Int. j. adv. multidisc. res. stud. 2025; 5(6):2011-2016

Received: 07-11-2025
Accepted: 17-12-2025

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

Legal Philosophy in Court Decisions: The Method of Legal Reasoning in Indonesia

[1] Indra Kesuma Hadi, [2] Suhaimi, [3] Andri Kurniawan, [4] Wardah, [5] Susiana, [6] Eka Kurniasari
[1, 2, 3, 4, 5, 6] Faculty of Law, Universitas Syiah Kuala, Indonesia

DOI: https://doi.org/10.62225/2583049X.2025.5.6.5722
Corresponding Author: **Suhaimi**

Abstract
Legal discovery is essentially a legal enforcement effort by judges to realize the legal objectives of legal certainty, justice, and legal utility. When formal legal rules are absent or unclear, judges use philosophical reasoning to fill the gap, for example through interpretation, analogy, or refinement of the law, rather than simply literal application. Legal philosophy studies the nature of law, justice, and the values underlying the legal system, which then serve as guidelines for judges in the legal discovery process. Thus, legal philosophy and legal discovery in judicial decisions are closely related. Forms of legal discovery in a court decision that judges in Indonesia can take include legal interpretation, legal construction, or reasoning.

Keywords: Legal Philosophy, Legal Discovery Methods

Introduction

The court is a state-established body to exercise judicial power in order to enforce the law, implemented by the Supreme Court and the Constitutional Court. This is stated in Articles 25 to 26 of Chapter IX of the 1945 Constitution of Indonesia (UUD 1945) concerning Judicial Power. Judicial power is further regulated by Law No. 48 of 2009 concerning Judicial Power (the Judicial Power Law). Judicial power is the independent state's power to administer justice to uphold law and justice.[1]

The existence of courts in the Indonesian constitutional system is a manifestation of the principle of the rule of law, which places the judiciary as an independent authority free from interference by other branches of government. In the context of constitutional law, courts serve as guardians of the constitutionality of state administration and as a means of oversight of the exercise of authority by state institutions and government officials. Through their authority to hear and decide cases, courts ensure that all state actions remain within the limits determined by the constitution and laws and regulations. The judicial structure, subordinate to the Supreme Court, and the existence of the Constitutional Court reflect the checks and balances mechanism within the Indonesian constitutional system. Therefore, courts play a role not only in resolving legal disputes but also play a strategic role in maintaining the supremacy of the constitution, protecting citizens' constitutional rights, and upholding the principles of constitutional democracy.

As quoted by Satjipto Rahadjo, Gustav Radbruch stated that there are three very important elements that must always be considered in law enforcement: justice (*gerechtigkeit*), legal certainty (*rechtssicherheit*), and utility (*zweckmassigkeit*). These elements are the pillars supporting the ideal of law (idee des Rechts). This ideal of law will guide people in their legal lives.[2] Judicial power in court is exercised by judges to examine, try, and decide cases. Therefore, every citizen involved in a dispute or litigation is obliged to resolve their case through a judicial body. This is to prevent citizens from becoming judges themselves or taking the law into their own hands (*Eigenrechting*).

Every judgess decision in a case must contain reasons or arguments as a legal source for the decision. These legal sources can be drawn by judges from articles contained in statutory regulations or from unwritten laws applicable within a particular community in Indonesia.[3] The arguments in a decision reflect the judge's legal reasoning process, ensuring that every legal action remains within the applicable legal provisions and provides substantial justice.

[1] Vide Pasal 1 angka 1 UU Kekuasaan Kehakiman.
[2] Satjipto Rahardjo, *Hukum dalam Jagad Ketertiban, Cetakan I,* Jakarta: UKI Press, 2006. hlm. 135.
[3] Vide Pasal 50 ayat (1) UU Kekuasaan Kehakiman.

Law or legal regulations aim to regulate human activities, while human activities are countless and diverse. Law exists in both written and unwritten forms. Written law can be found in statutory regulations. Unwritten law can be found in binding customs. Law, both written and unwritten, often has limitations in resolving legal problems or conflicts that arise in society.

The tradition of the civil law system places positive norms within the statutory system as the primary formal source of law. In this mindset, the existence of written law is crucial. The meaning of written law is limited to its denotation, namely, mere statutes. Consequently, laws need to be as comprehensive as possible to accommodate and anticipate any unlawful behavior.

Lawmakers generally believe that their laws are capable of accommodating and anticipating legal violations related to the content contained within the regulations. However, such beliefs are essentially mere assumptions. The law always falters behind concrete events.[4] Therefore, sooner or later, laws will be left behind by reality. This is where the legal gap between law on paper (law on the books) and law in action (the living law) arises. Thus, a gap in legal norms widens as the social order changes.

Due to unclear or incomplete information,, it must be supplemented and clarified, meaning it must be discovered and explored within society to solve legal problems. Therefore, the law already exists; it's not that it doesn't exist yet and needs to be created; it does exist, but it still needs to be sought, discovered, or unearthed.

Discovering law is not the same as creating law. Discovering law means discovering existing law, while creating law means creating law that didn't previously exist. Judges fundamentally lack the authority to create law; they are not even authorized to assess laws. Although judges don't create law, they are still able to discover law. Judges, whose daily duties involve discovering law, solve concrete legal problems. There is no intention to create law, but there is a possibility in finding the law without the judge realizing that he is creating law.

When formal legal rules are absent or unclear, judges use philosophical reasoning to fill the gap, for example through interpretation, analogy, or refinement of the law, rather than simply literal application. Legal philosophy studies the nature of law, justice, and the values underlying the legal system, which then serve as guidelines for judges in the legal discovery process.

Research Methods

Regarding the type of research, the method used in this study is a normative juridical research method. Data analysis was prescriptive. The data sources in this study were based solely on library or secondary data. Data were collected using documentation studies. Data analysis was conducted in a prescriptive-qualitative manner to answer the research questions.

Result and Discussion

1. The Relationship between Legal Philosophy and Legal Discovery in Judges' Decisions

Judges are not allowed to refuse to examine, try, and decide on a case submitted to them on the grounds that the law does not exist[5] or the law is unclear. In procedural law, the principle of ius curia novit is known, which means that judges know the law and must try every case submitted to them. According to the principle of ius curia novit, it is stated that as law enforcers, judges have the capacity and have the final authority to make decisions during trials, have the authority to prosecute and sentence all forms of actions that are contrary to the law. This is the basis for the public to believe that every problem they face will receive fair and correct treatment, because judges are considered law enforcers who understand various types of laws without exception, so that the public's hope for justice from the judicial system can be realized with certainty.[6]

In Indonesia, ius curia novit is reinforced in the constitution, specifically in Article 24 (1) of UUD 1945, judicial power is the power to administer justice independently and free from interference by anyone in order to uphold the law and uphold justice. Therefore, in this case, judges can use their constitutionally granted authority to determine the law in order to examine, try, and decide cases. Furthermore, this judicial authority obliges judges to follow, explore, and understand the legal values that are developing and existing in society.[7]

In a legal system, evidence collection is essentially the effort of judges to enforce the law in order to achieve legal goals such as legal certainty, fairness, and applicability.

Sudikno Mertokusumo, as quoted by Serlika Aprita and Rio Adhitya, stated, "The discovery of independent law does not mean that the judiciary is not bound by law. However, the law does not play a primary role, but rather serves as a tool to obtain appropriate solutions according to law, which do not necessarily have to be the same as those found in law."[8]

The free legal school holds that judges have the duty to create law. The task of a free legal innovator is not to apply the law, but rather to create appropriate solutions for specific events, so that subsequent events can be resolved according to the norms established by the judge.

According to the Utrecht principle, legal certainty has two meanings: first, the existence of universal rules that enable individuals to understand which actions are permissible and which are prohibited; second, legal certainty protects individuals from arbitrary actions by the state because these universal rules allow individuals to understand what constraints the state can impose or what actions it can take.[9]

The law's role is to create legal certainty because it aims to establish order in society. Legal certainty is an inseparable characteristic of law, especially written legal norms. According to Fence M. Wantu, "law without legal certainty will lose its meaning because it can no longer serve as a guide to behavior for everyone."[10] In a country that adheres

[4] Shidarta, *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Bepikir*, Bandung: Refika Aditama, 2006. hlm. 1.

[5] Vide Pasal 10 ayat (1) UU Kekuasaan Kehakiman.

[6] I Made Dera Januartha, I Made Suwitra, Ni Made Puspasutari Ujianti, Keberadaan Asas Ius Curia Novit Dalam Perkara Perdata, *Jurnal Konstruksi Hukum*, Vol. 4, No. 3, September 2023. hlm. 268.

[7] Vide Pasal 5 ayat (1) UU Kekuasaan Kehakiman.

[8] Serlika Aprita dan Rio Adhitya, *Filasafat Hukum*, Depok: Rajawali Pers, 2020. hlm. 119.

[9] Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum,* Bandung: Penerbit Citra Aditya Bakti, 1999. hlm. 2

[10] Fence M. Wantu, Antinomi Dalam Penegakan Hukum Oleh Hakim, *Jurnal Berkala Mimbar Hukum,* Vol. 19 No. 3 Oktober 2007*,* Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, hlm. 193.

to legal positivism, it has only one advantage, with many disadvantages. The advantage is the guarantee of legal certainty, allowing society to easily understand what is and is not permissible.[11]

Furthermore, to achieve order, legal certainty is sought in human interactions within society, as it is impossible for humans to optimally develop their God-given talents and abilities without legal certainty and order.[12] Law must be certain (cerum) to fulfill its function, namely to guarantee the rules of communal life and prevent chaos. Legal certainty is achieved through legislation that regulates all aspects of communal life down to its details.[13] Without legal certainty and the social order it embodies, humans cannot optimally develop their God-given talents and abilities within the society in which they live.[14]

Aristotle introduced ethical theory in his books Rhetorica and Ethica Nicomachea. This theory argues that the sole purpose of law is to achieve justice. Justice here is ius suum cuique tribuere (full slogan: iustitia est constans et perpetua voluntas ius suum cuique tribuere), which can be translated as "giving to each person what is due or due." Aristotle further divided justice into two: commutative justice (justice that gives each person according to their merit) and distributive justice (justice that gives everyone an equal share without considering individual merit).[15]

Justice is an inseparable part of the law itself. Law is fundamentally based on justice. Gustav Radbruch stated that justice is one of the fundamental values of law. Justice is sufficient if similar cases are treated equally. Justice has several meanings, namely:

a. Justice is defined as a personal trait or quality. Subjective justice, as secondary justice, is a stance or attitude, perspective, and belief directed toward the realization of objective justice as primary justice.
b. The source of justice comes from positive law and the legal ideal (Rechtsideee).
c. The essence of justice is equality. In this regard, Radbruch follows Aristotle's view and divides justice into distributive justice and commutative justice.[16]

John Rawls, considered a "liberal-egalitarian" perspective on social justice, argues that justice is the primary virtue of social institutions. However, the virtue of all society cannot override or challenge the sense of justice of every individual who has attained it, especially those in the weaker sections of society who seek justice.[17]

In general, justice is essentially treating a person or other party according to their rights. Every person has the right to be recognized and treated according to their dignity and worth, with equal status, equal rights and obligations, regardless of race, ancestry, or religion. Justice is generally defined as a balanced recognition of rights and obligations. Justice lies in the harmony between demanding rights and fulfilling obligations. In other words, justice is when everyone gets what is their right and everyone gets an equal share.[18]

Justice is closely related to the distribution of rights and obligations, fundamental rights as a divine gift in accordance with human rights, rights that are inherent in every person from birth and cannot be violated. Justice has been a goal throughout the history of legal philosophy. Justice is a constant, unwavering will to provide for everyone in accordance with the growth and development of society and the demands of the times.[19] Dante Alighieri, a natural law adherent, argued that justice can only be upheld if the implementation of the law is entrusted to a single authority, namely an absolute government.[20]

As quoted by Ervina Dwi Indriati and Hudi Karno Sabowo, according to Ulpianus, "Justitia est constans et perpetua voluntas ius suum cuique tribunes" (justice is a constant and steadfast will to provide for each party). There are several types of justice that we need to be aware of.

a. Commutativa Justice

Commutativa Justice applies specifically to civil law. In commutativa justice, performance equals counter-performance, and services equals recompense. Commutative justice applies in buying and selling, where the goods sold are worth the money paid.

b. Distributive Justice

Distributive justice provides equal justice to each party, taking into account the differences in quality. Distributive justice concerns the arrangement or regulation of individuals within a state, for example, by assigning appropriate rank or position according to their quality and services.

c. Vindicative Justice

Vindicative justice provides each party with the appropriate punishment according to the crime or offense committed. Vindicative Justice applies primarily to criminal law.

d. Creative Justice

Creative justice is justice in a country that gives each party in the country a share of freedom to create something according to their creativity in the cultural field of their society.

e. Protective Justice

Protective justice is justice that provides protection to each party according to what they need and what they are entitled to.

f. Legal Justice

Legal justice is called Legal Justice, or general justice. Legal justice demands obedience to the law. Obedience to the law is considered obedience to the public interest. Legal justice is considered general justice because by obeying the law, people are considered to have contributed to the public welfare.[21]

The value of utility is a hallmark of utilitarianism, where the primary goal of law is utility. The measure of legal utility is

[11] Farkhani. dkk, Filsafat Hukum; *Merangkai Paradigma Berfikir Hukum Post Modernisme*, Solo: Kafilah Pubishing; 2018. hlm. 151.
[12] Kamarusdiana, *Filsafat Hukum*, Jakarta: UIN Jakarta Press. 2018. hlm. 122.
[13] Serlika Aprita dan Rio Adhitya, Filsafat Hukum, Depok: Rajawali Pers. 2020. hlm. 5.
[14] Ibid. hlm. 42.
[15] Dudu Duswara Machmudin, Pengantar Ilmu Hukum Sebuah Sketsa, Bandung: Refika Aditama, 2010. hlm. 23.
[16] Theo Huijbers, *Filsafat Hukum,* Cetakan V, Yogyakarta: Kanisius Press, 1997. hlm. 6.
[17] Pan Mohamad Faiz, Teori Keadilan John Rawls, *Jurnal Konstitusi*, Volume 6 Nomor 1. 2009. hlm. 140.
[18] C.S.T. Kansil, dan Christine S.T. Kansil, *Pokok-Pokok Hukum Pidana, Hukum Pidana Tiap Orang*, Jakarta: Pradnya Paramita. 2004. hlm. 4
[19] Kurniawan Tri Wibowo dan Wagiman Martedjo, *Ilsafat Hukum (Tinjauan Komparatif Kontemporer Tentang Makna Keadilan)*, Jakarta: PT Cipta Gadhing Artha, 2021. hlm. 46.
[20] Ervina Dwi Indriati dan Hudi Karno Sabowo, *Filsafat Hukum*, Semarang: STIEPARI Press, 2023. hlm. 16
[21] *Ibid*. hlm. 50.

the greatest possible happiness for everyone. The assessment of a legal rule, whether it is just or unjust, good or bad, depends largely on whether the law is capable of providing happiness to people.[22] Utility here is defined as happiness. It does not question the goodness or unfairness of a law, but rather depends on the discussion of whether the law can provide happiness to humans.

Jeremy Bentham, as quoted by Kamarusdiana, stated that the existence of the state and law is merely a means for all citizens or society to achieve true prosperity and happiness. The basic principles of utilitarianism theory from Jeremy Bentham's teachings are as follows:[23]

1. The law must provide happiness to individuals. The basic principle of Bentham's utility theory states that "the greatest happiness is solely intended for the greatest number of people."
2. This principle must be applied qualitatively, because in principle, the quality of happiness or pleasure is always the same for everyone; only the form varies from one person to another.
3. To achieve individual and societal happiness.

2. Forms of Legal Discovery in a Court Decision That Can Be Carried Out by Judges in Indonesia

In Indonesia, judges have a constitutional mandate to uphold law and justice. The principle of ius curia novit and the provision in Article 10 (1) of Law No. 48 of 2009 concerning Judicial Power, which prohibits judges from refusing to adjudicate on the grounds that the law is absent or unclear, require judges to be active and creative.

In carrying out their duties, judges have very broad authority and are referred to as independent authority in managing the judicial system. All of these principles are regulated in Article 24 (1) of the UUD 1945, which expressly states that judicial power is an independent power to administer justice to uphold law and justice. Judges have independen authority, which must be balanced with integrity, honesty, and fairness. This aligns with the provisions stipulated in Article 5 paragraph (2) of Law No. 48 of 2009 concening Judicial Power, which emphassizes that judg's and consstitutional justices must possess integrity, an impeccable personality, honesty, fairness, professionalism, and experience in the legal field. The importance of the balance between the judge's authority and his integrity is evident in the impact it can have on the fairness of decisions.

The process carried out by judges to fill a legal vacuum is known as legal discovery, or rechtsvinding. Legal discovery is both a fundamental necessity and a concrete solution to the problem of normative vacuums. This process is a form of intellectual effort by a judge to produce a just decision, relying on written and unwritten legal sources. Legal discovery (rechtsvinding) is not an arbitrary act by judges, but rather a judicial response that is essential when positive law in the form of statutory regulation is unable to address a concrete problem. Four main conditions encourage judges to engage in legal discovery: a legal vacuum, unclear norms, conflicts between norms, and social developments that move faster than the legal formation process. A legal vacuum, or rechts vacuum, is a situation where there is no statutory regulation (lex scripta) that expressly regulates an event, act, or legal relationship that arises in society and requires legal certainty. If we examine all judicial decisions that have final force (kracht van gewijsde) and are the result of judges' legal discovery, we can distinguish:

1. Legal discovery by judges that merely serves as a way for judges to apply the law in concrete cases, but has no effect whatsoever on adapting the law to societal changes or engineering society.
2. Legal discovery by judges that is the work of judges to adapt laws deemed outdated or outdated to societal changes or to a society that has already undergone change;
3. Legal discovery by judges is a work or analysis of the judge's thinking in applying the law as "a tool of social engineering".[24]

Methods of legal interpretation include grammatical interpretation, historical interpretation of laws, systematic interpretation, teleological interpretation, comparativ interpretation, futuristic interpretation, restrictive interpretation, extensive interpretation, authentic interpretation, interdiciplinary interpretation, and multidiciplinary interpretation.

a. Grammatical interpretation is interpreting a term or word in a regulation based on applicable legal language rules. This grammatical interpretation attempts to understand the text of applicable statutory regulations. In general, this grammatical interpretation is used by judges together with logical interpretation, namely giving meaning to a legal rule through legal reasoning to be applied to texts that are unclear.
b. Historical interpretation is a method of interpreting the meaning of legal provisions based on their legislative history. It examines the legal history and legislative history of the law itself. In other words, historical interpretation encompasses both the legislative and legal history of the law. Interpretation based on legislative history aims to determine the legislator's intent when drafting the law.
c. Systematic interpretation is a method of interpreting legal provisions by relating them to other legal provisions or the entire legal system. Systematic interpretation follows the principle that a country's legislation constitutes a complete system. This means that the interpretation of legal provisions must be linked to other legal provisions to ensure that the interpretation does not deviate from or contradict the country's legal system.
d. Teleological interpretation is the interpretation of a law in accordance with its stated purpose. Judges using teleological interpretation must consider the legal regulation in accordance with the new social situation, so that the legal provisions are viewed not only textually but also contextually. Thus, teleological interpretation is a method of interpreting a legal provision by considering the existing social conditions or situation.
e. Futurist interpretation, also known as the predictive method of legal reasoning, is used to interpret legal

[22] Zainudin Ali, *Filsafat Hukum,* Jakarta: PT Sinar Grafika. 2008, hlm. 59.

[23] Kamarusdiana, *Filsafat Hukum*, Jakarta: UIN Jakarta Press. 2018, hlm. 73.

[24] Siti Malikatun Badriyah, *Penemuan Hukum dalam Konteks Pencarian Keadilan*, Semarang: Badan Penerbit Universits Diponegoro, 2010, hlm. 76.

provisions that have not yet come into effect. It clarifies current law (i.e., the constitution) by referring to future or anticipated law (i.e., the constitution).

f. Restrictive interpretation limits the meaning of rules. It is used to interpret legal provisions whose scope of application is limited by wording.
g. Extensive interpretation atau expansive interpretation goes beyond the scope of ordinary grammatical interpretation. It is used to interpret legal provisions that exceed the scope of grammatical interpretation.
h. Comparative interpretation is an interpretative method that compares various legal systems. By comparing various legal systems, the meaning of a legal provision can be determined. This method is used by judges when handling cases that use positive legal grounds arising from international treaties. This is crucial in efforts to realize the uniformity or unity of law arising from international treaties as objective law.
i. Authentic Interpretation is an interpretive method that examines the meaning of the terms contained in a law itself; therefore, this interpretation is called official or authentic interpretation. This interpretive method prohibits judges from interpreting terms other than those defined in the statutory provisions. Therefore, to determine the meaning of a term in a statutory regulation, one can consult the specific chapter or article that explains the term's meaning.
j. Interdisciplinary Interpretation is an interpretive method employed by judges when facing cases involving various legal disciplines, such as civil law, criminal law, state administrative law, or international law. In interpreting the law, judges rely on principles derived from the laws of various legal disciplines. For example, judges handling corruption cases must interpret the law from the perspectives of criminal law, administrative law, and civil law.
k. Multidisciplinary interpretation is a method judges employ when handling cases, referencing various scientific studies beyond the law. In this case, judges require support from different disciplines to examine the case and make a fair judgment. In practice, judges using this multidisciplinary interpretation consult experts or professionals from various disciplines relevant to the case. This is seen, for example, in cases of cybercrime, white-collar crime, and terrorism.[25]

Legal construction occurs when laws and regulations do not regulate or clear rules cannot be found regarding concrete cases that occur in society, so that there are no legal rules that can be directly applied to the problems or legal cases faced by judges when examining and handling these cases. In addition, this can also occur because of a legal vacuum (recht vacuum) regarding the problem. In order to fill this legal vacuum, judges use logical reasoning to develop a legal rule or statutory text in more depth. In this case, judges no longer strictly adhere to the contents of the text of a law, but judges also do not arbitrarily ignore applicable legal principles.[26] This legal principle is important, because it is the basis for the conception of legal regulations.[27] The purpose of the legal construction method is so that a decision made by a judge in concrete cases or events that occur in society can fulfill the sense of justice for the community and can provide benefits for the wider community. There are four legal construction methods that can be used by judges, namely:[28]

a. Analogical reasoning is an evidence-gathering method by which judges determine the more general core of a legal event or conduct, regardless of whether it is regulated by written law. The analogical method treats similar or legally regulated events equally. Analogical evidence gathering involves searching for universal rules within specific regulations to determine the underlying legal principles.
b. The method of reverse reasoning is a legal reasoning approach that allows judges to propose an interpretation that contradicts the actual meaning of the law. This method argues that legal provisions stipulate certain conditions for a specific event, but their application is limited to that event; conversely, this does not apply to other events. Sometimes, the law does not regulate a specific event, but rather regulates a particular event. Therefore, the essence of the reverse reasoning method lies in proposing an interpretation that contradicts the actual meaning of the law.
c. The method of legal refinement. The norms in laws and regulations are often too broad and general, requiring judges to narrow the scope of application of legal provisions. The method of legal refinement aims to make overly abstract, passive, and general legal norms more specific, making them applicable to specific cases.
d. The method of legal fiction. In legal theory, legal fiction is defined as the principle that everyone is assumed to know the law (statutes), when in reality, not everyone knows the law. Even a legal expert cannot possibly know all laws; they only know the law according to their expertise. However, this method of legal fiction is essential for judges in judicial practice, because a person accused of a crime cannot excuse themselves from being acquitted on the grounds of not knowing the law governing the crime they committed.[29]

Conclusion

Legal Philosophy and Legal Discovery in Judicial Decisions are closely related. Legal discovery is a form of law enforcement by judges in court in order to realize the legal objectives of legal certainty, justice, and benefit. Through legal discovery, judges can apply legal rules to concrete cases, even if the legal rules themselves are unclear, incomplete, or even non-existent (a legal vacuum).

Forms of Legal Discovery in a court decision that can be carried out by judges can take the form of legal interpretation or legal construction or reasoning. This is done by judges as one of their obligations and authorities in

[25] Muwahid, Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim Dalam Upaya Mewujudkan Hukum Yang Responsif. *L-HUKAMA The Indonesian Journal of Islamic Family Law*, Vol. 07, N0. 01, 2017. hlm. 235-240.

[26] Jazim Hamidi, *Hermeneutika Hukum*, *Sejarah, Filasafat dan Metode Tafsir*, Malang: UB Press, 2011, hlm. 40.

[27] Darmawan Darmawan, *et al*., "Relative Competence of The Sharia Court: Talaq Divorce Lawsuit And Protection of Women's Rights," Samarah: Jurnal Hukum Keluarga Dan Hukum Islam 7, No. 1 (2023), 89.

[28] Ahmad Rifaii, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif,* Jakarta: Sinar Grafika, 2010, hlm. 61

[29] Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar,* Liberty, Jakarta, 2010, hlm. 162-163.

implementing the principle of ius curia novit. In principle, judges cannot refuse to hear or examine a case on the grounds that the law is absent, unclear, or unclear, or otherwise. This requires judicial wisdom in deciding the case, so that the decision rendered by the judge reflects justice, legal certainty, and provides benefits to society.

References

1. Vide Pasal 1 angka 1 Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.
2. Satjipto Rahardjo. Hukum dalam Jagad Ketertiban, Cetakan I, Jakarta: UKI Press, 2006, hlm. 135.
3. Vide Pasal 50 (1)Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.
4. Shidarta. Moralitas Profesi Hukum: Suatu Tawaran Kerangka Bepikir, Bandung: Refika Aditama, 2006, hlm. 1.
5. Vide Pasal 10 (1) Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.
6. I Made Dera Januartha, I Made Suwitra, Ni Made Puspasutari Ujianti. Keberadaan Asas Ius Curia Novit Dalam Perkara Perdata, Jurnal Konstruksi Hukum, Vol. 4, No. 3, September 2023, hlm. 268.
7. Vide Pasal 5 (1) Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.
8. Serlika Aprita, Rio Adhitya. Filasafat Hukum, Depok: Rajawali Pers, 2020, hlm. 119.
9. Riduan Syahrani, Rangkuman Intisari Ilmu Hukum, Bandung: Penerbit Citra Aditya Bakti, 1999, hlm. 2
10. Fence Wantu M. Antinomi Dalam Penegakan Hukum Oleh Hakim, Jurnal Berkala Mimbar Hukum, Vol. 19 No. 3 Oktober 2007, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, hlm. 193.
11. Farkhani. dkk, Filsafat Hukum; Merangkai Paradigma Berfikir Hukum Post Modernisme, Solo: Kafilah Pubishing, 2018, hlm. 151.
12. Kamarusdiana. Filsafat Hukum, Jakarta: UIN Jakarta Press. 2018, hlm. 122.
13. Serlika Aprita, Rio Adhitya. Filsafat Hukum, Depok: Rajawali Pers, 2020, hlm. 5.
14. Serlika Aprita, Rio Adhitya. Filsafat Hukum, Depok: Rajawali Pers, 2020, hlm. 5.
15. Dudu Duswara Machmudin. Pengantar Ilmu Hukum Sebuah Sketsa, Bandung: Refika Aditama, 2010, hlm. 23.
16. Theo Huijbers, Filsafat Hukum, Cetakan V, Yogyakarta: Kanisius Press, 1997, hlm 6.
17. Pan Mohamad Faiz, Teori Keadilan John Rawls, *Jurnal Konstitusi*, Volume 6 Nomor 1. 2009, hlm. 140.
18. CST Kansil, Christine Kansil ST. Pokok-Pokok Hukum Pidana, Hukum Pidana Tiap Orang, Jakarta: Pradnya Paramita, 2004, hlm. 4
19. Kurniawan Tri Wibowo, Wagiman Martedjo. Ilsafat Hukum (Tinjauan Komparatif Kontemporer Tentang Makna Keadilan), Jakarta: PT Cipta Gadhing Artha, 2021, hlm. 46.
20. Ervina Dwi Indriati, Hudi Karno Sabowo. Filsafat Hukum, Semarang: STIEPARI Press, 2023, hlm. 16
21. Ervina Dwi Indriati, Hudi Karno Sabowo. Filsafat Hukum, Semarang: STIEPARI Press, 2023, hlm. 16.
22. Zainudin Ali, Filsafat Hukum. Jakarta: PT Sinar Grafika, 2008, hlm 59.
23. Kamarusdiana. Filsafat Hukum, Jakarta: UIN Jakarta Press, 2018, 73.
24. Siti Malikatun Badriyah. Penemuan Hukum dalam Konteks Pencarian Keadilan, Semarang: Badan Penerbit Universits Diponegoro, 2010, hlm. 76.
25. Muwahid, Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim Dalam Upaya Mewujudkan Hukum Yang Responsif. L-HUKAMA The Indonesian Journal of Islamic Family Law. 2017; 07(1):235-240.
26. Jazim Hamidi. Hermeneutika Hukum, Sejarah, Filasafat dan Metode Tafsir, Malang: UB Press, 2011, hlm 40.
27. Darmawan Darmawan, *et al*. Relative Competence of The Sharia Court: Talaq Divorce Lawsuit And Protection of Women's Rights, Samarah: Jurnal Hukum Keluarga Dan Hukum Islam. 2023; 7(1):89.
28. Ahmad Rifaii. Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif, Jakarta: Sinar Grafika, 2010, hlm. 61.
29. Sudikno Mertokusumo. Penemuan Hukum: Sebuah Pengantar, Liberty, Jakarta, 2010, hlm. 162-163.