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The Philosophy of Legal Reason in Indonesian Law

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Abstract

Indonesian legal system presents much confusion in either theoretic or practical matters. This is evident in the form of interaction between civil and criminal law and how lines of legal reason are drawn. The purpose of this paper is to outline the philosophy of legal reason in Indonesian law, especially whenever aspects of civil law interact with criminal law. This presents a crucial scenario for the interpretation and application of legal reason to arrive at an effective conclusion, redressing both the crime and the civil wrong. The paper points out that principles guiding legal reason in Indonesia are still not yet clear, primarily based on the complexities marring the development of legal principles in the country. The paper also notes that Indonesian legal system has strived to provide effective redress for private citizens in a criminal case; where their rights are abrogated and there is the possibility of finding relief through personal action as against the offender. The paper concludes that significant improvements are needed to harmonize legal reason with respect to the Indonesian legal system in order to improve access to justice and effective handling of criminal matters.

Keywords

Philosophy Law, Criminal Law, Civil Law, Legal Reason

1. Introduction

The legal system inherent in Indonesia can be traced from its colonial affiliations. The Dutch legal system mirrored the French and German civil law tradition, and this was implanted in Indonesia. This is commonly known around the globe as the European civil law system. This legal system was largely replicated in Indonesia and was applicable along with customary law during the colonial

times. Several decades later, the European civil law system has eventually become Indonesia's legal system (Mietzner & Parsons, 2009). This has resulted into a number of theoretical as well as practical confusion, particularly with respect to the development of legal reason aiding the determination of complex cases that border on criminal and enforcement of civil rights for Indonesian citizens. The confusion lies in the emphasis the law places on an important document as well as the role of each legal document especially in the court (Efendi, 2018).

The confusion that surrounds legal reason in Indonesia can be attributed to either the failings of the European civil law systems as well as the efforts to integrate it in Indonesia. Civil law relies more on coded law as opposed to principles developed over time; which are reflective of the law applicable in any given society (Lev, 1972). The Indonesia legal system before the influence of the Europeans was basically cultural law, as the traditions applied across generations transferred through word of mouth and kept in the societies' memory were applicable (Bedner, 2001; Bedner, 2013). This implies that similar cases within the cultural-legal system were determined within the cultural-legal system in the same manner; similar to the doctrine of legal precedents akin to common law legal systems (Faiz, 2016). European civil law on the other had failed to recognize the authority of a previously decided case even when the same may be written and kept as a court record. Ironically, this form of legal system gives a place for scholarly work to be used as persuasive material in the determination of cases. It is this confusion that partly originates from the European civil law system and the existence of an established traditional legal system in Indonesia that raises the problems with legal reasons in Indonesia (Lindsey, 2004).

The "legal reason" terminology is usually found in legal documents particularly judgment, for instance, the case of Pt Korindo Heavy Industry (Before known as PT Kostra Mas Jaya), vs. Hyundai Motor Company, cassation judgment no.320 K/Pdt/2015, where the final determination alluded to the consideration of legal reason; as leading to the outcome of the case, also, in the judgment case no.332/Pdt.G/2008/Surabaya Public Court. With respect to the case; on the considered on the confirmed court day, the plaintiff attended with the attorney (A) while the defendant did not attend to the court even though had been called righteously and legally based on the 19th June 2008, 3th July 2008 and 10th July 2008, also did not have been commanded others to be the legal representative. Evidently, the defendant had no legal attended reason based on the law. Considered, the defendant did not attend to the court or commanded a representative as his attorney even though had been called righteously or did not attend with no legal reasons, then the case was still be proceeded without his present by the plaintiff action letter recitation which was still being defended by the plaintiff (Katz & Katz, 1975).

Also, in the judgment no.3020/Pdt.G/2017/PA.Kab.Mlg, the court had the following to state:

> Defendant left the plaintiff without a permit and legal reasons. The defendant never went home and gave information to the plaintiff even with no clear address whether inside or outside the Republic of Indonesia" Considered the defendant had never been present to the court without legal reasons and had never been commanded a representative to the court or an attorney even though Malang Religion Court had called him righteously and officially as stated Clause 125 HIR jo. Clause 26 Government regulations no.9 1975, consequently the defendant had to be stated not present and could be judged by Verstek.

Based on several judgments highlighted above, the legal issue identified resonates around a person that could give legal or true reasons about his act. It was also referred to as someone's actions based on the law (Tabalujan, 2002). The next problems are related to legal reasons about how an act considers being legal and what it is contained of.

2. Concept of Legal Reason in Indonesian Law

Linguistically, reason was noun which means 1) basic, principle; foundation; 2) the basic evidence which was used to strengthen the opinion (disclaimer, estimation, and so forth); 3) that became the booster (to do); 4) justify the criminal act treatment and deprive the defendant's fault" (Murray, 1989). From a legal perspective, reason has been applied to infer part of the evidenced adduced to justify or explain the action. It could also be used to imply the rationale backing judgment; the legal route embarked on by judges to come to a particular finding (Butt, 2010; Butt & Lindsey, 2010; Butt, 2012; Butt, 2014). The reason adduced by the prosecution in a criminal case when considered alongside the defense raised by the defense team guides the jury presiding on a criminal matter on how to apply the law to the case and ultimately arrive at a justifiable conclusion (Bowen, 2000; Bowen, 2003). This is what the concept of legal reasoning in criminal cases is about.

Whereas legal 1) was done based on the applied law, legislations or regulation; 2) not canceled (based on the religion); 3) applied; recognized truth; recognized officially; 4) allowed reliable; unsanctioned; true; original; authentic (Garner, 2019).

If the legal reason is combined, then it means the initial evidence based on the applied law. Then, if the legal reason is related to the (ipso jure) which is Dutch, then it is also fit to the law terms book that written by this writer himself. Legal means an act or conduct based on the applied law, legislation or procedure (Perera & Baydoun, 2007). Therefore, simply means reasons that based on the law. However, civil law practice is not explicitly described these legal reasons.

Based on the writer search ability about legislation, there were no explicit phrase legal reason terms in verstek judgment as stated on judgment example above. Clause 125 HIR if defendant had been called legally, did not attend on the confirmed day and did not command other persons as his representative, then

the charge accepted as absent judgment (verstek), except as for the court was a violation right or no legal reason (RV. 78; IR. 102, 122 d,t.).

It was also on Clause 78 V "If the defendant did not attend to the court after the period terms also did not fulfill the code of conduct, then the judgment without defendant and plaintiff's present was granted, except as for the court was a violation right or no legal reason. (Rv.I dst., 46, 80, 83, 89, 91, 9 la, 94, 107, 121, 254, 405; Sv. 217; IR. 125, 345; RBg. 149, 634.)".

However, this legal reason appeared to several clauses HIR that sanction related. For instance, Clause 142 such as "If the defendant or witness proofed his absence because of legal reasons, then after the given information, Head must erase the law burdened. The witness had been burdened sanction even though he had been called righteously. Yet, the absence because of legal reasons, then the Head of Public Court must erase those sentences. The legal reasons are sick, death, travel or others".

Clause 264 "… if the witness had been sworn but there were no legal reasons or no information". Clause 265 "… if Head of Court saw that sworn did not base on fundamental or legal reasons, he had the right to refuse and cancel the case...".

These legal reasons often appear in Republic of Indonesia Supreme Court no.1 2016 about mediation procedures in a court. Clause 6 Verse 3 "The parties' absence directly in the mediation process could only do by legal reasons. Legal reasons as stated on the verse included unhealthy condition refer to medical's certificate; under the custodianship; had been living aboard, or run the state and profession duties". Now, the question is other statements beside stated statement in Permaktub I/2016 could be considered as legal reasons?

The position of the Indonesian Supreme Court is reflected in the decree number No. 108/KMA/SK/VI/2016 which touched on mediation procedures within the Indonesian court system. With regards to this, it was noted that consideration for legal reasons with regards to mediation procedures in Indonesia was a key recipe for the success of such procedures. Mediation is an alternative dispute resolution mechanism that has helped jurisdictions such as Indonesia clear much of the backlog within its judicial system. The exaltation of legal reason even in this quasi-judicial procedure outlines the nation's commitment towards efficient delivery of justice in the country.

When it comes to criminal cases, the same applies to the reasons adduced by either the prosecution or the accused party as to whether certain events contrary to the procedures of court occur during court proceedings. There are requirements for producing an accused person in court (Cammack, 2009). When such is not adhered to, the prosecution will have to adduce reasons that justify their actions with respect to arraigning the accused before the court as required by law (Cotterrell, 2017). The accused on the other hand may jump bail. There is also a requirement in law that such action by accused is justified.

It is important to note that such reasons within the legal context should have

firm backing from various sources of law acknowledged in Indonesia as well as the legal system in force within Indonesia. This also guides the judges in making rulings in the course of judicial proceedings and ultimately the final judgment (Lukito, 2012).

3. Research Approach

This research used the normative-sociologic approach to the study presented in the paper. This approach was used to review legal reasons related to rules (Efendi, 2018). Then, the review produced legal reasons concept in civil law which is the initial analysis and in-depth study. This study particularly observed criminal and civil cases in Indonesia which, in some cases, missed the concept of legality in its decision; or proper legal basis in the final outcome (Cribb, 2004; Cribb, 2005; Cribb, 2010).

4. Interpreting Legal Reasoning

Legal reason "legal issue" was included on the blurry norm. However, there were regulations but no explicit and detail explanation (Efendi, 2018). Therefore the writer used legal interpretation to explain the legal reason. A legal interpretation has several meanings. All terms have interpretation which considered to be a derivation from the real meaning. The "legal interpretation" is also used particularly to law practice or application to narrower meaning. The interpretation is needed when appears hesitation in a particular context. Then "legal interpretation" narrower meaning is oriented pragmatically; Several the same context norms need interpretation also, but need no interpretation to other situations. It is because of the simple meaning that has fulfilled the user language need (Cammack & Feener, 2012). In this concept "Interpretation" is considered as a clarification meaning from a doubtful legal norm patterns.

Wróblewski (1985) divided legal interpretation typology into two categories. Those were operative interpretation and doctrinal interpretation. Operative interpretation is happened on a legal norm meaning doubtful that must be applied to a concrete judgment legal case by an institution. As though operative interpretation needed a case, then the interpreter found the text meaning based on facing case. As guidance, operative interpretation presented as a unique or precise answer after interpretative doubtful and relates to a norm formulation that has to be concretely interpreted.

Then, operative interpretation was interpreted meaning from the derived case by an interpreter (case-bound). Operative interpretation erased the blurred law language after a particular case—or tended to generalize—or to other future cases if it is accepted in practice. Judge is one of the examples from the case-bound interpreter. Operative interpretative must solve doubtful meaning to the same way as the concrete case judgment. Operative meaning is not only related to the true meaning thesis but also a part of the court judgment and an utterance that has high performance on decision making. However, it is definitely through authoritative and hierarchy process.

Whereas, Doctrinal interpretation was aimed to build a healthy-concept system which was sufficient enough to erase the norm formulation doubt. The result could be a statement that determined linguistically meaning. It enhances interpreting one text to another. However, the doctrinal interpretation is usual to not only describe the linguistical definition, but also the real or true meaning from a text.

4.1. Legal Reason by Doctrinal Interpretation Approach

As stated previously, the Doctrinal Interpretation aims to build a sufficient system concept to remove the related norm formulation. Therefore, the writer tries to review the reason contained to be considered as legal reason and law based. It aims also to give justice and legal assurance so that the justice seeker could know related legal reasons. Another, it aims to be a comparison to other legal reasons that had been confirmed by the judge. The mentioned content is not cumulative but alternative. That means a reason considered legal if it had fulfilled only one reason though.

First, there is a good intention. Good intention is an old concept of civil law. It was born as a substantive framework in the civil law field. Civil law legislation used good intention to two definitions. 1) good intention was subjective meaning that called honesty. It was mentioned in Clause 530 KUHP civil law. This subjective meaning was inwardly behavior or soul state. 2) good intention in objective meaning while in Indonesian was decency. It had been mentioned on Clause 1338 verse 3 KUHP civil law that "an agreement must be done by good intention" Clause 1338 verse 3) civil law, an honesty (good intention) was not laid on soul state but rather than on the act that was done by agreement's doer. Hence, honesty means dynamic characterized. Honesty and decency were rooted in the law's role. It was an effort to balance all parties' interest in society (Mertokusumo, 2014). Then, the legal reason is based on the good intention that could be tested with honest and decency values in society. For instance, all parties did not come twice regularly (although had been called decently) by such reasons a) He had tried to attend but stuck on the traffic, b) He couldn't attend because there was a planned activity. Those two reasons could be still considered as a decent good intention.

The second is decency based on society and law values. Decency has a meaning as acts or conducts that had been society's local custom. It is also not contradicted with society life values.

Both criteria have very tied meaning to each other in one legal reason. The reasons must be based on good intention and decent. By both concepts, all parties would not give illogical reasons (onredelijk). Illogical reason becomes important as an indicator to all stated reasons by both parties. If there are parties that give unfulfilled contained reasons, then conceptually become in legal reasons.

4.2. The Legal Reason with Operative Interpretation Approach

One of the laws reasoning methods is an interpretation method. In the legal

judgment context, the judge is not the only one legislation interpreter, legislations regulation or law in general. However, it must be recognized that the judge has a paramount important role in law interpretation. The reasons are as follow:

First, the judge must manifest the law concretely through judge decision, confirmed abstract legislations that become reality. There are lost, winner, punished or free and etcetera as the concrete manifestation law. Second, the judge is not only confirmed a case law but also creates a general applied the law). Third, the judge guarantees the law actualization, included law development direction (Efendi, 2018).

Judge operative interpretation approach placed as the only one responsibly and authoritatively to give just judgment based on applied law values in society.

Therefore, Clause 5 verse (1) Legislation no.48 2009 stated judge and the constitutional judge must elaborate, follow and understand the just value in society. This regulation was made to fit the judge and constitutional judge in society. Based on those regulations, a judge must be obligated to give an idea, qualified and accountable judgment.

Arto (2013) stated the qualified judgment could see and solve the case as a whole whether quantitative, qualitative or complementary. Theoretically, it could be accountable; practically it could be as the same expectation target.

Supreme Court Instruction no.KMA/015/INST/VI/1998 on 1st June 1998 instructed all judges to establish professionalism to manifest qualified justice judgment. This case involved the falsification of documents to certify tax relief. It was also executable, integrated, considerable (based on the main juridic consideration), sociological (fit to the applied society culture and value) also logical, to create the judge authority independent execution.

The qualified judgment must be fulfilled two prerequisites. Those are theoretic and practice. Theoretical means considered good and true based on the theory. Practical means could achieve the desired target which is finished disputes by law and justice enforcement. The final aim case judgment could be considered true if fulfilling the practical need. Theoretical prerequisite is das sollen which means legal fact whereas practical prerequisite is das sein and this implies law as fact. If a judgment fulfills das-sollen and das-sein then it is a qualified judgment (Ganda, 1998).

5. Conclusion

Thereby, those are simple concepts about legal reasons. This concept is only the initial analysis. It needs further in-depth research. Regards to the reasons, probably the readers could formulate their own analysis based on the above contains statement.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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