legal regulations to concrete legal events. Furthermore, it can be said that legal discovery is the process of concretizing or individualizing general legal regulations (das sollen) by remembering certain concrete events (das sein).[4]

Judges are often faced with concrete events or conflicts (legal problems), which they must solve. He must master the event or conflict in the sense of understanding and understanding the situation and then apply the law. With the knowledge he has acquired, judges must master the ability to solve legal problems (the power of solving legal problems). The ability to solve these legal problems includes the ability to:

1) legal problem identification
2) legal problem solving
3) Decision making.

In social life, a legal system is always needed to regulate life so that it becomes harmonious and orderly. Law enforcement and application often face obstacles related to societal development. The formulation of laws and regulations often takes a long time so that by the time the laws and regulations are declared effective, the matters or conditions to be regulated by these regulations have already changed.

Legal vacuum can occur because things or circumstances that occur (legal events) have not been regulated in laws and regulations or even though they have been regulated in a statutory regulation but are unclear or even

[1] The inability of the community financially to claim their rights in accordance with legal procedures, so it is necessary to establish a policy to be able to submit a case without being hampered by costs, especially in civil cases, therefore a procedure is needed to file cases for free/ there is no need to pay a prodeo. However, for those who are less able, they can file a lawsuit for free, which is called a prodeo litigation. This is in accordance with the principle of the judicial trilogy, namely fast, simple and cheap justice. however, there are still many people who are less well off, do not understand how to prosecute in court, and do not dare to sue in court, even though they want to file a lawsuit in court. By Sudikno Mertokusumo, 1998, Fifth Edition of Indonesian Civil Procedure Code, Liberty Yogyakarta, p.16

[2] Mochtar Kusumaatmadja, Konsep-Konsep Hukum Dalam Pembangunan, Alumni,Bandung,2002, page 88

[3] The results of the interview with Kukuh Subyakto as a Semarang District Court Judge

[4] see also van Eikema Hommes, undated, pp 25.

incomplete. The development of society is faster than the development of laws and regulations. This causes law enforcers or officials to try (interpret) so that the law can work and be in accordance with the development of society. In reality, laws or statutory regulations that are made do not cover all cases that arise in society, making it difficult for law enforcers to resolve these cases.[1]

The principle of legality which is considered as the principle of legal certainty, is faced with the reality that society's sense of justice cannot be fulfilled by this principle because society continues to develop. Changes that occur in society are a problem, related to matters that are not (yet) regulated in laws and regulations[2], because it is impossible for a law and regulation to completely regulate all human life so that at one point in time, laws and regulations unable to provide legal answers or decisions for events or incidents that are currently happening in the community.[3]

Legal breakthroughs made by judges are important because according to R. Dworkin's opinion that not all complex and difficult legal cases or hard cases can be directly answered in the available positive law. In hard cases, the ability to analyze, interpret, and make legal breakthroughs is required to obtain available answers.[4] However, judges are not and should not be lawmakers.

R. Dworkin stated that a more adequate theory is still needed to handle serious cases. This is because if a judge is faced with a serious case, but the judge is not allowed to make a provisional law, then how can a legal breakthrough be made possible. To answer this problem, Dworkin provides a clear distinction between Arguments of Principles and Policy Arguments. The differences between the 2 (two) types of arguments are:

1) It is called a policy argument, namely when judges try to account for decisions by demonstrating benefits for the political community as a whole.[5]
2) The principle argument is the judge's argument that justifies the decision because it basically respects or protects the rights of individuals or groups.

This means that each type of case, whether it is a hard case or a clear case, is essentially unique so that it requires a new legal interpretation or in other words, there are never two cases which are completely similar.[6]

Judges are not legislators because their job is to carry out adjudication or examine and adjudicate. The task of making laws lies within the realm of legislation. However, in the end it is the judge who determines what is required by law. As Dworkin's opinion was quoted by Satjipto Rahardjo who explained that judges actually also "make laws" at a higher level.[7] This is because judges decide laws not by reading texts (textual reading), but exploring the moral behind them (moral reading).

In the context of carrying out the duties of a judge in order to provide justice for society and justice seekers, judges can use broad powers as Judge Made Law. If the invitation does not have an answer and there is no court decision regarding a similar case to be decided, the judge will seek the answer from the opinion of a legal scholar.[8] If the opinion of a legal expert is not found to be used as a guide by the judge to decide on a case, the judge is justified in discovering the law by way of interpretation and legal construction, if necessary, holding a contra legem against existing articles of legislation. Judges can answer all new legal problems that arise through judicial activism, in order to realize justice as a living law in a dynamically developing society.[9]

Juridically, there is no provision that threatens to invalidate a decision using the Burgerlijk Wetboek (BW) translation as a basis for consideration. Article 50 of Law Number 48 of 2009 Concerning Judicial Power only emphasizes that a court decision must include reasons and basis for the decision, it also contains certain articles of the relevant laws and regulations or an unwritten source of law which is used as the basis for adjudicating. However, a violation of this Article results in the decision being annulled by a higher court due to reasons of insufficient consideration or onvoldoendegemotiverd.[10]

In other words, the reason this can happen is because of the law itself. So far, there has been no codification of law, both procedural law, in resolving civil disputes in court, so that so far there has been a lot of "choosing"

[1] Judge Made Law: Functions And Role Of Judges In Law Enforcement In Indonesia, In Al-Hukama The Indonesian Journal of Islamic Family Law Volume 03, Number 01, June 2013; ISSN:2089-7480, by Moh. Imron Rosyadi, STAI Taswirul Afkar Surabaya, page 97
[2] The results of an interview with the Deputy Chairperson of the Semarang District Court named Frida Ariyani
[3]Legislation (positive law) that applies in a country, is a formal system, which of course is rather difficult to change or revoke in a short time, even though it is no longer in accordance with the development of society which must be regulated by these statutory regulations.
[4] Asshiddiqie, Jimly. 2006. Pengantar Ilmu Hukum Tata Negara. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.
[5] Ibnu Subarkah, Lukman Hakim. 2015. "Penanggulangan Campur Tangan Urusan Peradilan Di Luar Kekuasaan Kehakiman Berbasis Penal Reform (Studi Di Wilayah Hukum Pengadilan Tinggi Jawa Timur)." Yustisia Jurnal Hukum. p. 4
[6] Butarbutar, E. Nurhaini. 2012. "Antinomi Dalam Penerapan Asas Legalitas Dalam Proses Penemuan Hukum." Yustisia Jurnal Hukum. p.1
[7] Siahaan, Lintong Oloan. 2007. "Peran Hakim Dalam Pembaruan Hukum Di Indonesia Hal-Hal Yang Harus Diketahui (Proses Berfikir) Hakim Agar Dapat Menghasilkan Putusan Yang Berkualitas." Jurnal Hukum dan Pembangunan. p. 37.
[8] The results of an interview with Frida Ariyani as Deputy Chairperson of the Semarang District Court
[9] Setyanegara, Ery. 2014. "Kebebasan Hakim Memutus Perkara Dalam Konteks Pancasila (Ditinjau Dari "Keadilan Substantif")." Jurnal Hukum dan Pembangunan. p.44
[10] Nurjaya, I Nyoman. 2014. "Penalaran Hakim Dalam Menciptakan Hukum (Judge-MadeLaw); Suatu Kegiatan Berpikir Ilmiah." Jurnal Hukum dan Pembangunan. p.13

both in HIR, RBg, even rules that are no longer enforced, such as Rv, have to be used when HIR nor other related laws do not regulate.[1]

However, in this study it can be seen that it is not or has not arrived at a later time when it will make a legal product or a just decision, because in it there must be a legal discovery which in the end the law can always be applied in every case or civil dispute which in the end the decision boils down to justice. Later, the panel of judges needs to reconstruct the law in that case, then interpret the law to be seen in the case it is examining, only then can the panel of judges find the law for how this case should be decided. Thus, when the case is decided, the Plaintiff and the Defendant can feel satisfied. This also implies that later in the Supreme Court itself, arrears in decisions, especially civil cases, will not accumulate so much.

Several obstacles also contributed to the emergence of problems, including the fact that occurred in the judiciary and the Supreme Court, that seniority still determines the career and rank of a judge, so that sometimes a progressive judge is a little constrained in exploring his ability to think when trial or make decisions. It often happens that his thoughts cannot be put into a decision because the chairman of the assembly, in this case the senior, still uses the old mindset that he usually makes in drafting decisions, so that new thoughts that are more in-depth and comprehensive for consideration in the decision are not used.

Judges are always faced with concrete events, conflicts, or cases that must be resolved or solved and for this it is necessary to look for the law. So in finding the important law is how to find or find the law for concrete events. According to Ter Heide's functional law teaching, what is important is the question of how, in a given situation, the best solution can be found that is in accordance with the needs of shared life and with the expectations that live among the members of society towards "social games" which are governed by "game rules". Here it is not the results of the judge's discovery activities that are the central point, even though the aim is to produce a decision, but rather the method used.

As long as the law does not stipulate otherwise, the judge is free to evaluate evidence.[2] So, the one authorized to evaluate evidence which is nothing but an assessment of a fact, is a judge, and only a judex factie[3]. Thus the evidence is considered complete and perfect, if the judge is of the opinion that based on the evidence that has been submitted, the event that must be proven is considered certain and true.[4]

Proof in civil procedural law if a case is to be won by someone, there is no need for a judge's conviction. In civil procedural law what is important is the existence of valid evidence, and based on the evidence the judge will make a decision who wins and who loses. In other words, in civil procedural law, only formal truth is enough.[5]

Basically, the evidentiary law that applies in Indonesia until now still adheres to only certain types of evidence, other than that it is not justified to submit other evidence, evidence submitted outside of what is determined by law is invalid as evidence, therefore it is not has the power of proof to corroborate the truth of the arguments or rebuttals put forward.

Evidence (bewijsmiddle) of various forms and types capable of providing information and explanations about the issues being disputed in court. Based on the information and explanations provided by the evidence, the judge will evaluate which party has the most perfect proof. The proof system adopted so far is:

1) Closed and limited system

The parties are not free to submit the type or form of evidence in the settlement process. The law has determined enumeratively what is valid and has value as evidence. This limitation of freedom also applies to judges, judges are not free and are not free to accept whatever the parties submit as evidence. If the litigant parties submit evidence other than those specified enumeratively in the law, the judge must reject and set it aside in settling the case.

2) Development towards open evidence

In an open system, in evidentiary law, the type or means of evidence is no longer determined enumeratively. The truth is not only obtained from certain evidence but from any evidence the truth must be accepted as long as it does not conflict with public order, meaning that valid and justified evidence as evidence is not mentioned one by one, because the determination of old evidence is considered inappropriate. complete in the system does not mention and include modern evidence, for example electronic evidence, including data electronics, electronic files or as a form of computer system that can be read.

[1] Hamdan. 2010. "Jenis-Jenis Putusan Hakim Dalam Perkara Pidana (Suatu Catatan Tentang Pembaruan Kuhap)." Jurnal Hukum dan Pembangunan. p.40

[2] Interviewed with deputi of Semarang District Court FridaAriyani

[3] *Judex factie* merupakan hakim yang memeriksa fakta persidangan, apakah dari fakta itu terbukti atau tidak perkara tersebut. *Judex factie* artinya hakim-hakim (yang memeriksa) fakta. Pengadilan Negeri adalah pengadilan tingkat pertama yang memeriksa dan memutus perkara sebagai *judex factie*. Di akses melalui https://www.hukumonline.com/berita/a/mengenal-jud*ex*-factie-dan-jud*ex*- jurist-dalam-praktik-peradilan-lt61f193261cc1a

[4] Aviena Rahmatunnisa, Akta Otentik Sebagai Alat Bukti Yang Sempurna Dalam Perkara Perdata Dihubungkan Dengan Pasal 165 HIR – Pasal 1868 KUHPerdata, Sekolah Tinggi Hukum Bandung,Bandung, 2018, page. 2-3.

[5] Ibid.

With the explanation above, the judge does not have to be fixated on positive law, because if there is no law governing a case, the judge must still accept, examine and adjudicate the case. It is unavoidable if the law is a result of the needs of norms that grow in society. Indeed, there are several laws that are ready to be amended, but not a few are difficult to amend, so revising a law does not take a little time. Because revising a law will change the philosophy of the law as a whole, or perhaps it will disrupt the philosophy of other laws.[1] Judges cannot be denied that they are not legislators who have the authority to enact a law.[2] However, judges are also it is possible to form a law or what is usually known as a judge made law which is regulated in the content of Article 10 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power above. To form a law, judges will perform a legal construction and interpretation.[3]

The definition of legal construction, which is an attempt by a judge to fulfill the obligations of a judge in filling a legal void or ambiguity in a statutory regulation with legal principles and foundations. In legal construction, it is divided into 3 (three) parts, namely as follows:

a. Analogy
   Analogy is the application of a law that is carried out by judges by analogy with laws that have the same treatment but are based on different events;
b. Determination
   This term is also known as legal smoothing, namely the judge does not apply or will apply the existing law or treats the law in a subtle way, so that nothing is wrong or right, for example in an accident involving two car collisions, car A crashes into car B. Car B makes a sudden turn without turning on the turn signal, so Car A crashes into car B. Car A hits car B because the driver of car A is sleepy so he can't focus on the road. In car A demanding compensation from car B, then car B also demands compensation from car A. Because both of them were wrong in running their vehicle, the judge decided for them to compensate each other according to the amount of loss suffered;
c. Argument
   It is the judge's interpretation of the Law which is based on the opposition between the facts of the case and the events regulated in the Law or what is also known as argumentum a contrario. interpretation of the law by using the argumentum a contrario will narrow the formulation of the law. This has the aim of strengthening legal certainty so that there is no gap in doubt in the law.[4]

Legal interpretation or referred to as legal interpretation by judges, interpretation is the method/way of judges to understand the meaning/meaning of a text of laws and regulations which is then used to resolve concrete cases. It can also be used by judges to change the constitution in the sense of repairing, reducing, or adding to the meaning contained in a text of laws and regulations.[5] The way to find meaning in a statutory regulation put forward by legal experts. This can be done in 6 (six) ways, namely:)[6]

1) Language Interpretation
   In interpreting the language, the judge uses the provisions or rules of written law, where the judge will interpret a law according to the meaning of the sentence or everyday language that is commonly used. ordinary people. Such as "means of transportation" and "household equipment" which must be interpreted in accordance with the case being handled by the court. This does not preclude the possibility of using a more technical term if this is necessary. Example: Vehicle (water): All means of transporting people or goods moving from another place on or under the surface of the water;
2) Historical Interpretation
   Historical interpretation is by examining the history of the law in question. In historical research, it is divided into 2 (two) types. that is:
   a) The history of making laws (*wetshistorische Interpretatie*) In interpreting the history of making laws, this is a way of interpretation that can be said to be quite narrow, because it only examines what the intent of this law was to be made, who made it, what are the basics, and what just what members of the DPR debated so that this Law could be formed;
   b) Legal history (Rechtshistorische Interpretatie)
      In contrast to the above, the interpretation of law in this way is quite broad, because the judge will examine the origins of the making of this Law from the previous legal system that was in force or the law that is still in force, also does not rule out the possibility of examining the legal system of other countries that have still valid.

[1] Ibid. p. 136
[2] Website resmi DPR Republik Indonesia. Di akses melalui http://www.dpr.go.id/tentang/tugas-wewenang
[3] Liwe, Immanuel Christophel. "Kewenangan Hakim Dalam Memeriksa dan Memutus Perkara Pidana Yang Diajukan Ke Pengadilan." L*ex* Crimen 3.1 (2014). p.136
[4] Juanda, Enju. "Konstruksi Hukum Dan Metode Interpretasi Hukum." Jurnal Ilmiah Galuh Justisi4.2 (2017). p.172-173
[5] Khalid, Afif. "Penafsiran Hukum oleh Hakim dalam Sistem Peradilan di Indonesia." Al-Adl:Jurnal Hukum 6.11 (2014). p.11
[6] Yudha Bhakti Ardiwisastra, Penafsiran dan Konstruksi Hukum, Alumni, Bandung, 2000

3) Systematic interpretation
Regarding systematic interpretation, what is meant is carrying out an interpretation by linking one Article with another Article in another statutory law. Or by reading the explanation of a law so that you understand what is meant by the law; Example: Article 1330 of the Indonesian Civil Code states that it is incapable of entering into agreements between minors.

In order to find out how the benchmark for adults can be seen in the provisions regulated by Article 330 of the Civil Code which provides an age limit of 21 years, but if the person is not yet 21 years old but is married, then that person is included in the adult qualifications. Then in this case, the provisions contained in Article 1330 of the Civil Code, can be interpreted systematically by looking at the provisions stipulated in Article 330 of the Civil Code;

4) Sociological Interpretation
What is meant by sociological interpretation is an interpretation that is adapted to what is happening in people's lives. The result of sociological interpretation is the application of law in accordance with the social conditions of society, so as to create legal certainty based on the principles of community justice.

5) Authentic interpretation
Authentic interpretation or what is commonly referred to as official interpretation (Authentieke Interpretatie or Officieele Interpretatie), namely by looking at the explanation from the legislator himself which is usually attached in the attachment or addition to the state gazette of the relevant law;

6) Comparative interpretation
In comparative interpretation, it is a way of interpretation by comparing old laws with positive laws that are currently still in force, such as there are some old laws that may be more suitable to be applied at the present time, or between laws that are national in nature and foreign or colonial laws, such as taking state law. another if the law is suitable to be applied in national law in the national interest.

Based on what has been described above, this is the basis that the judge must continue to give a decision even though there is no law governing it, because this has been clearly stated in Article 10 Paragraph (1) of Law Number 48 of 2009. The judge must must be able to carry out legal constructions and legal interpretations.[1] The function of harmonization of statutory regulations is essentially to avoid overlapping, different interpretations, or differences in terms and definitions used in statutory regulations. One word and the meaning of the word greatly determines people's understanding of the intent of legislators.

In fact, according to the researcher, in connection with the reconstruction of the judge's authority in assessing authentic instruments, it can be implemented, namely that there has been a judge's interpretation that extends the position of an authentic deed which is perfect and binding, but does not have a coercive and decisive nature.[2] So that in fact, the interpretation of the assessment of the panel of judges, regarding the position of authentic documentary evidence submitted by the parties who position it as evidence with the highest level can be paralyzed by opposing evidence with different gradations of evidence according to the Judge's assessment of Authentic Deeds and evidence submitted by the opponent according to the position of the Evidence in Article 1866 of the Civil Code and Article 164 of the HIR are responsible which is due to a legal certainty because in principle the judge's decision must be considered correct. As with decisions that have permanent legal force and are used as guidelines by researchers as an example, namely:

1) Determination of Execution of the Medan District Court Number 08/Eks.Hip/1993/PN.Mdn. jo Decision of the Supreme Court of the Republic of Indonesia Number 3030 K/Pdt/1994 jo Decision of the Supreme Court of the Republic of Indonesia Number 486 PK/Pdt/2002. This decision explains that:
   a. In the end, the Panel of Judges determined that the Grosse Deed was valid and the Panel of Judges rejected the Judicial Review because the Grosse deed of mortgages and debt securities drawn up by a notary within the territory of Indonesia contained a head that read "For the sake of justice based on Belief in the One and Only God" has the power the provisions of this section apply, but with the understanding that the application of corporal coercion can only be carried out if permitted by a court decision (Rv. 4tO, 584; No. 41; IR. 224.)[3] 389
   b. Authentic evidence submitted in court is in the form of a credit agreement, but according to the Panel of Judges concerned, the agreement has no executive power, so if the debtor defaults, the creditor cannot execute directly against the existing collateral, but must file a lawsuit through the District Court first formerly.
2) Decision Number 485/Pdt.G/2015/PN.Dps in conjunction with Decision of the Supreme Court of the Republic of Indonesia Number 115/PDT/2016/PT.Dps in conjunction with Decision of the Supreme Court of the Republic of Indonesia Number 1068 K/Pdt/2017 in conjunction with Decision of the Supreme Court of the Republic of Indonesia Number 181 PK/Pdt/2019. This decision explains that:

[1] Pasal 10 ayat (1) Undang-Undang Nomor 48 tahun 2009
[2] Yahya Harahap, *Loc.Cit,* p.581
[3] Yahya Harahap, *Loc.Cit,* p.581

a. Regarding the expert testimony submitted by the Plaintiff, namely Expert Winanto Wiryomartani, SH. MH (notarial expert) obtained information that the establishment of a Limited Liability Company was carried out before a notary in the presence of the founders or their proxies based on a power of attorney (written power of attorney). If a power of attorney contains forged signatures, then the deed of establishment of the PT contains legal defects. This legal defect causes such deed to become null and void. Based on the evidence submitted by the plaintiff, both from the documentary evidence and the expert's statement, it has been able to prove the correctness of the posita argument of the plaintiff's lawsuit point (9), namely that it is true that the plaintiff never gave power of attorney to establish PT. Mexicano Asia, and therefore the power of attorney used by Mila Aryani (personal assistant co-defendant II) to sign the deed of establishment of PT. Mexicano Asia is an illegal power of attorney.
b. So legally all legal actions related to the use of the unauthorized power of attorney are null and void, in this case the making of Deed Number 52 concerning the Establishment of PT. Mexicano Asia is illegal and null and void.
c. Based on the judge's decision above, the judge's decision in assessing the strength of authentic evidence can be refuted because of bad elements such as fake signatures. The judge has been able to prove the truth of the argument for the posita lawsuit of the plaintiff's figures (9), namely that it is true that the plaintiff never gave the power of attorney to establish PT. Mexicano Asia, and therefore the power of attorney used by Mila Aryani (personal assistant co-defendant II) to sign the deed of establishment of PT. Mexicano Asia is an illegal power of attorney.
d. So, according to the judge, legally all legal actions relating to the use of the unauthorized power of attorney are null and void, in this case the making of Deed Number 52 concerning the Establishment of PT. Mexicano Asia is illegal and null and void.

3) Decision Number 334/Pdt.G/2013/PN.Smg in conjunction with Decision of the Supreme Court of the Republic of Indonesia Number 3185 K/Pdt/20l4. This decision explains that:
   a. whereas regarding evidence, the Plaintiff has been able to prove his ownership of the object of land in dispute, namely land acquired on the basis of a purchase in accordance with the Deed of Sale and Purchase Number 19/1990 dated March 31, 1990 drawn up before the Land Deed Making Officer (PPAT), which has then been renamed be the plaintiff's name
   b. Whereas on the contrary, the Defendant failed to prove his argument as the object owner of the dispute, because based on the evidence it was known that the land that the Defendant argued as his own was not located in the same location as the plaintiff's land. So that the ownership of the object of land dispute by the Defendant is an unlawful act (PMH);[1]
4) Decision Number 263/Pdt.G/2012/PN.Dps in conjunction with Supreme Court Decision Number 2618 K/Pdt/2013 in conjunction with Decision of the Supreme Court of the Republic of Indonesia Number 778 PK/Pdt/2016. This decision explains that:
   a. whereas regarding the reasons for the review, the Supreme Court is of the opinion that the reasons cannot be justified, with the consideration that the Deed of Lease Agreement Number 25 dated 6 March 2002 drawn up before Notary JS. Wibisono,
      S.H. in Denpasar is legal, made and signed by both parties and made for a period of 8 (eight) years. This has met the legal requirements of the agreement deed because it has been agreed that both parties consciously agree and sign the contents of the agreement.
   b. Whereas the Plaintiff has paid the rent up to 2011, it is unreasonable for the Plaintiff to state that he does not know the contents and intent of the Deed of Lease Agreement Number 25 dated March 6, 2002.
   c. Whereas the reason for review is only a mere repetition and difference of opinion between the Applicants for Review and the Judex Jurist[2] so it is not a reason for review as meant in Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court so that the request for review filed by the Applicants for Judicial Review: Kurt Saulich, and colleagues must be rejected.[3]

[1] Putusan Mahkamah Agung Republik Indonesia Nomor 3185 K/Pdt/20l4
[2] The judicial system in Indonesia recognizes three levels of courts namely the court of first instance, the court of appeal, and the court of cassation. To refer to the three levels of the judicial process, two terms are known, judex factie and judex jurist. Judex factie is a judge who examines the facts of the trial, whether the facts are proven or not. Meanwhile, the judex jurist is the judge who examines the application of the law, whether there is a mistake in the application of the law in the judex factie court. Both terms come from Latin. Judex factie means judges (who examine) facts and judex jurist means judges (who examine) law. The District Court is the court of first instance which examines and decides cases as a judex factie. The High Court is a court of appeal against cases decided by the District Court to re-examine the evidence and legal facts that occurred. Thus, the District Court and the High Court are referred to as judex factie courts. Accessed via https://www. Hukumonline.com/berita/a/mengenal-judex-factie-dan-judex-jurist-dalam-dinding-perjudicator-lt61f193261cc1a
[3] Putusan Mahkamah Agung Republik Indonesia Nomor 778 PK/Pdt/2016

Table
RECONSTRUCTION OF REGULATION OF THE AUTHORITY OF JUDGES TO ASSESS AUTHENTIC DEEDS AS A TOOL OF EVIDENCE IN CIVIL DISPUTES IN COURT BASED ON VALUE-BASED JUSTICE

Code of Civil law

No	Before Reconstruction	Weaknesses	After being reconstructed
	Article 1870 of the Civil Code which states that an Authentic Deed provides between the parties and their heirs or other persons the people who got the rights from them, Article 1870 of the Civil Code which states that an Authentic Deed provides between the parties and their heirs or other persons the person who gets the rights from them, a complete or perfect and binding proof of what is contained therein.	By judges in practice it is interpreted that there are no provisions that can be decisive and coercive. Thus causing injustice to society, The judge is only formal in nature so that it triggers the party to submit other evidence of the same or lower gradation.	Article 1870 of the Civil Code which states that an Authentic Deed provides between the parties and their heirs or people who have rights from them, a proof that is complete or perfect and binding on the contracting parties and third parties as long as it is agreed, but based on the interpretation by the judge of the authentic deed the quality is not determine and compel what is contained in it if there is evidence against it nullify it in fact.

D. CONCLUSION

The regulation on the authority of judges in assessing authentic deeds as evidence in civil disputes in court is not yet based on the value of dignified justice because Indonesia still uses other countries' legal systems under the Civil Code article, the Law on Judicial Power. Weaknesses in the regulation of judges' authority in assessing authentic deeds as evidence in disputes at court today are weaknesses in legal substance, weaknesses in legal structure, and weaknesses in legal culture that are not in accordance with the legal values of the development of modern society in Indonesia. The system used is closed and limited. Reconstruction of regulations on the authority of judges in assessing authentic deeds as documentary evidence that expands the position of authentic deeds which are perfect and binding, but do not have a coercive and decisive character in civil disputes in court based on the value of dignified justice adapted to the development of the modern legal system. Reconstruction of legal norms Article 1870 of the Civil Code.

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