

Legal Research Perspective through Problem Solution Approach

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Abstract

This study aims to find out what is the point of view of legal research with a problem solution approach (dispute resolution) on legal disputes that exist both in court and outside the court in force in Indonesia. This research method uses a qualitative method with a literature study approach where legal materials are obtained from library books, both printed and electronic. The formulation of the problem for this research are: a. how is the settlement of legal disputes that occur in Indonesia?; b. What are the judges' considerations in their decisions regarding the settlement of legal disputes that occurred in Indonesia? The conclusions of this study are 1. Legal research with a dispute resolution approach (problem solution) can be carried out outside the court and in court where both have advantages, disadvantages and procedures that differ from one another; 2. The legal research approach with out-of-court dispute resolution is difficult to obtain legal documents because it is closed (not published) while dispute resolution through the courts can be analyzed in terms of court decisions, judges' legal considerations and legal findings by judges. It is recommended that the results of dispute resolution outside the court can be obtained openly so that decisions and legal considerations can be examined on existing disputes and laws and other regulations so that they are immediately made to strengthen the legal position of the judge's legal findings.

Keywords: *Research Approach, Problem Solution, Dispute Resolution.*



A. INTRODUCTION

Law will continue to develop following the development of science and its era, it also depends on the prevailing local culture (Fordyce, 2020; Ballin, 2020), therefore legal research is needed to: a) filling the legal void, providing firmness due to the blurring of the meaning of law, moreover due to the conflict of existing legal norms; b) provide input for legal regulations that do not yet exist or are about to be drafted; c) also to criticize existing laws, regulations and statutes that are "out of date" and no longer appropriate (Steele, 2001). Thus, Legal Research is needed because of the gap (gap) between *das sollen* and *das sein*.

Legal research is a process and means to find legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand. The function of legal research is also to seek legal truth regarding a problem in the law (Nickerson et al., 2012; Hutchinson & Duncan, 2012). Legal research should be focused on legal and societal issues that interact with law at the regional (local), national, regional and international levels. This is to find out the extent to which legislation meets philosophical, sociological, and juridical values (Ervasti, 2018; Endarto et al., 2012).

The legal research conducted will use consistent and systematic research methods that can be described as follows:

1. Research Specifications

The specification of the research is carried out descriptively on the characteristics of the objects of trademark disputes which in principle or as a whole become a source of dispute between the parties holding the brands studied from cases, literature studies and field research as supporting material. Research that has a descriptive nature in Soerjono Soekanto's view, descriptive research is a research that is intended to provide data that is as precise as possible with humans, conditions or other symptoms, and only explains the state of the problem object without intending to draw generally accepted conclusions.

2. Research Approach

The research approach used is a normative juridical approach that examines laws and regulations, especially laws and regulations related to trademark disputes in principle or in its entirety, so as to obtain objective law (legal norms), in addition to being aimed at obtaining objective law (rights and obligations). from the parties to the dispute. Peter Mahmud Marzuki explained that, normative legal research is a process to find a rule of law, legal principles and legal doctrines to answer the legal issues at hand. This is in line with Soerjono Soekanto's view which explains that normative legal research or normative juridical research is library law research conducted by examining literature or secondary data.

The research uses a normative juridical approach to laws and regulations in the sense that an approach based on legislation (statute approach) is considered a certain thing. It is said to be certain, because according to legal logic, normative legal research is based on research conducted on existing legal material, even though the research is carried out due to a legal vacuum, the legal vacuum can be known due to legal norms that require positive law. This dissertation also uses a conceptual approach (conceptual approach) with regard to the concept of brands, well-known brands, equality in essence, legal protection, good faith, and also uses a case approach by analyzing the reasons and considerations for the decision of the Supreme Court in cases selected and related to the research.

3. Legal Material Collection Techniques

The technique of collecting legal materials is carried out on secondary data in the form of literature to obtain various information related to brands originating from scientific books, research reports, scientific essays, laws and regulations, and other sources both in writing and from electronic media. so that studies on secondary data can explain the variables that become topics in research. Sugiyono explained that, literature studies are related to theoretical studies and other references related to values, culture and norms that develop in the social situation being studied, besides that library studies are very important in conducting research, this is because research cannot be separated from the literature. scientific. In normative legal research, literature is the basic material which in research is referred to as secondary data. Legal materials in legal research can be divided into: 1) Primary Legal Materials, The legal material used in the research is the applicable laws and regulations; 2) Secondary Legal Materials, The secondary legal materials used are literature, journals, legal

papers and doctrines; 3) Tertiary Legal Material, the tertiary legal material used is any material related to the main points of the problem formulation, providing clarity on what the contents are information, and explanation of primary and secondary legal materials in the form of legal dictionaries, encyclopedias and others (Bandura et al., 2022).

4. Legal Material Analysis Techniques

The research was conducted using qualitative normative analysis techniques, by describing conditions and facts about registration that exceeded the limit. Legal facts are analyzed through statutory approaches, legal theories and expert opinions aimed at finding answers to the problems raised in this study by using a contextual mindset. Qualitative normative analysis techniques are used on the basis of Burhan Bungin's view which explains that, qualitative analysis of legal material shows an integrative analytical method and conceptually tends to be directed to find, identify, process, and analyze legal material to find its meaning, significance, and relevance.

B. METHOD

This research method uses a qualitative method with a literature study approach where legal materials are obtained from library books and legal material sources, both printed and electronic.

C. RESULT AND DISCUSSION

1. Problem Solution Approach

The problem solution method (problem solving) is one of the theoretical bases that makes the problem the main issue in learning. In line with that, Utomo Dananjaya also has an explanation of the Problem Solution Method, which is an effort to increase results through a scientific process to assess, analyze, and understand success. Therefore, to solve a problem one must be accustomed to thinking independently. Meanwhile, according to W. Gulo, the Problem-Solving Method is a method that teaches problem solving by emphasizing solving a problem logically (Calcara, 2019).

Approach is a way of dealing with something as a problem. An approach is needed in research where the focus or point of view of the researcher is in responding to the problems or issues raised. Here's an example. These researchers can approach history, psychology, religion, and others. In normative legal research there is also an approach. Peter Mahmud Marzuki emphasized that there are five approaches in legal research, namely the statutory approach, the case approach, the historical approach, and the comparative approach or comparative approach, and conceptual approach or conceptual approach. Meanwhile Johnny Ibrahim added two more types of approaches, namely the analytical approach and the philosophical approach.

2. Principles of Dispute Resolution

The term "Dispute" or Disputes (English), is often referred to as "Conflict" or Conflict (English). Henry Campbell Black explains the meaning of "Dispute", as: "A conflict of controversy; a conflict of claims or rights; an assertion of a right, claim, or

demand on one side, met by contrary claims or accusations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which judges are called and witnesses examined.”

In the literature, Dispute Theory is also called Conflict Theory. The definition of conflict formulated by Dean G. Pruitt and Jeffrey Z. Rubin, conflict is the perception of differences in interests (perceived divergence of interest), or an aspiration of the parties in conflict is not achieved simultaneously (simultaneously). Pruitt and Rubin further saw conflicts from differences in interests or failure to reach an agreement between the parties. Purpose Differences in interests are different needs or needs of each party. Furthermore, Conflict Theory according to Salim HS, can be classified into: a) The object of study; b) Factors causing the conflict; and c) Strategy in conflict resolution (Munthe & Hindayai, 2020; Disemadi, 2022).

Al-Amaren et al. (2020) and Bhat (2019), put forward several theories of conflict, one of which is the theory of human needs or interests, which in essence this theory reveals that conflicts can occur because human needs or interests cannot be fulfilled or feel hindered by other parties.

The disputing parties in practice can take several approaches in managing the disputes they face (Negara, 2023; Mignanelli, 2020). In general, there are several approaches to managing conflicts or disputes that occur, namely:

- a. Power Based, is a dispute management approach based on strength or authority to force someone to do something or not to do something. This approach is generally carried out when one party has a stronger position and access than the other party;
- b. Right Based, is an approach based on the concept of rights (law), namely the concept of right and wrong based on juridical parameters through adjudication procedures, both in court and arbitration. Justice seekers who wish to resolve their dispute must first submit their case to court or through arbitration. An approach like this generally leads to a win-lose solution, that is, one side wins and the other side loses;
- c. Interest Based, is an approach based on the interests of the disputing parties, not on their respective positions so that they reflect contractual (civil) interests, which are classified into: 1) Quality arbitration, which involves factual issues (questions of fact) that require arbitrators with high technical qualifications; 2) Technical arbitration, which does not involve factual issues, as is the case with problems arising in the construction of documents or the application of contract provisions; and 3) Mixed arbitration, disputes regarding factual and legal issues (question of fact and law).

Dispute resolution refers to the idea that law is a tool of social engineering, namely law as a tool for social engineering. Max Weber's thoughts regarding the role of law in making changes to society were studied more deeply by sociological jurisprudence, especially that of Roscoe Pound in 1912 (Girad et al., 2022; Halim et al., 2019). Roscoe Pound argues that jurists with a sociological perspective need to take into account more social facts (in this case the occurrence of disputes) in their work,

whether it is law making, interpretation or application of the legal rules themselves. Legal experts must be able to more intelligently calculate the social facts that must be absorbed in the law and which then become the target of its application (dispute resolution) (Sloan, 2021).

For this reason, Roscoe Pound suggests that attention should be focused on the real effects of legal institutions and doctrines, because the life of law lies in its implementation. In order for the law to better meet the needs of society, it is necessary to pay attention to the most recent social conditions, such as the background to the occurrence of disputes. By accommodating the latest developments in social facts in terms of the needs, interests and aspirations of the community, the function of law as social engineering in resolving disputes will be more transformative.

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3. Settlement of Disputes Outside the Court

Conventional dispute resolution is carried out through the courts (litigation path), but subsequent developments arise out of court dispute resolution due to dissatisfaction with efforts to resolve disputes through the courts. Dispute resolution outside the court can be done through Arbitration and Alternative Dispute Resolution (APS), namely consultation, negotiation, mediation, conciliation, or expert judgment as stipulated in Law (UU) Number (No) 30 of 1999. However, that can be resolved are disputes in the field of trade or business, so that disputes that arise are not related to business and cannot be reconciled are not the object of settlement of the Law

So far, what has been used as the basis for examining arbitration in Indonesia are Article 615 to Article 651 of the Civil Procedure Regulation (Reglement op de Rechtsvordering, Staatsblad 1847:52) and Article 377 of the Revised Indonesian Regulation (Het Herzeiene Indonesisch Reglement, Staatsblad 1941:44) and Article 705 Event Regulations for Regions Outside Java and Madura (Rechtsreglement Buitengewesten, Staatsblad 1917 No 127).

Developments in the business world and traffic in the field of trade both nationally and internationally as well as legal developments in general, the regulations contained in the Civil Procedure Regulations (Reglement op de Rechtvordering) which are used as guidelines for Arbitration are no longer appropriate so they need to be adjusted due to international regulations. is already a requirement of *condido sine qua non* whereas this is not regulated in the Civil Procedure Regulations (Reglementop de Rechtvordefing). Starting from this condition, fundamental changes to the Civil Procedure Regulations (Reglement op de Rechtvordering) both philosophically and substantively have been implemented.

Developed countries such as America started efforts to find Alternative Dispute Resolution (APS) forms when Warren Burger (former Chief of Justice) was

invited to a conference, namely the Roscoe Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (Pound Conference).) in Saint Paul, Minnesota. Academics, legal observers, and lawyers who are concerned with issues of disputes/conflicts, gathered together at the conference, and finally compiled a basic understanding of dispute resolution at that time.

Almost the entire substance of Law No. 30 of 1999 regulates Arbitration, while the provisions regarding APS or Alternative Dispute Resolution (ADR) are not explained in detail. The APS/ADR provisions are only listed in Article 1 point 10 (definition) and Article 6. Other APS mechanisms such as consultation, negotiation, mediation, conciliation, or expert judgment are very vague in the law. Even in the General Provisions, the meaning of each of the APS mechanisms is also not explained, only the term Arbitration is clearly defined. While there is no explanation for other APS mechanisms, they are only stated as part of the APS as stated in Article 1 Number 10 of the Law.

Arbitration is "a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute." According to Black's Law Dictionary: "Arbitration: The reference of a dispute to an impartial (third) person chosen by the Parties to the dispute who agree in advance to abide by the arbitrator's award issued after hearing at which both parties have an opportunity to be heard. An arrangement for taking and abiding by the judgment of selected persons in some dispute meter, instead of carrying it to establish tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation."

Basically, Arbitration can take the form of 2 (two) forms, namely: an arbitration clause contained in a written agreement made by the parties before a dispute arises (*factum de compromitendo*); or a separate Arbitration agreement made by the parties after a dispute arises (*compromise deed*) (Ali, 2020; Afolayan & Oniyinde, 2019). Thus, dispute resolution through arbitration can be expressly stated before the dispute occurs or proposed at the time the dispute occurs based on an agreement.

In essence, the mechanism for resolving disputes by arbitration is not much different from the process of examining cases in court, because both arbitration and litigation are adjudicative mechanisms, that is, the third parties involved in resolving the dispute have the same authority to decide on the dispute. Arbitration is private adjudicative while litigation is public adjudicative, so that both arbitration and litigation are win-lose solutions.

The enactment of Law No. 30 of 1999 was based on the implementation of judicial power handed over to the judiciary based on Law No. 14 of 1970 concerning Main Provisions of Judicial Power. This is the main body and general framework that lays the foundation and principles of justice as well as guidelines for general courts, religious courts, military courts and state administrative courts, each of which is regulated in a separate law. In the Elucidation of Article 3 Paragraph (1) of Law No. 14 of 1970 it is stated, among other things, that settlement of cases outside the court on the basis of conciliation or through arbitration is still permissible, but the arbitral

decision only has executorial power after obtaining permission or an order to be executed (executor) from court.

Taekma (2021) and Arora et al. (2020) summarizes several criticisms of the judiciary from several countries, namely: "slow" or waste of time dispute resolution; case fees are "expensive"; the judiciary is unresponsive; court decisions do not solve the problem. Apart from arbitration, another out-of-court dispute resolution process is through mediation. The term "Mediation" in English is called "Mediation" which is defined as "a process of dispute resolution in the form of negotiations to solve problems through a neutral (third) party (mediator) and impartiality, to help find a solution in resolving the dispute satisfactorily for both side. According to the "Black's Law Dictionary", mediation is defined as a process of resolving disputes privately, informally, namely a neutral party (mediator), helping the disputing parties to reach an agreement. The mediator does not have the authority to make decisions for the parties (Pradeep, 2019; Zelentsov & Yastrebov, 2019).

Mediation in court is regulated by Law no. 48 of 2009 concerning Judicial Power, that "The provisions referred to in Paragraph (1) do not close efforts to settle civil cases peacefully" (Article 10 Paragraph (2). Meanwhile, mediation outside the court, in Law No. 48 of 2009 is regulated in Chapter XII from Article 58 to Article 61. These four articles refer to Law No. 30 of 1999 concerning Arbitration and APS According to Law No. 48 of 2009, mediation through courts is further regulated in PERMA No. 1 of 2008 concerning Mediation Procedures in Court, which was established on July 31, 2008. PERMA No. 1 of 2008 which consists of VIII Chapters and 27 Articles, does not refer to and does not refer to Law No. 30 of 1999 as Law No. 30 of 1999 is not found in the Preamble." Bearing in mind "PERMA is intended. Thus, mediation according to PERMA No. 1 of 2008 is different from mediation in Law No. 30 of 1999. Mediation in PERMA No. 1 of 2008 is intended as mediation in court (litigation) while mediation according to Law No. 30 The year 1999 was intended for dispute resolution outside the court (non-litigation).

The mediator is neutral and impartial whose job is to help the disputing parties identify the issues in dispute and reach an agreement. In its function, the mediator does not have the authority to make decisions. In contrast to arbitration which is binding and has executive power, the legal product of a mediation process is an agreement of the parties in the form of an agreement, so that the product of the mediation does not have executorial power (Blengino et al., 2019; Raionov et al., 2019).

Basically, dispute resolution through mediation has the following characteristics or elements: a) Mediation is a process of resolving disputes outside the court based on negotiations; b) The mediator is involved and accepted by the disputing parties in the negotiations; c) The mediator is tasked with assisting the disputing parties to find a solution; and d) The passive mediator only functions as a facilitator for the disputing parties, so he is not involved in preparing and formulating a draft or agreement proposal; e) The mediator does not have the authority to make decisions during the negotiation; and f) The purpose of mediation is to reach or produce an agreement acceptable to the disputing parties in order to end the dispute.

According to Fuller, as quoted by Suyud Margono, mentions 7 (seven) functions of mediators, namely: catalyst (catalyst); educators (educators) translators (translators); resource person; bearer of bad news; agent of reality (agent of reality); scapegoat. Mediation as a form of dispute resolution has strengths so that mediation is an option that can be used by disputing parties, for the following reasons: a) flexibility or flexibility compared to the litigation process, is an element of attraction because the parties can immediately discuss substantial issues, and are not caught up in discussing or debating legal technical matters; b) held privately or secretly. This means that only the parties and the mediator attend the mediation process, while other parties are not allowed. This secrecy has become an attraction for certain groups, especially businessmen, who do not want their problems to be made public; c) the parties in the mediation process can use everyday language that is commonly used, there is no need to use legal terms such as those used by advocates in court proceedings; d) the parties in the mediation process can discuss various aspects or various sides of the dispute, not only legal aspects; e) according to its consensual or consensus and collaborative nature, mediation can produce a win-win solution for the parties (win-win solution). Conversely, litigation and arbitration tend to produce win-lose solutions; f) Mediation is a relatively inexpensive and time-consuming dispute resolution process compared to litigation.

Besides having advantages, mediation also has several weaknesses, including: a. Mediation can only be carried out effectively if the parties have the will to resolve disputes by consensus. If only one party has a wish, while the other party does not have the same wish, then mediation will not take place and even if it does it will not work effectively; b. parties who do not have good faith can take advantage of the mediation process as a tactic to prolong dispute resolution, for example by not adhering to the schedule of mediation sessions or negotiating simply to obtain information about the opponent's weaknesses; c. some types of cases may not be able to be mediated, especially cases related to ideological issues and basic values that do not provide space for the parties to compromise; d. mediation is not appropriate to use if the main issue in the dispute is a matter of determining rights because it must be decided by a judge, while mediation is more appropriate to be used to resolve disputes related to interests; e. another factor, Mediation as a first step settlement, meaning, mediation does not rule out the possibility of submitting a dispute to court or arbitration. In the event that no compromise is reached, settlement can be increased through the courts (Valladolid & Chavez, 2020; Rosca et al., 2020). Or if a compromise has been reached through mediation, and one of the parties does not comply with voluntary compliance. Means there has been a denial of settlement.

4. Settlement of Disputes through the Courts

Settlement of disputes through courts has legal sanctions that are autonomous, while settlements of disputes outside the courts have heteronomous sanctions. Autonomous in nature, due to coercive measures if the court decision is not implemented by the parties, it is in the judiciary (General Court), among others,

through law enforcement officials, correctional institutions, and others. Dispute resolution outside the court is heteronomous in law enforcement, because arbitration decisions and alternative dispute resolution decisions require further strengthening through the judiciary (Perry, 2020; Pathak, 2019). This means that there are other parties that also strengthen the compelling legal force of the arbitral award and alternative dispute resolution.

Judicial institutions as institutions created by the legal system function as a means of fair dispute resolution through a simple, fast and low-cost judicial process. The principle that the judicial process is carried out simply, quickly and at low cost is manifested in achieving an effective and efficient trial. However, the implication of the rapid development of economic and business activities is not matched by the court institution as a means of resolving disputes that is expected by the community. This is because the court institution which concretely carries out the task of upholding law and justice when receiving, examining, adjudicating, and settling any disputes submitted, is considered as a place to settle disputes which are not effective and efficient.

The dispute resolution process is carried out through court proceedings or what is often referred to as "litigation", which is a dispute resolution process in court where the authority to regulate and decide is carried out by a judge. Settlement in this litigation is a decision, in which one party will be declared victorious and the other party loses (win-lose solution). Procedures in the litigation route are more formal and technical in nature, require high costs, and require more time because the process is protracted.

5. Legal Considerations of Judges in Deciding Cases

In Indonesia the principle of freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Powers, hereinafter referred to as the Judicial Powers Law, where it is formulated that judicial power is the power of an independent state to administer justice in order to uphold law and justice. This principle of judges' freedom includes freedom for judges in formulating legal considerations known as legal reasoning which is carried out by a judge in deciding a case he is trying.

Judges are state officials who exercise judicial power as stipulated in the law. Judges are referred to in Article 1 number 5, number 6, number 7 and number 9 of the Judicial Powers Act. Article 1 point 5, reads: Judges are judges at the Supreme Court and judges at judicial bodies under it within the general court environment, religious court environment, military court environment, state administrative court environment, and judges at special courts within the the judiciary.

According to the Judicial Powers Act, the judge's considerations are the thoughts or opinion of the judge in making a decision by looking at things that can lighten or burden the offender.

Every judge is obliged to submit written considerations or opinions on the case being examined and becomes an integral part of the decision. Judges are the personification of the judiciary, in making decisions on a case apart from being

required to have intellectual abilities, a judge must also have high morals and integrity so that it is expected to reflect a sense of justice, guarantee legal certainty and be able to provide benefits to society.

Based on the Judicial Powers Act Article 53, it reads: (1) In examining and deciding cases, the judge is responsible for the decisions and decisions he makes. (2) The stipulation and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct reasons and legal basis. This is the legal basis for a judge in carrying out his duties to decide a case, that must be based on various considerations that can be accepted by all parties and do not deviate from existing legal principles, which is called legal considerations or legal reasoning.

Formulating and compiling legal considerations or legal reasoning must be accurate, systematic and in correct and good Indonesian. The legal considerations must be complete containing facts of events, legal facts, formulation of legal facts, application of legal norms both in positive law, customary law, jurisprudence and legal theories and others, based on aspects and methods of interpretation of law, even a judge can make a discovery. appropriate law in compiling the arguments or reasons that form the legal basis for the judge's decision.

For judges, legal reasoning is useful in taking consideration in deciding a case. Before imposing a decision, a judge must pay attention and make every effort not to allow the decision to be handed down to allow new cases to arise. The decision must be complete and not give rise to new cases. The task of the judge does not stop with making a decision, but also ends with its implementation. In civil cases, judges must assist justice seekers and try their best to overcome all obstacles and obstacles in order to achieve a simple, fast and low-cost trial.

The judge's legal reasoning is closely related to the main duties of a judge, namely the task of receiving, examining and adjudicating and resolving every case submitted to him, then the judge examines the case and finally adjudicates which means giving the person concerned his rights or law. Thus the importance of the legal reasoning of a judge in deciding a case in court, therefore it is very interesting to know about legal reasoning in making a case decision.

The judge's considerations are: a. juridical in nature, i.e. the judge's considerations are based on juridical facts revealed in the trial and by law have been determined as matters that must be included in the decision; b. non-juridical in nature, that is, in deciding a case and considering whether or not a person is sentenced to a sentence, a judge is based on the judge's conviction and not only based on existing evidence. Following are the circumstances that are classified as non-juridical considerations as follows: a) the background of the defendant's actions; b) as a result of the defendant's actions: c) the defendant's condition.

Legal considerations carried out by judges are also one of the duties and obligations of judges, namely the obligation to explore, follow, and understand legal values and a sense of justice that lives in society. This becomes material that is processed to make legal considerations. It is also implied that a judge in carrying out his duties can make legal discoveries or *recht vinding*.

Based on the Law on Judicial Powers Article 5 paragraph (1), that judges and constitutional judges are required to explore, follow, and understand legal values and a sense of justice that lives in society. This means that if there is a void in the rule of law or the rules are not clear, then to overcome this a judge must have the ability and activeness to find the law (*recht vinding*).

What is meant by *recht vinding* is the process of law formation by judges/other law enforcement officials in the application of general regulations to concrete legal events and the results of legal findings become the basis for making decisions.

6. Judge's Decision

Judges in making a decision in a court session may consider several aspects: a. the guilt of the perpetrators of criminal acts; b. motive and purpose of committing a crime; c. how to commit a crime; d. the inner attitude of the perpetrators of criminal acts; e. life history and social economy; f. the attitude and actions of the perpetrator after committing the crime; g. criminal influence on the future of the offender; h. public view of criminal acts committed by perpetrators.

Based on the Law on Judicial Powers Article 50, it reads: (1) In addition to having to contain the reasons and basis for the decision, a court decision must also contain certain articles of the relevant laws and regulations or an unwritten source of law which is used as the basis for adjudicating. (2) Each court decision must be signed by the chairperson and the judge who made the decision and the clerk who took part in the session. Judges in deciding a case must consider juridical truth, philosophical and sociological truth.

Juridical truth is the legal basis that is used whether it meets the applicable legal provisions. Philosophical truth means that the judge must consider the side of justice whether the judge has done and acted as fairly as possible in deciding a case. Sociological considerations mean that judges must also consider whether their decision will have negative consequences and have an impact on society. In other words, a judge must make fair and wise decisions by considering the legal impact and the impact on society. The imposition of punishment on the perpetrators must look at the mistakes made. This is based on the principle of error.

The judge's decision is a statement by the judge as a state official who is authorized to do so, uttered in court and aims to end or settle a case or dispute between the parties. The verdict is called *jurisdiction contentiosa*, namely because there are defendants and plaintiffs as they are in a real court. There are 3 (three) types of judge's decisions, namely in terms of the decision, in terms of its content and in terms of whether or not the parties were present at the time the decision was made, it is explained as follows: a. In terms of the decision, it consists of: 1. Final decision. The final decision is a decision that ends a dispute or case at a certain level of justice, such as for example a *contradictoir* decision, a *verstek* decision, a *resistance* decision (*verzet*), an *immediate* decision, a decision to accept *principaal* countermeasures (*verweerten principale*) and countermeasures (*exemptief verweer*), an *appeal* decision, *cassation* decision.

The final decision is divided into 3 (three) types, namely: 1) Is condemnatory namely decisions that are punitive in nature on one party to do something or not do something, or surrender something to the opposing party to fulfill achievements.

Decisions that are condemnatory are imposed on the defendant where the defendant is obliged to fulfill his achievements; 2) It is declaratory, namely a decision declaring a condition that is lawful according to law, therefore the declaratory ruling reads "to determine"; and 3) It is constitutive, namely decisions that can negate a legal situation or create a new legal situation. Decisions that are not final are also known as interlocutory decisions or intermediate decisions. A non-final decision is a decision whose function is to expedite the case examination process.

In terms of content, it consists of: 1) The decision granted the lawsuit, the decision whose content is the lawsuit is granted if the lawsuit is justified or does not violate the rights. The decision granted the plaintiff's claim in part and refused not to accept the rest, namely the final decision in which the arguments for the lawsuit were proven and some were not proven or did not start the conditions (positive and negative mixed decisions). The decision granted the plaintiff's claim in its entirety, namely a decision that met the requirements of the lawsuit and proved the arguments for the lawsuit (positive decision); 2) Decisions where the lawsuit is not accepted, Decisions whose content states that the claim is not accepted, if the claim is against rights or against the law. The decision does not accept the plaintiff's request, namely the plaintiff's claim/applicant's request is not accepted because the legal requirements, both formal and material, are not fulfilled (negative decision); 3) Decisions whose lawsuit was rejected, the decision whose content is a lawsuit is rejected if the lawsuit is groundless. The decision to reject the plaintiff's claim, namely the final decision handed down after going through all stages of examination, but it turns out that the plaintiff's arguments were not proven (negative decision).

In terms of whether the parties were present at the time the decision was made, it consisted of: 1) A *verstek* decision, namely a decision handed down because the defendant/respondent was not present at the trial even though he had been officially summoned, while the plaintiff/applicant was present; 2) The decision is dismissed, namely the decision stating that the claim/application is dismissed because the plaintiff/applicant has never been present even though he has been officially summoned and the defendant/respondent is present at the trial and requests a decision; and 3) A contradictory decision, namely a final decision which at the time it was made/pronounced in a trial was not attended by one of the parties or the parties.

7. Discovery of Law by Judges

Renewal of the law as a rule or norm can be carried out by authorized legal officials (*rechtsautoriteiten*) in two (2) ways, namely: 1) Legislators (*wetgever*) can make changes and renewal of law by reformulating a rule of law; and 2) Lawmakers can reformulate a rule of law by forming new legal norms or lawmakers can also abolish (derogate) new legal norms; 2) Judges can make changes and renewal of law by means of interpretation (*interpretation*) of a rule of law.

Legal interpretation (interpretation) of law carried out by judges is towards the content of legal norms/norms, both narrow (restrictive) and broad (extensive) interpretations so that the substantively applicable legal rules remain unchanged. An interpretation made by a judge can be a means of providing legal protection for trademark rights, because the interpretation given by a judge has a variety of juridical and non-juridical considerations which can objectively provide protection to each owner of trademark rights according to the case and characteristics involved. owned by each trademark protection. The judge's consideration is also known as "ratio decidendi" which is the decision of the panel of judges based on material facts.

Material facts become an important object in the ratio decidendi, because judges and parties can find a legal basis in overcoming and providing protection in a case. The ratio decidendi can reflect the main thoughts on a legal case issue that is controversial or counterproductive which can describe the law enforcement system, the attitude of legal officials and judicial institutions. The ratio decidendi is based on a ratio that considers material facts and a decision based on that fact, so that in a material fact there can be two (2) conflicting possible decisions which can create a ratio decidendi. This is in line with Goodheart's view which explains that ratio decidendi can be found by paying attention to material facts which further interpretation or interpretation of these material facts is carried out.

Ratio decidendi is theoretically based on a philosophical basis that considers every aspect related to the subject matter and regulations, seeks laws and regulations that are in accordance with the subject matter as a legal basis in deciding a case. The ratio decidendi must also be based on a clear motivation in upholding the law and providing justice for the parties. Ratio decidendi is one of the means (methods) used in making legal discoveries. Legal discovery is the process of law formation carried out by judges to apply general law to concrete legal events. Law enforcement is carried out as a form of concretization and individualization of law (das sollen) to concrete problems (das sein).

Law is defined as a legal (court) decision, which is the subject matter of the duties and obligations of the judge regarding the duties and obligations of the judge in discovering what becomes law. Judges can be considered as one of the factors forming the law, because the law is incomplete, the judge must seek and find the law (rechtsvinding). Judges work on the basis of judgments, and the results of those judgments create something new. Paul Scholten views that the legal system is logical and not closed. The legal system is also not static, because the legal system requires decisions or decisions that always increase the breadth of the legal system. The meaning of the law can be changed, although the wording is not changed to suit the existing concrete facts. Therefore the judge's assessment is carried out in the form of interpretation and argumentation.

The existence of legal discoveries has received excessive attention, because legal discoveries are felt to be able to provide a more dynamic decision by combining written and unwritten rules. The judge's rechtsvinding is defined as the judge's thought in giving a decision that has a spirit of legal purpose. According to Paul

Scholten, legal discovery is defined as something other than the application of rules to events, where it sometimes happens that the rules must be stated by way of interpretation.

Based on the understanding of legal discovery above, it can be concluded that what is meant by legal discovery is the process of forming a law by a judge, the judge must see whether the law does not provide clear regulations, or there are no provisions governing it, if so the judge can make legal discoveries. It aims to create concrete laws and according to the needs of the community.

The positive legal basis for legal discovery is regulated in Article 1 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila for the sake of the implementation of the Republic of Indonesia.

Furthermore, Article 4 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that the Court shall judge according to law without discriminating against people. This means that judges basically must remain in one system (law), cannot leave the law, so they must find the law. Article 10 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that the Court is prohibited from refusing to examine, try and decide on a case filed on the pretext that the law does not exist or is unclear, but it is obligatory to examine and try it. Therefore, it can be concluded that what is meant by legal discovery is the process of forming a law by a judge, the judge does not only look at the textual context or in the sense only from the law, but can also come from other legal sources.

D. CONCLUSION

Legal research with a dispute resolution approach (problem solution) can be carried out outside the court and in court where both have advantages, disadvantages and procedures that are different from one another. The legal research approach with out-of-court dispute resolution is difficult to obtain legal documents because it is closed (not published) while dispute resolution through the courts can be analyzed in terms of court decisions, judges' legal considerations and legal findings by judges.

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