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# THE DICHOTOMY BETWEEN LEGAL CERTAINTY AND OVERLAPPING COURT RULINGS

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**Abstrak:**
Today there are indications of reduced public trust in the formal law enforcement process through the trial process in the Court. Such conditions are generally due to the public considering the Court no longer a facility as the last bastion for justice seekers, but has a tendency as a means of accommodating the interests of certain parties, especially the interests of the ruler and groups of capital owners such as investors or developers called capitalists. This research uses a normative juridical research approach, with several technical approach techniques, namely the statute approach, and conceptual approach (conceptual approach), the results of the discussion can be stated, The real condition in judicial practice in Indonesia at this time must be recognized that "there are still many mental and moral judges who are dilapidated as law officers so that the behavior of judges is not potentially corruptive making decisions that do not reflect legal certainty and justice (even though justice is relative) and even overlap between one decision and another in the context of the same case, it is necessary for the Judge to understand the realization of the concept of justice according to what is contained in Pancasila.

**Keywords:** dichotomy; Law; Court.

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## INTRODUCTION

Kepastian hukum merupakan prinsip dasar dalam sistem hukum yang berfungsi untuk memberikan kejelasan dan kepastian mengenai hukum kepada masyarakat. Namun, prinsip ini dapat terganggu apabila terdapat putusan pengadilan yang tumpang tindih dan saling bertentangan mengenai isu hukum yang sama. Dalam hal ini, terdapat suatu dikotomi antara kepastian hukum dan putusan pengadilan yang tumpang tindih.

Dikotomi ini menjadi semakin kompleks dengan adanya perbedaan interpretasi hukum, perbedaan fakta dalam kasus, dan perubahan doktrin hukum dari waktu ke waktu. Hal ini dapat menimbulkan konsekuensi negatif seperti penerapan hukum yang tidak konsisten, penurunan kepercayaan masyarakat terhadap lembaga peradilan, dan meningkatnya biaya litigasi.

Namun demikian, terdapat solusi untuk mengatasi dikotomi ini, seperti mempromosikan konsistensi dalam pengambilan keputusan yudisial melalui penggunaan preseden yang mengikat dan meningkatkan komunikasi antara pengadilan untuk mengurangi kemungkinan putusan yang saling bertentangan. Penting juga untuk menyeimbangkan kepastian hukum dengan kebutuhan fleksibilitas dan adaptabilitas dalam hukum untuk menyesuaikan perubahan dalam masyarakat dan teknologi.

Kepastian hukum merupakan prinsip hukum yang penting dalam sistem hukum modern (Fenwick & Wrbka, 2016). Kepastian hukum berarti hukum harus jelas, dapat dimengerti, dan konsisten dalam penerapannya. Kepastian hukum memberikan keyakinan bagi individu dan bisnis untuk melakukan transaksi dan kegiatan sehari-hari mereka dengan keyakinan bahwa tindakan mereka mengikuti hukum dan tidak akan menghadapi konsekuensi yang tidak terduga (MacKay & Chia, 2013); (Rismawati, 2015). Namun, dalam praktiknya, ada situasi di mana putusan pengadilan tumpang tindih atau bertentangan, yaitu ketika pengadilan yang berbeda membuat putusan yang bertentangan dalam kasus yang sama atau serupa. Hal ini dapat menciptakan ketidakpastian hukum karena individu dan bisnis mungkin tidak tahu keputusan mana yang harus diikuti atau mengikuti aturan ranjang yang berbeda (Forsberg et al., 2020); (Lubis & Koto, 2020). Dalam dikotomi antara kepastian hukum dan tumpang tindih putusan pengadilan, terdapat konflik antara dua nilai yang penting dalam sistem hukum (Riyadi, 2017); (Lobubun et al., 2022). Kepastian hukum di satu sisi diperlukan untuk menciptakan kepercayaan dan stabilitas dalam sistem hukum, sedangkan putusan pengadilan yang tumpang tindih dapat menyebabkan ketidakpastian dan ketidakadilan hukum (Singaruju, 2022).

Dalam hal ini, sistem peradilan perlu memastikan bahwa putusan pengadilan konsisten dan terkoordinasi dengan baik untuk meminimalkan kemungkinan tumpang tindih putusan (Miller & Maloney, 2020). Selain itu, hakim dan profesional hukum juga perlu memastikan bahwa mereka merujuk pada putusan pengadilan yang relevan dan memiliki argumen yang kuat untuk mendukung kasus mereka (Tirtakusuma, 2019). Dengan cara ini, sistem hukum dapat memperkuat kepastian hukum dan mencegah tumpang tindih putusan pengadilan.

## METHOD

This research uses a normative juridical research approach, with several technical approach techniques, namely the statute approach, and the conceptual approach. In addition, the author also makes observations in various courts in Indonesia, in the context of monitoring the performance of judges in carrying out the function of judicial power that examines, adjudicates, and decides cases. Basically, in normative legal research, the case approach aims to find concrete facts and factors related to the dichotomy between legal certainty and overlapping judgments.

A statute approach is an approach to examining a problem by examining and reviewing laws and regulations at the normative level which correlates with the issue of public awareness not to take the law into their own hands to solve legal problems in social interaction (Prananda, 2020).

## RESULTS AND DISCUSSION

About the juridical phenomenon of "dichotomy between legal certainty and overlapping court decisions", a conclusion the discussion can be stated as a result of the discussion as follows: (1) The real condition in judicial practice in Indonesia at this time must be recognized that "there are still many mentally and morally dilapidated Judges as Law Officers". (2) The absence of legal certainty and the number of overlapping court decisions have an impact on reducing public trust in the judiciary as the last bastion for justice seekers. (3) Law enforcement through an official and formal coercion system through an ineffective judicial body will cause a tendency to rampant the potential of the community to carry out a secondary coercion system in the form of vigilantism (thuggish model) to overcome any legal problems that occur, because of the impasse in obtaining guarantees and protection of legal interests.

The main task or main role of law is to create public order, intending to realize peaceful living together through the regularity of social interaction in community life (Lasahido, 2021). A very important factor for the realization of legal objectives is "certainty and comparability" in law enforcement, with the principle that certainty is concrete to dispute resolution in certain legal events and the guarantee of protection of citizens' rights (in this discourse it is civil rights). Such a concept is following the provisions of Article 28 D paragraph (1) of the 1945 Constitution which expressly affirms "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law". However, in actual reality, precisely the imperative provisions in the formulation/provisions of Article 28 D paragraph (1) of the 1945 Constitution are often violated and even amputated by uniformed officers who call themselves "Law Officers" or "Law Enforcers" (law officers), including Judges as guardians of the fortress of justice.

In principle, the postulate can be put forward that "the decision of the Court is law", and if the decision of the Court has permanent and binding legal force (Eintracht van gewijsde) then the decision of the Court is final and binding so that it can be immediately implemented.

However, currently, in concreto, there is a paradox at the level of implementation, Wati (2022) also stated, "The law that is ready to be used by legal practitioners in solving rights and obligations problems in the current reform era is political, while the task of finding and applying the law to concrete cases is different for each person and the technique is different in the function of government. Therefore, legal products are often expressed as juridically normative fair, or dogmatic, but not juridically empirical fair, or the reality of legal values that exist in society (Hartoyo, 2022). A legal product that is perceived to be unjust, juridically empirical is a futile legal product".

In the context of the academic discourse study "Dichotomy between Legal Certainty and Overlapping or Non-Uniform Court Decisions", among others, in the scope of practice of Civil Procedural Law, without denying let alone manipulating the real conditions in judicial practice in Indonesia, "there are still many dilapidated mentalities and morality of judges as law officers". The abrasion and degradation of the judge's morality are related to his performance in carrying out the function of judicial power in examining, trying, and deciding a case in the Court of Court, especially in the consistency of the application of the principles of civil procedural law, namely: 1) The Principle of Hearing Both Parties (Horen van Beide Partijen); and 2) The principle of judgment must be accompanied by reasons because they are often the starting axis that suppresses the "legal certainty" that eventually arises.

overlapping or non-uniform Court rulings. The juridical-scientific explanation that can be used as an argument from the postulate, is as follows:

**A. The Principle of Hearing Both Litigants**

The principle and fundamental provisions in the Civil Procedure Code require that in every examination of a disputed case in a Court proceeding then both parties (parties) to the dispute must be treated equally and equally in filing claims and defending their respective legal interests, the behavior of the Judge must reflect impartiality, and each party to the dispute is given an equal opportunity to present its legal arguments (Lengkong, 2019). "The court adjudicates according to the law by not distinguishing people", as stated in Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. This means that in the Civil Procedure Code, litigants must be equally considered, and entitled to equal and fair treatment, and each must be allowed to give his opinion. The principle that both sides should be heard is better known as the "principle audi et al team partem" or "eines mannes rede ist keines mannes rede, man soll sie horen alle beide". The meaning of such a legal principle is that the Judge may not accept the testimony of one party as true if the opposing party is not heard or is not allowed to express his opinion (Adib et al., 2021).

This also means that "the submission of evidence must be made before the court in the presence of the parties to the case (Articles 121 and 132 HIR, Articles 145 and 157 RBg)". The exception, in this case, is the examination of cases verse, namely the examination of civil cases in the court outside the presence of one of the litigants (provided that there is only one party Plaintiff and one party Defendant).

However, in the practice of civil cases in Indonesian courts, the meaning of the principle of hearing both parties (Horen van Beide partijen), often becomes just "absurd jargon" because judges/judges do not perform their function as "referees" neutrally in the context of handling civil cases in Court trials. Especially when the case examined, tried, and decided by the Court is a "matter of entrustment" or "matter of attention". Such a fact gives rise to haki m behavior that is unfair, impartial, ignores the values of truth through legal facts revealed in court, so that the dignity of justice to provide justice for seekers of justice (justifiable) loses spirit because Hakim has entered the vortex of the judicial mafia (judicial corruption).

In the end, the decisions produced by the court no longer require Legal Certainty, even the polemic of the number of overlapping or non-uniform decisions becomes a phenomenon "that cuts the sense of justice" because in 1 () case there are several different decisions, even decisions that have permanent legal force (Eintracht van gewijsde) even though they cannot be executed, Because, against the same object of dispute, there are still cases that are being examined by the court, especially later if the court gives/gives a different decision on the same object of dispute that has permanent legal force (Eintracht van agewise). In such an event the meaning of the principle "The judge is considered knew of the law" (ius curia novit) became questionable, and the Court lost the trust of the public "as the last bastion for the seekers of justice".

**B. The Principle of Judgment Must Be Accompanied by Reasons**

Each judge's decision must contain the reasons for the decision that is used as the basis for trial, as determined and regulated in Article 14 paragraph (2) of Law Number 48 of 2009 concerning judicial power, Article 184 paragraph (1) HIR, Article 195 RBg, and Article 61 Rv. Juridical reasons or arguments as legal considerations are intended as ex officio responsibility of judges in carrying out their duties, The obligations and judicial powers it has are inherent in connection with the function of pro Justitia in examining, adjudicating, and deciding every case it handles. The reasons, in the form of considerations regarding the subject matter and considerations regarding the law, contained in the decision make the decision considered authoritative. Incomplete or inconsiderate judgments (onvoldoende gemotiveerd) are grounds for cassation and such judgments must be annulled.

Ex officio, to exercise his power, the Judge is obliged to try all parts of the lawsuit. The Decision of the Supreme Court of the Republic of Indonesia Number 1992 K / Pdt / 2000 dated October 23, 2002, in its consideration stated: "That regarding objection 1 can be justified

because of the decision of Judex Factie which has overturned the decision of the Bandung District Court without considering the exclusion of the Defendant so that the decision of Judex Factie must be declared imperfect judgment (onvoldoende gemotiverd) that objection 3 can also be justified because Judex Factie consideration is lacking regarding the seizure of bail".

In the practice of Civil Procedure Law courts, it is very common that to be more accountable for a decision of the Court (Judge/Panel of Judges), the reasons stated in the decision are supported by introducing jurisprudence and doctrine (opinion of leading jurists).

However, in reality (in actu) often the Judge / Panel of Judges does not contain reasons in its consideration of all the arguments stated by the Parties and legal facts revealed in the Court proceedings (both in civil cases, criminal cases, state administrative cases, as well as cases in other legal fields). Even more ironically, at the examination of cases at the appellate level in the High Court, often the Judge/Panel of Judges (Court) in considering their decisions only uses the pretext of "taking over all the considerations of the Judges/Panel of Judges at the district court level". Procedurally–functionally, the capacity/position of judges in the high court is also as a "Judex Facti" who must re-examine the disputed subject matter a quo and then present reasons as considerations of the decision, both considerations of the subject matter and considerations of law. As a result of the neglect of "The principle of the decision must be accompanied by reasons", the decision of the Judge / Haki Panel does not reflect legal certainty and is often even found between one judgment overlaps or is not uniform with the other even though the cases have a basic similarity. In such circumstances, court rulings as legal products have lost their singular essence. Even more fatal than that, the consequences of "the absence of legal certainty and the existence of overlapping or non-uniform decisions" will cause an uproar (uneasy situation) in society because each defends a legal product in the form of a court decision they have, until in the end to defend their rights, the community tends to act "vigilante" (eigen richting).

Being a vigilante will generally destroy order and security because retaliation or retaliation will have no end at all. Protection is provided by the state through the decision of a judge (court) to provide justice and legal certainty, in events or circumstances where a person receives an attack or threat to his life and property or recovery of losses suffered by a person / a party when viewed from the point of public interest is precisely so that the state that upholds justice, as justice should be maintained in the rule of law, with the concept of rule of law or rechtsstaat. The position and role of judges (courts) as representatives of the state that does not directly experience an attack or threat and/or loss, will be fairer in giving its decision, compared to people who are directly harmed by their legal interests.

For the judge's behavior not to be corruptive in terms of potentially making decisions that do not reflect legal certainty and justice (even though justice is relative) and even overlap between one decision and another in the context of the same case, judges must understand the embodiment of the concept of justice according to what is contained in Pancasila. The concept

of "justice" in Pancasila is formulated in the Second Precept which reads "Just and civilized humanity", and the Fifth Precept which reads "Social justice for all Indonesian people". The Second Precept of Pancasila, namely "Just and civilized humanity" was first described in the Decree of the People's Consultative Assembly No. II / MPR / 1978, but later the provision was revoked based on MPR Decree No. XVIII / MPR / 1998. In this description, a fair attitude is described as: dignified, equal, loving each other, an attitude of respect, not arbitrary, having human values, defending truth and justice, and respecting respect and cooperation with others. While the meaning of justice in the precepts of "Social justice for all Indonesian people" includes: cooperation, the balance between rights and obligations, having social functions property rights, and simple living.

The concepts of "justice" and "democratic system" applied in Indonesia are based on Pancasila as a philosophy or philosophy of way of living which is manifested in the 1945 Constitution as the Written Basic Law. The values of justice that are aspired to must refer to the noble values crystallized in Pancasila, as formulated in the Second Precept and the Fifth Precept. Thus, the concept of justice as affirmed by the Second Precept and the Fifth Precept of Pancasila must be a parameter for the executive and legislature to make every regulation, including Judges, Prosecutors, Police, and Advocates as well as other Law Enforcement tools in carrying out their duties and functions to uphold justice.

Regarding the discourse of the dichotomy between legal certainty and overlapping court decisions, the main factor as a trigger for the paradox of law enforcement that has become a heartbreaking reality today in Indonesia is on the one hand if the poor who commit minor mistakes but they are rewarded with severe punishments, while on the other hand if the bourgeois group who commit serious crimes but they only get very light sentences. Although in the law there is a principle "the law must not be merciful", the penal policy contained in the principle is considered contrary to reason (contra rationem). Currently, the community feels the absence of the rule of law that embodies equality before the law.

Moreover, the general public considers that in reality "the law cannot fight the power" (Contra vim non-valet us), because of the fact they experience that the law in Indonesia is like a sharp blade down but blunt up.

The law seems to be a "merchandise" that can be bought and sold by people who have power, people who have influence and of course the buttocks of capital owners called capitalists. Public trust in law enforcement in Indonesia eventually becomes very poor due to transactional law, which has the impact of losing authority.

It is very important to understand the social reality that occurs in Indonesia today is that there is a tendency that public trust in the dual duty of law, namely to provide legal certainty and provide legal reparability, has lost its meaning so that the goal of law to realize peaceful living together is very difficult to achieve because nowadays Indonesian people tend to carry out vigilante acts (eigen richting). Law enforcement through an official and formal system of

coercion through the judiciary, which makes the condition of formalism more tangled and chaotic due to the behavior of judges who ignore moral responsibility ex officio so that law enforcement becomes not straight and correct has caused distortions to law enforcement. Such conditions imply that there is a tendency for the community to carry out a secondary coercion system in the form of law enforcement efforts outside the "formal official law-enforcement system" system, among others, by vigilantism to overcome any legal problems that occur.

## CONCLUSION

For the Judge's behavior not to be corruptive in terms of potentially making decisions that do not reflect the certainty of law and justice (even though justice is relative) and even overlap between one decision and another in the context of the same case, the Judge must understand the embodiment of the concept of justice according to what is contained in Pancasila. The concept of "Justice" in Pancasila is formulated in the Second Precept which reads "Just and civilized humanity", and the Fifth Precept which reads "Social justice for all Indonesian people". To recruit Judges (both career Judges and ad hoc Judges) a clean, transparent, and accountable selection must be carried out so that Judges who have integrity and extensive knowledge are obtained following the principle of Judges considered to know the law (ius curia novit).

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