



# The Role of Judges in Customizing Cases Based on Considerations of Community Cultural Values to Realize Justice Study in Brebes State Court

M. Kenan Lubis(✉)

Doctoral Program in Law, Unissula, Semarang, Indonesia  
kenan.lubis@gmail.com

**Abstract.** The legal culture of society in a legal country is highly respected as natural wealth. In an Indonesian constitutional system, legal culture is born from the community and for the people who live in the area they occupy. Indonesia as a constitutional state based on Pancasila upholds the values of justice. So, due to the existence of a legal culture that is still valid and valid in a group of indigenous peoples. Law enforcers, especially judges, can play a role in adjudicating cases based on considerations of the cultural values of society to achieve justice. This is if strategic steps are not taken, then there will be problems in the application of the law that cause losses in the legal territories of indigenous peoples. This research is descriptive analysis and the research approach used is juridical sociological. The location of this research was conducted at the Brebes District Court, the indigenous people of the village of jalawastu culture, Ciseureuh Village, Ketanggungan District, Brebes Regency. The types of data used include primary data and secondary data. Data collection techniques through interviews, literature study research through books, laws and regulations, scientific journals, papers, documents. Data analysis using qualitative analysis. Based on this research, the results obtained show that the role of judges in adjudicating cases is based on the consideration of the cultural values of the community to achieve justice in the Brebes district court using the judicial power law, the instinct of a judge, customary law and positive law. In addition, the analysis used by a judge in adjudicating a case to create justice uses the testimony of expert witnesses, including the customary chief, unwritten regulations that can be used as evidence. So to create justice in the Brebes District Court by implementing the principles: authoritative solutions, efficiency, judicial power laws, aspects of stability, and fairness. These principles are translated into a program through a partnership to build a village (kembangdesa), regular legal counseling, application of judicial power laws. These principles contain the meaning of providing good role models from officers in compliance with the law and response to law, well-planned and directed institutions, judges carry out their judicial functions independently, judges behave both inside and outside the court. To maintain and increase the trust of the public, the legal profession, and the parties in a case against the impartiality of judges and judiciary.

**Keywords:** The Role of Judges · Legal Culture · Justice

## 1 Introduction

Conceptually, the rule of law principle (*rechtsstaat* or rule of law) is closely related to the nature of modern law which is rational in nature which requires a state administration based solely on objective legal rationality. The state does not serve a subjective will from the rulers or state power (*machtsstaat*), but is subject solely to objective legal rules. In this regard, there is an internal relationship between rule of law and democracy because the rule of law requires the operation of democratic mechanisms that enable rational and objective rule of law to be obtained through a process of public deliberation (deliberation). Thus, a rule of law state is basically a state implemented based on the 'general will' which is reflected in the rule of law. In other words, the concept of rule of law is basically an embodiment of the principle of people's sovereignty or democracy.<sup>1</sup>

Sociologically, the justice that is tried to be formulated in laws and regulations is of course limited to justice that is understood and felt by the legislators of laws and regulations, and is also limited to when the laws and regulations are formed. On the other hand, the community's sense of justice continues to develop along with the development of the condition of the community itself. Justice is the spirit or soul of laws and regulations.<sup>2</sup>

Based on the authority and duties as the principal actor of court functions, the attitude of judges symbolized in *kartika*, *cakra*, *candra*, *sari* and *tirta* is a reflection of the behavior of judges which must always be implemented and realized by all judges in the attitude and behavior of judges based on the principle of the Supreme God. Almighty, just, wise and authoritative, virtuous and honest. This devotion to God Almighty, which underlies the principles of this code of ethics and guidelines for the behavior of judges, means the practice of behavior according to each religion and belief according to the basis of just and civilized humanity. This devotion to God Almighty will be able to encourage judges to behave properly and responsibly in accordance with the teachings and guidelines of the religion and beliefs they adhere to.<sup>3</sup>

Judicial power is the main and general framework laying the foundation and principles of the judiciary in general, judicial power is an independent power. Independent according to language means being independent and not dependent on others,<sup>4</sup> and free from interference from parties outside the power of the judiciary to administer justice for the sake of the rule of law.<sup>5</sup> Policies are laws, regulations, procedures, administrative

---

<sup>1</sup> Aidul Fitriadi, 2005, *Kekuasaan Kehakiman Yang Merdeka Dan Bertanggungjawab di Mahkamah Konstitusi: Upaya Menemukan Keseimbangan*, Jurnal Jurisprudence Vol. 2 No. 1, Surakarta, Page. 94.

<sup>2</sup> Widayati, 2020, *Implementasi Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan Yang Partisipatif Dan Berkeadilan*, Jurnal Hukum Vol. 36 No.2 Unissula, Semarang, Page. 70.

<sup>3</sup> Mardani, 2017, *Etika dan Profesi Hukum*, Rajawali Pers, Depok, Page. 185.

<sup>4</sup> Departemen Pendidikan Nasional, 1900, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, Page. 710.

<sup>5</sup> Yusna Zaidah, 2015, *Peradilan Agama di Indonesia*, Banjarmasin, Page. 33.

actions, incentives, or voluntary practices of governments and other agencies.<sup>6</sup> As a rule of law, actions taken by both the government and citizens must be based on law.<sup>7</sup>

As a state institution that exercises judicial power at the first level, the district court is the spearhead of the judiciary above it. Therefore the district court has a strategic role in carrying out its main tasks, namely receiving, examining, deciding and settling cases submitted to it.

The indigenous people of the Jalawastu cultural village, Ciseureuh Village, Keuntungan District, Brebes Regency have the highest customary law rules, namely being humiliated, exiled, ostracized if they violate the rules in the Jalawastu cultural village area, Ciseureuh Village, Keuntungan District, Brebes Regency.

Then, in carrying out its duties, the Brebes District Court is required to try to help justice seekers and try to overcome all obstacles and obstacles in order to achieve a simple, fast and low-cost trial.<sup>8</sup>

## 2 Research Methods

The approach method used in this research is the juridical empirical approach, which is research that examines or traces people's attitudes and attitudes towards the applicable law.<sup>9</sup> Sources of data used are primary and secondary data. Primary data refers to data or facts and legal cases obtained directly through research in the field, including information from respondents related to the object of research and practices that can be seen and related to the object of research.<sup>10</sup>

## 3 Results and Discussion

In the author's interview with the Head of the Brebes District Court, Tornado Edmawan SH., MH. Say:<sup>11</sup>

"The task and role of the judge is to serve the community according to the procedures in force to create true justice. Judges are part of law enforcers who have the image of participating in protecting the dignity of the judiciary in Indonesia by prioritizing professional, fair and trustworthy characteristics.

---

<sup>6</sup> Ma'ruf Cahyono, Bahtiyar Efendi, and Anis Mashdurohatun, Restructuring Institutional and Legal Policies in Fostering the Ideology of Pancasila, *Lex Publica* Vol. 7, No. 1, 2020, Page 28-39

<sup>7</sup> Ahmad Faisol and Anis Mashdurohatun, *Law Enforcement against the Criminal Action of Little Theft*, Vol 2 Issue 4, December 2020, Page 647-657

<sup>8</sup> <https://pn-brebes.go.id/sop-pn-brebes/>

<sup>9</sup> Nur Indah Setyoningrum and Anis Mashdurohatun, Restorative Justice in Children's Criminal Jurisdiction System through Diversion, *Law Development Journal*, Volume 2 Issue 4, December 2020, Page 573-581

<sup>10</sup> Agus Irawan Yustisianto, Sri Endah Wahyuningsih, Anis Mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, *Scholars International Journal of Law, Crime and Justice*, Vol 5 No. 12, Page 513-519

<sup>11</sup> Interview With Tornado Edmawan., SH. MH Ketua Pengadilan Negeri Brebes,

For this reason, there is a need for serious oversight from related institutions, in this case the Judicial Commission, which is tasked with supervising and protecting judges so that they comply with procedures, namely to become law enforcers who are fair, professional, honest, consistent and trustworthy. Concrete steps from the Judicial Commission to carry out supervision of judges to create a judiciary that is clean from all kinds of interference by law enforcement and the public that affect performance in deciding or resolving a case at the Brebes District Court.

Furthermore, in his duties as a law enforcer to create a clean judiciary. Judges have a special position apart from having a code of ethics that must be upheld, they must also be obeyed professionally and promote an honest attitude. Because the role of such a judge will lead to a judiciary that is trusted by the community as an institution of a state judiciary that can adjudicate according to the needs of the existing community.

In the author's interview with Galuh Rahma Esti., SH. MH., Brebes District Court Judge said:<sup>12</sup>

Judicial power is an independent power to administer justice in order to uphold law and justice as stated in Article 24 paragraph 1 of the 1945 Constitution. Its meaning is that a judge in deciding a case has independence or freedom based on direct accountability to God Almighty. .

Based on what has been explained above, apart from the judge's job of adjudicating justice in the best way possible, another step that can be taken is an attitude of independence which can be called direct accountability to the Creator. That is, the judge is not only responsible for what has been decided by the litigants, but in accordance with the judge's conscience, he realizes that accountability goes directly to the Creator.

Once it is known that the law that was born from society is a legal instrument that cannot be abandoned. In overseeing legal cases that occur in society, the legal culture of the Republic of Indonesia Police has a role and existing guidelines, as meant:<sup>13</sup>

#### 1. The role of Polri in law enforcement

Polri is part of the Criminal Justice System as an investigator who has law enforcement (repressive) capabilities and international police cooperation to anticipate international crimes. In creating legal certainty the role of the Police is actualized in the form:

- a. The National Police must be professional in the field of criminal and civil procedural law so that the negative image that the Police work based on power will disappear.
- b. Able to increase public legal awareness so that they do not become victims of legal necessity or arbitrary actions.
- c. Able to set an example in law enforcement.

---

<sup>12</sup> Interview With Galuh Rahma Esti., SH. MH Hakim Pengadilan Negeri Brebes, 21 Desember 2020

<sup>13</sup> Riadi Asra Rahmad, 2019, *Hukum Acara Pidana*, Rajawali Pers, Depok, Page. 156.

d. Able to refuse bribes or the like and even vice versa able to guide and make bribers aware of carrying out obligations according to applicable regulations.

## 2. The role of the Police as the protector and protector of the community

This role is manifested in security activities both regulated in statutory provisions (legality principle) and those not yet regulated by statutory regulations (opportunity principle embodied in police law). Actualization of this role is embodied in the form:

- a. Able to put himself on equal footing with society, not arrogant and feel no more in the eyes of society.
- b. Able and willing to work hard to prevent and eliminate all forms of community trouble.
- c. Able to protect based on the law and not otherwise violate the law because of certain interests.
- d. Able to anticipate early in fortifying the community and all possibilities that will disturb the peace and order of society.

## 3. The role of Polri as a public servant (*Public Service*)

This role is Polri's ability to carry out Polri's duties, whether preventive, preventive or repressive. This role is to guarantee the peace, peace and justice of the community so that the rights and obligations of the community are carried out in a balanced, harmonious and harmonious manner. Polri as a place to complain, to report all the problems of people who are experiencing difficulties, needs to provide sincere and responsive service and assistance.

The National Police of the Republic of Indonesia has wise steps for the sake of law and order. Society is directed to something that is right and not against the law. Regarding the sanctions and punishments imposed on the guilty parties or suspects, the attitude of the police is the bridge to achieve justice. If within the territory of the Ciseureuh Village Government, Keuntungan District, Brebes Regency, they cannot resolve crimes against the indigenous people of the Jalawastu cultural village, the steps to be taken are then submitted to the police. If the legal settlement process at the police station cannot be completed, the last step is submitted to the prosecutor's office to be processed at the Brebes District Court.

Often judges at the Brebes District Court experience obstacles and problems in creating justice. In practice it has not been maximally accepted by the community even though it has been decided through the applicable legal procedures. Some of the judge's obstacles in adjudicating cases, namely:<sup>14</sup>

1. Judges do not know directly about cases that occur in the field.
2. As an ordinary human being, judges have natural traits, namely emotions, passions, and desires or different views among the panel of judges.
3. The resulting decision is relative.
4. Judges often look at several cases from a formal perspective only relating to civil matters.

<sup>14</sup> Interview With Galuh Rahma Esti., SH. MH Hakim Pengadilan Negeri Brebes,

5. Justice is closely related to emotions so judges are sometimes coerced.
6. The judge's policy in deciding cases in several cases does not only deal with concrete matters.

The judge's solution in adjudicating cases based on considerations of community cultural values to achieve justice at the Brebes District Court is as follows:<sup>15</sup>

1. Authoritative solutions, find a way out of the problems faced.
2. Realizing a judicial institution with efficiency, namely fast, low cost and simple.
3. Guided by laws and the legal culture of society.
4. Aspects of stability which include comfort, security, justice and public order.
5. There is fairness, opening the same space between litigants.

The judge realized that the existence of customary law that was born in the cultural village community of Jalawastu, Keuntungan District, Brebes Regency had become a sacred value and could not be contested regarding the existence, position, position and meaning contained therein. The judge considers that customary law has become a tradition that is guarded, preserved as natural wealth even though it lies under state law. State law and customary law complement each other and uphold existing laws. So, the people of the Jalawastu cultural village, Kenggungan District, Brebes Regency, continue to prioritize written law as a step to obey the state and customary law as a form of respecting their ancestors, which has become a hereditary belief.

## 4 Conclusion

The role of judges in adjudicating cases based on considerations of community cultural values to create justice here is judges as law enforcers who make legal decisions independently and there is no influence from other parties. The role of the judge as a public servant is to obtain a fair decision according to the needs of the community.

Analysis of judges in adjudicating cases based on consideration of community cultural values to create justice using interpretation methods (law discovery), jurisprudence, expert witness testimony obtained from the chief of the Jalawastu tribe, Ciseureuh Village, Keuntungan District, Brebes Regency, applying the theory of rule of law justice, the theory of justice in an Islamic view, methods of construction, written laws, opinions of legal experts, unwritten laws or customary laws.

Barriers to judges in adjudicating cases based on considerations of community cultural values to create justice such as judges not knowing directly about cases that occur in the field, Judges' policies in deciding cases in several cases are not only dealing with concrete matters, The nature of customary law is not written so it is not can be formulated and interpreted clearly the meaning contained therein. Customary law varies in nature according to the conditions and circumstances of the people who believe in customary law as a rule of law and it can be recognized that the legal process is experiencing difficulties. After the obstacles faced by judges in deciding cases, there are several things that can make a solution to create justice, such as providing authoritative solutions, finding solutions to the problems faced, creating a judicial institution with efficiency, namely fast, low cost and simple.

<sup>15</sup> Interview With Tornado Edmawan., SH. MH Ketua Pengadilan Negeri Brebes,

## Bibliography

1. Agus Irawan Yustisianto, Sri Endah Wahyuningsih, Anis Mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, *Scholars International Journal of Law, Crime and Justice*, Vol 5 No. 12
2. Ahmad Faisol and Anis Mashdurohatun, Law Enforcement against the Criminal Action of Little Theft, Vol 2 Issue 4, December 2020,
3. Aidul Fitriadi, 2005, *Kekuasaan Kehakiman Yang Merdeka Dan Bertanggungjawab di Mahkamah Konstitusi: Upaya Menemukan Keseimbangan*, *Jurnal Jurisprudence* Vol. 2 No. 1, Surakarta,
4. Departemen Pendidikan Nasional, 1900, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta,
5. <https://pn-brebes.go.id/sop-pn-brebes/>
6. Interview With Galuh Rahma Esti., SH. MH Hakim Pengadilan Negeri Brebes,
7. Interview With Tornado Edmawan., SH. MH Ketua Pengadilan Negeri Brebes,
8. Ma'ruf Cahyono, Bahtiyar Efendi, and Anis Mashdurohatun, Restructuring Institutional and Legal Policies in Fostering the Ideology of Pancasila, *Lex Publica* Vol. 7, No. 1, 2020,
9. Mardani, 2017, *Etika dan Profesi Hukum*, Rajawali Pers, Depok,
10. Nur Indah Setyoningrum and Anis Mashdurohatun, Restorative Justice in Children's Criminal Jurisdiction System through Diversion, *Law Development Journal*, Volume 2 Issue 4, December 2020,
11. Riadi Asra Rahmad, 2019, *Hukum Acara Pidana*, Rajawali Pers, Depok,
12. Widayati, 2020, Implementasi Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan Yang Partisipatif Dan Berkeadilan, *Jurnal Hukum* Vol. 36 No.2 Unissula, Semarang,
13. Yusna Zaidah, 2015, *Peradilan Agama di Indonesia*, Banjarmasin,

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

