

# THE THEORY OF BIOLOGICAL JUSTICE IN LEGAL PHILOSOPHY AND ITS APPLICATION IN JUDGES' DECISIONS

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## **Abstract**

Justice is one of the legal goals that judges want to uphold. Since justice is subjective and individual, it cannot be separated from the place, time, and others, which greatly affects the judges' sense of justice. Justice is becoming more important when the 'question of law' is about to be applied to the 'question of fact.' Justice is defined as a value to create an ideal relationship among humans. They are entitled according to law and morality as stated by the popular doctrine "fiat justitia ruat caelum" which means justice must be upheld even though the sky will fall. Biological justice is a normative entity that is committed to delivering human dignity and welfare. The theory of Biological Justice offers a broader understanding of the meaning of justice.

*Keadilan menjadi sangat penting karena merupakan salah satu tujuan hukum yang ingin dicapai hakim yang sifatnya, subyektif dan individual. Sehingga ia tidak bisa terlepas dari pengaruh locus, tempus, dan lainnya yang secara komprehensif sangat mempengaruhi rasa keadilan hakim. Terlebih ketika question of law hendak diterapkan terhadap question of fact. Keadilan diartikan sebagai suatu nilai untuk menciptakan hubungan yang ideal antar-manusia yang menjadi haknya menurut hukum dan moralitas. Sebagaimana ditegaskan dalam doktrin populer "fiat Justitia ruat caelum", yang bermakna tegakkan keadilan sekalipun langit akan runtuh. Biological justice adalah entitas normatif yang berkomitmen mengantarkan kemuliaan manusia (harga diri dan kesejahteraan). Keadilan biologis diharapkan bisa lebih menyelami makna dari keadilan itu sendiri.*

**Keywords:** Biological Justice, legal philosophy, judge's decisions.

## Introduction

### 1. Background

Legal Philosophy provides answers about the real law, the purpose of the law, why it is necessary to obey the law and the essence of justice.<sup>1</sup> Legal philosophy is an alternative that is considered appropriate for obtaining concrete solutions to legal problems closely related to society's problems.<sup>2</sup> There are a legal adage commonly known, *ubi sociates ibi ius* (where there is a community, there is a law). This adage arises because humans were created to be in society and protect each other's rights and obligations. Every human being has different interests, and in many cases, there is sometimes friction, which causes disputes. So that the problems faced can be resolved and the interests of various parties are protected. Therefore, humans make legal provisions that must be obeyed. If there are parties who violate, then they will be subject to punishment (sanctions).

Law, which is subjectively contained in statutory regulations, is implemented objectively by the judicial power holder, namely the judiciary, through a judge's decision. In order for legal justice to reach the community, a judge who is just and has high integrity is needed. The law in the hands of the wise people will produce justice, propriety, and legal certainty. At the same time, the law in the authoritarians' hands will produce calamity for the nation concerned.<sup>3</sup>

The concept of law, judge, and God's justice basically wants to return the judge to their nature, namely as a representative of God who represents divine values and a manifestation of God's justice in every decision. This process of returning certainly requires the judge to carry out a spiritual procession with full awareness. Getting closer to God, studying transcendent teachings and values, carrying out orders and staying away from His prohibitions, and striving for the growth and development of divine

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<sup>1</sup> Amran Suadi, *Filsafat Hukum Refleksi Filsafat Pancasila, Hak Asasi Manusia dan Etika*, Kencana Prenada Media Group, Jakarta, 2019, P. 16.

<sup>2</sup> Sukarno Aburaera, dkk., *Filsafat Hukum Teori dan Praktik*, Kencana Prenada Media Group, Jakarta, 2013, P. 46.

<sup>3</sup> Muh. Guntur, *Kepastian Hukum Dan Rasa Keadilan Masyarakat Menuju Indonesia Baru*, (Simposium Internasional Jurnal Antropologi Indonesia Ke-2, Padang, July 2001), p. 3.

consciousness in everyday life are the real manifestations of the spiritual procession in question.<sup>4</sup>

Judges should have hard competency (broad knowledge, multidisciplinary knowledge) and need to have soft competency (religiosity and morals). These two types of competence will always guide judges in upholding law and justice. By binding procedural law instruments, judges will implement the value of justice in material law according to their settling cases. The figure of a judge who has a mix of scientific capacity, religiosity, and morals will not rigidly apply the law so that the resulting decisions can provide justice and benefit to the disputing parties. This can happen because a judge who has a combination of competencies will judge every case presented to him/her professionally, carefully, and with full responsibility, both vertically to God and horizontally to the community.

The existence of the theory of biological justice can be a solution and provide direction so that the law remains on the right track. The basic philosophy of biological justice is a normative entity committed to leading humans to a just, prosperous life and making humans happy. This departs from the basic assumption that law is for humans, not the other way around.

Biological justice places itself as a force of self-liberation from legalistic-positivistic types, ways of thinking, principles, and theories of law. In applying material law (*tatbiq al-ahkam*), legal justice takes precedence over formal/normative justice. In this context, to enforce the law, creative and innovative steps are needed, and if necessary, legal mobilization and rule-breaking can be conducted. This is because whatever is done must be based on the logic of social appropriateness and justice, not solely based on the logic of regulations.

There are two important parameters for measuring how urgent the "theory" of biological justice is, which will then be discussed further in this paper. The first parameter relates to the theory and rationale for biological justice. Moreover, second, the implementation of the concept of biological justice in practice, especially in the judges' decisions made in court.

## **2. Problems**

Based on the description above, two issues will be explored more deeply related to biological justice as follows:

a. What is biological justice in the perspective of Legal Philosophy?

How is the application of biological justice in the practice of judges' decisions?

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<sup>4</sup> Muhammad Taufiq, *Keadilan Substansial, Memangkas Rantai Birokrasi Hukum*, Pustaka Pelajar, Yogyakarta, 2014, p. 25.

## Discussions

### 1. Biological Justice in the Perspective of Legal Philosophy

Biological justice is a normative entity committed to delivering humans to a just, prosperous life and making humans happy. This departs from the basic assumption that law is for humans and not the other way around. Based on this, the birth of law is not for itself, but something broader, namely for human dignity, happiness, welfare, and glory. That is why, when problems occur in the law, then the law must be reviewed and corrected, not humans who are forced to be included in the legal scheme.

One of God's justice values is equality, which is closely related to fairness, propriety, and justice. This value must be more operationalized in order to be implemented by law. The value of justice, for example, must describe how to compromise between individual rights and obligations. Individual rights (its nature, form, and magnitude) must be adjusted to the obligations and responsibilities they carry. Therefore, the law can implement it through a "theory of rights" that defines the litigants' rights following the obligations and responsibilities they bear.

As an institution or a place for people to seek justice, the court is not like a manufacturer that produces decisions, pursues the quantity and target settlement of cases, and does not consider applying procedural law and material law anymore. If that is the case, it is clear that the resulting judgments will be far from a sense of justice.

In essence, fair means putting something in its place (*itsbatu as-syai' ala as-syai'*), which reflects moral rectitude and fairness because it means putting everything in its rightful place,<sup>5</sup> By giving anyone what is their right, which based on the principle that all people are equal before the law.<sup>6</sup>

The relationship between judges' and God's justice functions is implementation, while the law in the sense of statutory regulations is corrective. This is because the value of God's justice is universal and absolute, so the judge only applies it. Meanwhile, the law as a human product is inseparable from weaknesses and shortcomings here and there, so judges need to make corrections if such matters are contained in statutory regulations relating to in-concreto cases.

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<sup>5</sup> Jimly Asshiddiqie, *Konstitusi Keadilan Sosial*, Buku Kompas, Jakarta, 2018, p. 45.

<sup>6</sup> Mahkamah Agung RI, *Kajian Pengembangan Sistem, Mekanisme, Serta Tata Kerja Pengawasan, Penilaian Kualitas dan Kinerja Hakim*, Penerbit LeIP, (Lembaga Kajian Advokasi untuk Independensi Peradilan), Jakarta, 2005, p. 43.

As a guarantee for justice seekers' implementation, judges must uphold the procedural law stipulated in the procedural law. Without following the correct procedural law, substantive justice will not be found, and this is tantamount to injustice. After going through the correct procedural law, the judge will apply the material law by law and justice.

If according to the judge's view, the law contained in the statutory regulations has not fulfilled the sense of justice for the case under trial, the judge is obliged to deviate from these regulations by exploring the community's values of justice. Such action is not against the law; instead, it is ordered as in Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power.<sup>7</sup>

There are various instances of cases that occurred when the judge has handed down a verdict, but there was disappointment in the community because the decision was deemed to have hurt the sense of justice. There is a case of a wife who is married to a man illegally (unregistered marriage). Over time, they run a happy life with abundant wealth. For legal certainty, the wife managed to obtain a marriage certificate from the local Office of Religious Affairs (KUA), not from the KUA where they got married. Until then, based on the existing Marriage Book, they divorced at the Religious Court. After obtaining the Divorce Certificate, the wife filed a joint property lawsuit. However, at the same time, the husband reported his (ex) wife to the police for having committed identity forgery. To make a long story short, the District Court decided that the wife faked her identity to get a marriage certificate at the Office of Religious Affairs. This has resulted in the wife who has been living with her (ex) husband for a long time cannot get her rights from the marital property because she has committed an act against the law.

In another case, a young mother named Prita Mulyasari was charged by the local district court to pay compensation of Rp161,000,000.00 (one hundred and sixty-one million rupiahs) because she was found guilty of defamation against a hospital in the Tangerang area. However, at the cassation level, Prita was exempted by the Supreme Court from paying the compensation. On the other hand, in her criminal case, Prita was sentenced by the Supreme Court to 6 months in prison with a one-year probation period, although she was released at the reconsideration level.

Another case that shocked the country's legal world is the legal case against Mbok Minah, a 55-year-old grandmother accused of stealing cocoa beans and was eventually sentenced to three months of house arrest. The problem started when Mbok Minah took 3 cocoa beans that fell to the

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<sup>7</sup> Law Number 48 of 2009 on Judicial Power.

ground and brought them home to be used as seeds, and for this attitude, Mbok Minah was sued in court. Another interesting case is the problem that happened to a child accused of stealing sandals belonging to a police officer when he found them outside the fence. In May 2012, the judge sentenced him guilty of stealing the sandals by paying a fine of Rp2,000.00 (two thousand rupiahs).

Without justifying or even blaming, the four cases above are among the examples of cases that have been decided by the court, but the public has not felt fair with the decisions. Of course, this condition has raised a question, why did this happen? As a place for society to find justice, courts must strive to appropriately implement the sense of justice because justice is one of the important objectives of the law.

Ideally, when the court has ruled, there will be peace in the community because one of the nine functions of law compiled by Charles Sampford is "maintaining social peace", restoring social order. The nine functions of the law are as follows:<sup>8</sup>

- a. Dispute resolution;
- b. Reinforcement or 'reinstitutionalization' of existing practices within the community by framing rules that equate to those practices and by providing the means for their 'facilitation';
- c. Change in existing practices by legislatures and, sometimes, courts;
- d. Guidance or education again, by the legislature and courts;
- e. Regulation, the administrative control of various private institutions by the bureaucracy;
- f. Participation by the state in social and economic affairs by the bureaucracy;
- g. Punishment retribution or vengeance against perceived wrongdoers, reinforcement of existing social values—by courts and penal institutions;
- h. Maintaining social peace (or, more loosely, 'social order' or 'social control')- by police and penal institutions to the extent that they isolate some and deter some other potentially violent individuals; and
- i. Legitimation of existing social institutions- supposedly achieved by courts.

It is often found in society the dichotomy between legal certainty and legal justice. At its peak, one has to choose which one should prioritize

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<sup>8</sup> Muh. Guntur, *Kepastian Hukum dan Rasa Keadilan Masyarakat Menuju Indonesia Baru*, (Simposium Internasional Jurnal Antropologi Indonesia Ke-2, Padang, Juli 2001), p. 6.

between legal certainty and legal justice. Actually, the two things do not need to be contested. Both legal certainty and a sense of community justice should be realized simultaneously in every legal problem resolution. These two elements, coupled with the principle of decency, are the main principles for establishing the rule of law in the context of legal ideals.<sup>9</sup> Legal certainty must be placed in the framework of justice itself since the purpose of justice according to Radbruch, is to promote goodness in human life, so it must colour the law.<sup>10</sup>

Formal justice is justice that solely refers to the sound of the law. As long as the sound of the law is materialized, formal justice is achieved. However, at this time, many parties are demanding that judges take more sides with material justice so that judges in Indonesia make law-finding through its verdict. Even so, there are still formal rules that must be obeyed, because of course, if the procedural law is hit, it will result in the verdict being null and void.<sup>11</sup>

The statement that law is for humans means that law is only a tool to achieve a just, prosperous, and happy life. Therefore, according to progressive law, the law is not the goal of man. Law is only a tool. Thus, substantive justice must take precedence over procedural justice in the sense that the law must be a solution to human problems.

In their function as the justice provider, judges often face a legal problem that has not been regulated. Many laws and regulations that are inherited from colonialism and laws that have just been enacted but are not following society's development, which is full of the dynamics of changes. On the other hand, the judiciary, in this case, the judge, may not refuse to examine, try, and decide a case brought to them because the law does not exist or is unclear.<sup>12</sup>

In carrying out their duties and functions, judges must adapt the law to developments in society. If the law cannot be implemented according to its meaning, the judge is obliged to interpret it so that a decision made fulfils a sense of justice and follows the law's intent. This needs to be done because

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<sup>9</sup>*Ibid.*, p. 7.

<sup>10</sup> Yunanto, *Menerjemahkan Keadilan Dalam Putusan Hakim*, in *Jurnal Hukum Progresif* 7, Nom. 2 (October 2019), p. 200.

<sup>11</sup> *Ibid.*, p. 389.

<sup>12</sup> Edi Rosadi, *Putusan Hakim Yang Berkeadilan*, in *Badamai Law Journal* 1, No. 1 (April 2016), p. 383.

the judge is always faced with concrete events, and the judge must make a decision accompanied by considerations that can be rationally accepted.<sup>13</sup>

Legal justice is a condition that cannot stand alone. This is because justice as a part of the law accumulates with a reaction that provides a stimulus to a condition around the facts closely related to the environment in which the events occurred. Fairness as a value becomes relative and depends on the conditions. The author believes that justice is a biological metabolism in the blood or the legal value itself.

The word “fair/just” in the Arabic word '*adl*', means “in the middle”, impartial, treating each other equally, straight, consistent, and balanced or equal and proper.<sup>14</sup> The encyclopedia of Islamic law explains that etymologically *al-'adl* means impartial, not taking sides or equating one another (*al-musawah*).<sup>15</sup>

The author observes that there are four stages of the mechanism of the organism of the human body, which is appropriate when associated with biological justice processes, as follows:

- a. Changing the reaction from the result of a stimulus to a condition;
- b. Connecting with the environment;
- c. Having a metabolic process;
- d. Being able to produce something from this process so that there are products in the form of “question of fact”.<sup>16</sup>

That is why we believe that every judge's decision regarding justice may differ from one another depending on the reaction of the stimulus and the locus of the legal events. Therefore, justice applied to legal facts encompasses the biological justice process, which allows an inequality in understanding about justice even though the question of law is the same but maybe different in the question of fact.

In the author's opinion, justice is self-actualization obtained from metabolism between the question of facts and question of law and becomes

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<sup>13</sup> *Ibid.*

<sup>14</sup> Rifyal Ka'bah, *Hukum Islam di Indonesia*, Universitas Yarsi, Jakarta, 1999, p. 28.

<sup>15</sup> Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, Ikhtiar Baru van Hoeve, Jakarta 2000, p. 25.

<sup>16</sup> John M.Reiner, *The Organism as an Adaptive Control System*, Practice-hall Englewood Clifts, New Jersey, 1968, p. 139.

very strategic in human life. Justice must flow with the blood of life itself because, without justice, this life actually has died before real death comes.

## 2. Biological Justice in Judges' Judgments

A philosopher named Taverne once said: "Give me a judge and prosecutor who are honest and smart, then even with bad laws, I will produce a fair verdict."<sup>17</sup> This illustrates how important the integrity of law enforcers is in deciding cases. Thus, justice will be difficult to achieve if the law enforcement officers do not have a high and respected attitude of morality.

Judge is a position full of risks. Prophet Muhammad SAW once said: "Anyone who is appointed to be a judge, then actually he/she has been slaughtered by not using a knife."<sup>18</sup> This shows how tough the position of a judge is. Therefore, a judge may not act unfairly, may not be careless in deciding cases, and may not cheat. Judges are required to be thorough, extra careful, and not to fall into behaviour that ignores law and truth. This is even more dangerous when judges want to pursue a position or want to get a certain award value outside of their professional duties. This causes the judge to easily ignore the correct application of procedural law in adjudicating cases.

The central point of justice is in the person of the judge himself. Thus, a judge figure must have several elements, namely:

- a. Having extensive knowledge;
- b. Being able not to fall into temptations that ignore truth and justice;
- c. Being Honest and having high integrity;
- d. Being free from influence and intervention from various parties (independent).

A court decision consists of three parts: the head of the decision, legal considerations, and the dictum or orders. The essence of the Head of a judgment is the philosophy and purpose of the decision itself. Historically, the head of the verdict changed, among others: "In Naam des konings or on behalf of the king", then changed to "In the name of justice" and now became "For the sake of justice based on the Supreme Lordship". The

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<sup>17</sup> Winardi dan Sirajuddin, *Politik Hukum*, Setara Press, Malang, 2019, p. 69.

<sup>18</sup> Abdul Halim Talli, *Asas-Asas Peradilan dalam Risalah Al-Qada, Kritik Terhadap Beberapa Asas Peradilan di Indonesia*, UII Press, Yogyakarta, 2014, p. 160. See also Abu Daud, *Sunan Abi Daud*, al-Aqdiyah, Chapter Fi Talab al-Qada, 3573th hadith.

philosophy of the meaning of justice in the head of the verdict is actually realizing true justice.<sup>19</sup>

The first and foremost duty of the judge in his position as the connecting axis is to synergize between God's law and justice. It is common in our understanding that many laws are made not in the name of the interests and benefits of the public at large. However, it is for the benefit of a few people, eliminating the egalitarian side of the law itself. The legislation actually makes it more difficult for the people to do their business, and to a certain extent, it causes the community to become inferior before the law. The law is actually to serve the greatest human interest.

Judge is a title that is assigned to people who have knowledge of matters of high value. In Islamic literature, the term judge often referred to and used in a philosophical sense, is a person who seriously explores and seeks the truth about facts and provides law and justice for these legal events.<sup>20</sup> Judges as apparatus have a strategic role, especially in Indonesia as a state based on the rule of law, because the judges decide every case brought to them. Judges must produce fair, legal, and certain decisions and bring benefits to people who seek justice.

Questioning the judge's decision means questioning the judge and their duties as law enforcer and law creator. Article 2 paragraph (1) of Law Number 48 of 2009 on Judicial Power stipulates that the implementation of judicial power is delegated to judicial bodies and stipulated by law, with the main task of receiving, examining, and deciding as well as completing every case submitted to him/her.

A judge may not refuse to try a case brought to him/her on the pretext that the law does not exist or is unclear. The judge is considered a wise person, where people ask questions, then they are considered to know the law (*Ius Curia Novit*), even though they may not know. In essence, a judge is expected to consider and decide who is right. The principle of *recht weigering* (prohibited from refusing to decide cases) is because judges do not only rely on written law but also unwritten law.

Judges must be accountable for their decisions, both vertically/transcendentally and horizontally/socially. Therefore, the judges' decisions must be argumentative and explain why he/she arrived at such a

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<sup>19</sup> Yunanto, *Menejemahkan Keadilan Dalam Putusan Hakim*, dalam *Jurnal Hukum Progresif* 7, No. 2 (October 2019), p. 199.

<sup>20</sup> Abdul Kadir Muhammad, *Ensiklopedia Indonesia*, (Jakarta: Gramedia, 1983), p. 1208.

decision.<sup>21</sup> That is why every judge's decision must contain the legal basis on which the judge decides the case, not just taking over without mentioning the reasoning about why the judge took over the judges' considerations.

The judge's responsibility for his/her decision lies in their legal considerations. Therefore, legal considerations must be prepared using proper law of reasoning and legal reasoning. With a properly reasoned court decision, it is hoped that the parties can accept the verdict so that people who feel their rights have been violated by other people get their rights back. People who feel that they have violated the rights of others must return those rights.<sup>22</sup>

The judge's duty does not stop at making decisions only. Do not just be a judge who settles cases, but to be a judge who gives justice and helps justice seekers and tries the best to overcome all obstacles and hindrances in order to achieve justice that truly gives a sense of justice to the community. The Supreme Court of the Republic of Indonesia has determined that the judge's decision must consider all aspects of a juridical, philosophical and sociological nature.<sup>23</sup>

Consideration of juridical aspects in judges' decisions is the main aspect, considering that judges will adhere to the applicable law in deciding cases. The philosophical aspect is an aspect that is core to truth and justice, while the sociological aspect considers the cultural values that live in society.<sup>24</sup>

The discourse of justice in the Indonesian legal tradition is still about whether court decisions in Indonesia reflect a sense of justice in society? This question arises as a natural response from the experience of the people who think that the decisions that are passed do not reflect the sense of justice in the community.

The most prominent example that can be raised is the number of loud voices shouting dissatisfaction with the verdicts for corruptors who have scooped up billions of state money, even trillions of rupiah. The sense of justice is torn when people logically compare the corruptor's verdict with the sandals thieves, chicken thieves, and other thieves who are often beyond their legal reasoning. The tendency of court verdicts on corruption cases is

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<sup>21</sup> Sudikno Mertokusumo, *Perkembangan Hukum Perdata di Indonesia*, (Yogyakarta: Genta Publishing, 2019), p. 142.

<sup>22</sup> Yunanto, *Op.Cit.*, p. 199.

<sup>23</sup> *Ibid.* p. 200

<sup>24</sup> *Ibid.* p. 201-202.

currently very stagnant. One example of this is the punishment of 2 to 4 years imprisonment, even though the state losses it incurs are enormous. Not to mention the penalty of compensation money and fines that are not paid are replaced by imprisonment for several months.

Justice seekers certainly yearn for judges who are professional and have high integrity in deciding their cases. Thus, the decision not only contains aspects of legal certainty but also has the dimensions of legal justice, moral justice and social justice. This is because such justice is the main goal to be achieved from the dispute settlement process in court.<sup>25</sup>

The public often perceives a judge's decision in deciding a case as a decision that deviates from the objectives of law and justice.<sup>26</sup> As stated above, justice is an inseparable part of the law because the law is basic justice. The law must be enforced by providing legal certainty and justice for justice seekers.<sup>27</sup>

Basically, justice is obtained by humans freely and it is their right when they are formed as fetuses in their mother's womb. In the process of judging, there must be no pressure of mind or pressure of reacting in carrying out a legal attitude because this condition causes judges to be unable to explore the essence of justice as expected by the justice seekers. Let the judge render justice in free conditions without pressure from anyone because, in fact, justice is already a metabolism that flows in law when it must be implemented into legal facts. It remains only for the judge to bring it up again and formulate it in the form of a court decision that is able to achieve the legal objectives as argued by Gustav Radbruch.<sup>28</sup>

More than that, judges who are wise and capable of realizing the objectives of the law are actually formed from various factors. Among the most important factors is family. Family influence is very significant in influencing one's mindset. If you want to know how someone can succeed or fail, look at the atmosphere of harmony in the family at home, including the kindness that is brought from home. For example, parents who care for their children, children who pay respect and respect to their parents, and so on will attract much good in all aspects of life outside the home.

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<sup>25</sup> Bambang Sutiyo, *Reformasi Keadilan dan Penegakan Hukum di Indonesia*, UII Press, Yogyakarta, 2010, p. 4.

<sup>26</sup> Winardi dan Sirajuddin, *Politik Hukum*, Setara Press, Malang, 2019, p. 65.

<sup>27</sup> *Ibid.*, hlm. 63.

<sup>28</sup> The three legal objectives put forward by Gustav Radbruch are justice, benefit, and legal certainty. Justice is the most popular theme and is considered the highest goal of the law.

Justice is not something that is dead, rigid, and permanent, but something that lives and moves along with the metabolism of blood in the body. That is the importance of understanding biological justice by judges when deciding cases. In this case, the author agrees with what Bagir Manan said that no case is the same, so that justice is not a mere patron in making clothes.

In addition to a number of court decisions considered by the public to only fulfil formalistic justice as the example set out above, there are also examples of judges' decisions that become permanent jurisprudence because they contain legal breakthroughs and substantial justice. Among these is the Decision of the Supreme Court of the Republic of Indonesia Number 2078 K/Pdt/2009 containing a legal rule that the legal relationship between the vehicle owner and the parking entrepreneur is a custody agreement so that the parking manager is responsible for the loss of the vehicle deposited with and compensates for the loss suffered by the owner of the vehicle. The legal maxim in the decision has cancelled the exoneration clause (transfer/release of responsibility) in the parking agreement.<sup>29</sup>

If we analyze the considerations given by the judge in the decision above and related to the theory of justice promoted by John Rawls, which states that justice is fairness, then the judge's decision on this parking case has provided a sense of justice because it appears that the parking agreement only benefits the parking manager and does not provide a balance of rights and obligations that should exist.<sup>30</sup>

In this condition, a judge's wisdom is needed, not just having legal knowledge. Furthermore, this wisdom cannot be found by a person in an instantaneous condition, but through the depth of intuition and divine morality, as well as the deepest sharpness of his conscience. Therefore, an understanding of biological justice will further sharpen judges' analysis when deciding cases so that justice is truly delivered to justice seekers.

## CLOSING

### 1. Conclusion

Based on the descriptions above, the authors come up with the following conclusions:

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<sup>29</sup> Edi Rosadi, "Putusan Hakim Yang Berkeadilan," *Badamai Law Journal* 1, No. 1 (April 2016), p. 386.

<sup>30</sup> *Ibid.*

- a. The theory of biological justice is a normative entity committed to delivering humans to a just, prosperous life and making humans happy. This departs from the basic assumption that law is for humans and not the other way around. The author argues that legal justice is a condition that cannot stand alone. Legal justice in human life is felt as blood flowing in the veins of life itself. So, justice is obtained from the results of metabolism in the building of laws, and the results are able to manifest the happiness of life for humans.
- b. The application of the theory of biological justice is essential. Judges are obliged to explore and understand the legal values that live in society. The judge's duty does not stop at making decisions only. Do not be a judge who is just a case decider, but a judge who provides justice and helps justice seekers. The biological justice theory will make it easier for judges to make decisions on the cases they face. Sensitivity to "human" issues experienced by the parties can be an important consideration when making decisions.

## 2. Suggestion

Judges face various problems in receiving, examining, trying, and resolving cases at hand. One of the important issues that many judges encounter is how to implement a sense of justice into the judges' decisions to truly realize the purpose of the law.

Therefore, every judge should have an understanding and knowledge of this biological justice. The theory of Biological Justice was born from the writer's anxiety over the various judges' decisions to uphold justice.

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