



The concept of screening cases in the general court through dismissal process

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Abstract

In the world there are 2 (two) types of legal systems, namely the Anglo Saxon or Common Law System and the Continental Europe or Civil Law System, Countries with Anglo Saxon legal systems do not recognize the separation of judicial chambers. Indonesia as a continental european adherent in the exercise of judicial power divides into several courts under it, including General Courts, Religious Courts, Administrative Courts, and Military Courts. The number of cases submitted to the District Court as General Court makes the case unfiltered, whether it is under the authority of the District Court or other Courts, in contrast to the State Administrative Court where in its procedural law there is a lawsuit research process that goes to the Court or commonly known as the dismissal process. Therefore, a legal transplant is needed to overcome the problem. This research used a normative juridical approach method with the nature of analytical descriptive research, which was then analyzed with qualitative juridical methods.

Key Words

Dismissal Process, Transplant Law, Competence of the Court

1. Introduction

Broadly speaking, in the world there are 2 (two) types of legal systems, namely Anglo Saxon or Common Law System and Continental Europe or Civil Law System. Countries with a continental european system have an inquisitorial nature in the judiciary, namely Judges have an important role in directing and deciding

cases, Judges need to be active to observe and assess the events they face.¹ Unlike the Anglo Saxon legal system, the assessment of an event is focused on the jury's judgment. In addition, countries with Anglo Saxon legal systems do not recognize the separation of judicial chambers.

The Supreme Court is a high state institution implementing judicial power in Indonesia which oversees several types of courts under it, including the General Court which has the authority to examine, adjudicate, and decide civil and criminal cases with special sub-courts such as the Corruption Court and the Commercial Court, then there is the Religious Court which has the authority to examine, adjudicate, and decide cases related to inheritance, wills, divorce, sharia economics, etc. for Muslim legal subjects, there is also a State Administrative Court that has the authority to examine, adjudicate, and decide state administrative disputes, and there is a Military Court that has the authority to examine, adjudicate, and decide military criminal cases.

In practice, examples of recent cases related to administrative disputes in the election process in Indonesia, which were resolved through civil courts at the District Court, have been highlighted by various parties, especially legal experts who consider that the District Court has exceeded its authority in deciding the case. That the case is a dispute over the election process that occurs between election participants and the election as a result of a decision issued by the General Elections Commission.

The general court is authorized to try criminal and civil cases, in the civil field, there are 2 (two) categories, namely unlawful acts (*onrechtmatige daad*) and default (*wanprestasi*). Unlawful act has a very broad definition, so that the definition of unlawful is divided into 2 (two), namely in a narrow sense that gives the meaning of violation of written or unwritten law, while the understanding in a broad sense gives the meaning of violation of unwritten and written law.

Unlawful acts in a narrow sense are influenced by legism which is then adopted by judges, this view is also called the formal view. Meanwhile, according to the material view, unlawful acts do not have to be limited to violations of the Law, but it also needs to be seen whether these acts are included in violations of general principles in society, Unlawful acts can be committed by private parties, individuals or civil law entities, and can also be carried out by state administrative officials. Violation of the general principles of good governance can also be interpreted as violations or unlawful acts committed by state administrative officials. Therefore, there may be a wedge between pure civil law acts and unlawful acts committed by state administrative officials.

A lot of cases submitted to the District Court makes the case unfiltered, whether the case is the authority of the District Court or other Courts, in contrast to the State Administrative Court where in the procedural law there is a lawsuit research process that goes to the Court or commonly known as the dismissal

¹ Fajar Nurhardianto, Sistem Hukum dan Posisi Hukum Indonesia, Jurnal TAPIS, Vol. 11 No. 1, 2015, page 37-38

process. The dismissal process is a continuation of the formal examination of the lawsuit conducted by the Registrar. Then, the lawsuit is submitted to the Chief of Court for examination of its substance to determine whether it passes the qualification or not.

The backlog of cases in the District Court resulted in inefficiency for justice seekers. Therefore, a legal transplant is needed to overcome the problem. So based on the description above, it is interesting to study with regard to (1) how to division of court competence in the Indonesian judicial system? and (2) How the concept of screening court competence through dismissal processes in the general justice system?

2. Research Methodhs

Creswell defines research as a processes that begin with the identification of the problem which is then carried out the collection of reading material and then the data is carried out interpretation for later poured into a work or report.² In this study, the normative juridical approach method is used, which is research that focuses on law as a system of norm buildings which includes principles, rules, laws and regulations, and doctrines related to the topic of discussion.³ In addition, it is also carried out statue approach and conceptual approach.

This study also has a descriptive specification of analysis, namely research that aims to provide a systematic picture of the facts and / or applicable laws and regulations comprehensively then associated with legal theories regarding the topic of discussion.⁴ The data collection is carried out through literature studies by collecting secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data obtained are then analyzed by qualitative juridical methods, namely research that is carried out in depth as a whole and then poured into a descriptive sentence narrative.⁵

3. Discussion

Division of Court Competence in the Indonesian Justice System

Law is not just a set of norms and laws that regulate people's lives, so in order for the law to run as it should, it needs to be a legal system. According to Lawrence M. Friedman, the law includes 3 (three) component, Among others, legal substance, legal structure, and legal culture.⁶ In order for the legal component to be implemented, a forum commonly known as the Court is needed, Paul Bohannon argues that legal institutions are an essence of law.⁷ An institution is legal when

² J. R. Raco, *Metode Penelitian Kualitatif Jenis, Karakteristik, Dan Keunggulannya*, Grasindo, Jakarta, 2010, page 6.

³ Bambang Sunggono, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta, page 93.

⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia, page 10.

⁵ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Bandung: Alfabeta, 2009, page 216

⁶ Lawrence M. Friedman, *Law An Introduction*, Tata Nusa, 2001, page 7

⁷ Lawrence M. Friedman, *Sistem Hukum: Perspektif Ilmu Sosial*, Nusa Media, Bandung, 2019, page 8

people in a community use it to resolve disputes and deal with violations of applicable rules.⁸ Institutional of law have certain organized ways to sort out problems and deal with them.

Institutional of law can carry out legal functions in accordance with the legal system they adopt, each legal institution has a different legal system. In this world have 2 (two) types of legal systems, i.e. Anglo Saxon or Common Law System and Continental European or Civil Law System. Countries that were British colonies or influenced by the British majority adhered to the Anglo Saxon legal system, such as England, Malaysia, America, and many more. While countries that became Dutch colonies such as Indonesia adhered to the continental european system. Countries with a continental european system have an inquisitorial nature in the judiciary, namely Judges have an important role in directing and deciding cases, Judges need to be active to observe and assess the events they face.⁹ Different with anglo saxon system, the assessment of an event is focused on the judge's assessment. In addition, in countries with Anglo Saxon legal systems do not recognize the separation of judicial chambers.

Judicial power in Indonesia is exercised by the Supreme Court which oversees several judicial institutions, in the judicial power exercised by the Supreme Court there are several judicial bodies under it that have the authority to examine, adjudicate, and decide their respective cases. These courts include: (1) General Court; (2) Religion Court; (3) Administrative Court; and (4) Military Court, The division of the four courts does not rule out the possibility of specialization in each judicial environment.¹⁰

Philipus M. Hadjon argues that the division of competencies (*distributie van rechtmacht*) or the adjudicating authority has 2 (two) principle. First, The powers and procedures of judicial bodies are regulated by law. Second, that special courts deal only with certain cases established by law.¹¹

The District Court is one of the judicial bodies under the Supreme Court that exercises judicial power which basically aims to realize the implementation of independent judicial power and a clean and authoritative judiciary, which is carried out through an integrated justice system. Based on the provisions of Law Number 2 of 1986 concerning General Courts as amended into Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 states that the District Court have duty and authority to examine, decide, and resolve criminal cases and civil cases in the first instance. The civil cases are divided into: 2 (two) categories, i.e. unlawful acts (*onrechtmatige daad*) and default (*wanprestasi*). The District Court as the executor of the General Court has a specialty in adjudicating certain cases, including (1) Corruption Court; (2) Juvenile Court; (3) Commercial Court ; (4) Industrial Relations Court; (5) Human Rights Court; and (6) Fisheries Court.

⁸ Ibid

⁹ Fajar Nurhardianto, *Sistem Hukum dan Posisi Hukum Indonesia*, Jurnal TAPIS, Vol. 11 NO. 1, 2015, page 37-38

¹⁰ Z. A. Sangadji, *Kompetensi Badan Peradilan Umum dan Peradilan Tata Usaha Negara*, Citra Aditya Bakti, Bandung, 2003, page 2.

¹¹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Bina Ilmu, Surabaya, 1987, page 116

The Religious Court is one of the judicial bodies under the Supreme Court that exercises judicial power for Muslim justice-seeking people regarding certain civil cases in accordance with Law Number 7 of 1987 concerning Religious Courts as amended by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Cases which is the authority of the Religious Courts, including marriage, inheritance, wills, grants, waqf, zakat, infaq, sadaqah, and sharia economics.

The State Administrative Court is one of the judicial bodies under the Supreme Court that exercises judicial power for the people seeking justice for disputes arising from the decision of state administrative officials, in other words the dispute that arises must be a dispute arising in the field of State Administration between a person or civil law entity and a State Administrative Officer as a result of the issuance of a State Administrative Decree that considered to violate the rights of a person or civil law entity, this is in accordance with the provisions of Law Number 5 of 1986 concerning State Administrative Court as amended by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court. The State Administrative Court also has a specialty, namely the existence of a Tax Court. Those that are not included in the authority of the State Administrative Court, among others:¹²

- 1) State Administrative Decisions which are civil law acts;
- 2) State Administrative Decisions which are general arrangements;
- 3) State Administrative Decisions that still require approval;
- 4) constitutional decisions issued based on the Criminal Code or the Code of Criminal Procedure or other laws and regulations of a criminal law;
- 5) State Administrative decisions issued on the basis of the results of judicial examinations based on the provisions of applicable laws and regulations;
- 6) State administrative decisions regarding the administration of the Armed Forces of the Republic of Indonesia; and
- 7) the decision of the Election Committee, both at the center and in the regions regarding the results of the general election.

Military Court is one of the exercises of judicial power to examine, decide, and resolve disputes in the field of administration of the Armed Forces and in military personnel matters including criminal acts committed by members of the military. The Military Court is a court of first instance for criminal cases in which the defendant is a member of the military with a Captain or below and the High Military Court is a court of appeal and is a court of first instance for criminal cases in which the defendant is a member of the military with the rank of Major or above and administrative disputes of the armed forces. In addition, there is also the Battle Military Court which is the court of first and last instance in adjudicating criminal cases committed by Soldiers in the battle area. This is in accordance with the provisions of Law Number 31 of 1997 concerning Military Justice.

¹² See Article 2 of Law Number 5 of 1986 concerning the State Administrative Court

The Concept of Screening Court Competence through Dismissal Process in the General Justice System

The Supreme Court is a high state institution in the constitutional system of the Republic of Indonesia as the holder of the highest judicial power together with the Constitutional Court. Judicial power is an independent power to administer justice to enforce law and justice carried out by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, and state administrative court, and by a Constitutional Court.

The District Court is one of the judicial bodies under the Supreme Court that exercises judicial power which basically aims to realize the implementation of independent judicial power and a clean and authoritative judiciary, which is carried out through structuring integrated justice system. Based on the provisions of Law Number 2 of 1986 concerning General Courts as amended into Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 states that the District Court (General) has the duty and authority to examine, decide, and resolve criminal cases and civil cases in the first instance. The civil cases are divided into: 2 (two) categories, i.e. unlawful acts (*onrechtmatige daad*) and default (*wanprestasi*). The District Court as the executor of the General Court has a specialty in adjudicating certain cases, including (1) Corruption Court; (2) Juvenile Court; (3) Commercial Court; (4) Industrial Relations Court; (5) Human Rights Court; and (6) Fisheries Court.

The very broad authority of the District Court results in more cases that must be handled by the District Court Judge, this is because the Judge adheres to the principle of *ius curia novit* which means that the Judge is considered to know the law so that the Court as the Judge's workplace cannot reject the case submitted to him. This is also confirmed by the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states:

"The court is prohibited from refusing to examine, adjudicate, and decide a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and try it."

The procedural law of the General Court is different from that of the State Administrative Court. Procedural law at the State Administrative Court before entering the trial process, there is a dismissal process stage to conduct research on claims that enter the State Administrative Court can be declared worthy of acceptance as a state administrative dispute case or not,¹³ this is in accordance with the provisions of Article 62 of Law Number 5 of 1986 concerning the State Administrative Court.

Procedural law in the general court there is no stage or process to examine whether the lawsuit or application submitted is complete and becomes the authority of the General Court or not, after the lawsuit or application file is registered, the

¹³ Dezonda R. Pattipawae, Fungsi Pemeriksaan Dismissal Dalam Peradilan Tata Usaha Negara, Jurnal Sasi, Vol. 20 No. 1, 2015, page 38

next stage is the appointment of a panel of judges and the determination of the day of the hearing. In the civil sector, there are 2 (two) categories, i.e. unlawful acts (*onrechtmatige daad*) and default (*wanprestasi*). This unlawful act has a very broad definition, so the definition of against the law is divided into 2 (two), that is, in a narrow sense that gives the meaning of violation of written or unwritten law, while understanding in a broad sense gives the meaning of violation of unwritten and written law.

Unlawful acts in a narrow sense are influenced by legism which is then adopted by judges, this view is also called the formal view. Meanwhile, according to the material view, unlawful acts do not have to be limited to violations of the Law, but it is also necessary to see whether these acts are included in violations of general principles in society, so that with this view Judges are given freedom in interpreting unlawful acts.¹⁴ Unlawful acts can be committed by private parties, individuals or civil law entities, and can also be committed by state administrative officials. Violation of the general principles of good governance can also be interpreted as violations or unlawful acts committed by state administrative officials. Therefore, there may be a wedge between pure civil law unlawful acts and unlawful acts committed by state administrative officials, so that in the General Court there is a need for dismissal proceedings such as in the State Administrative Court.

The concept of the application of dismissal proceedings in the General Court can be studied using the theory of transplantation, in general transplantation has the meaning of grafting or replacing a part of a thing with similar elements derived from other things.¹⁵ In the field of law, grafting in question is the grafting of legal provisions originating from one system into another system.

Alan Watson argue transplantation is the borrowing and transmissibility of rules from one society or system to another.¹⁶ Meanwhile, according to Tri Budiyono, legal transplantation is the takeover of the rule of law, doctrine, structure, or legal institution from another legal system or from jurisdiction to jurisdiction.¹⁷ In the context of this discussion, grafting is carried out from the State Administrative court system at the State Administrative Court to the general judicial system at the District Court. This legal transplant process is carried out by considering the positive impact caused.¹⁸

Filtering comes from the word filter is a tool used to separate.¹⁹ The word filtering has a meaning as a meaning or process to filter, select, or separate. Filtering in law can also be interpreted as legal screening. Meanwhile, what is meant

¹⁴ Effendi, *Hukum Pidana Indonesia*, 2014, page 117

¹⁵ Ahmad Fauzi dan Asril Sitompul, *Transplantasi Hukum and Permasalahan Dalam Penerapan di Indonesia*, Pustaka Prima, Medan, 2020, page 1.

¹⁶ Tri Budiyono. *Transplantasi Hukum: Harmonisasi dan Potensi Benturan*, Griya Media, Salatiga, 2009, page 9.

¹⁷ Tri Budiyono. *Menggagas Sintesa Global-Lokal dalam Membangun Hukum Ekonomi*, Jurnal Ilmu Hukum, 2002.

¹⁸ A. Zuhdi Muhdlor, *Kajian Politik Hukum Terhadap Transplantasi Hukum di Era Global*, Jurnal Hukum dan Peradilan, Vol. 5 No. 2, July, 2016, page 199.

¹⁹ Kamus Besar Bahasa Indonesia, 2008, page 1450.

by the process is ascreening process for claims that enter the Court.²⁰ According to Wiyono, the dismissal process is a continuation of the formal lawsuit examination conducted by the Registrar. Then, the lawsuit is submitted to the Chief of Court for examination of its substance to determine whether it passes the qualification or not.²¹ In its development there are several mentions, namely dismissal process or dismissal procedure.

Dismissal proceedings in principle have the benefit of weighing and stating whether the lawsuit filed can be declared forwarded to the court process or not, in addition to its purpose:

1. The subject matter of the dispute falls within the authority of the court or becomes the competence of the court or not;
2. Fulfillment of the conditions of the lawsuit or not;
3. Whether there is a reason or basis for filing a lawsuit;
4. Whether the lawsuit is filed within the permissible grace period or not is due to.

The essence of the dismissal process includes (1) upholding law and justice universally, with the dismissal process it will place cases in accordance with the place (authority), this is in accordance with the meaning of justice from Aristotle, which is fair when giving something in accordance with its rights;²² (2) Providing legal certainty, with the dismissal of the process, the seekers of justice are in a state of certainty, whether the lawsuit is the authority of the Court concerned or not; and (3) Creating a good relationship between the community and law enforcement.

The General Court does not have a strict lawsuit filing period as in the State Administrative Court, but certain cases are still determined regarding the period (expiration) of the case. The large number of cases that enter the District Court causes a backlog of cases and the length of the time period for resolving cases. The existence of a dismissal process can minimize the occurrence of a buildup of cases, this is because before the trial process research has been carried out first and on the one hand the dismissal process does not violate the principle of *ius curia novit* and the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which basically states that the Court may not reject cases.

The concept of dismissal process in the General Court can be carried out by registering a lawsuit or application, then conducting research on the lawsuit or application before the determination of the composition of the Panel of Judges and the day of the hearing. However, in criminal cases it is not possible to dismiss the process. The concept of dismissal process can be applied to civil cases, commercial cases, industrial relations cases, and cases in the Human Rights Court.

²⁰ Dezonda R. Pattipawae, Fungsi Pemeriksaan Dismissal Dalam Peradilan Tata Usaha Negara, Jurnal Sasi, Vol. 20 No. 1, 2015, page 39

²¹ R Wiyono, Hukum Acara Peradilan Tata Usaha Negara, Sinar Grafika, Jakarta, 2007.

²² I Gde Suranaya, Konsep Keadilan Dalam Persepsi Bioetika Administrasi Publik, Jurnal Administrasi Publik, 2016, page 15

The concept of applying dismissal proceedings in civil cases is carried out because there is a need for an understanding of unlawful act (onrechtmatige daad) in a purely civil action with an unlawful act by a state administrative officer for violation of general principles of good governance and other administrative procedures.

The concept of applying dismissal proceedings in commercial cases is carried out because it needs to be seen in advance whether the problem concerns ordinary debt payment obligations that enter into pure civil or enter into Suspension of Debt Payment Obligations.

The concept of applying dismissal process in industrial relations cases is carried out because it needs to be seen, whether the industrial relations dispute process has been taken in full or not, as stipulated in Article 3 paragraph (1) of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

The concept of applying dismissal proceedings to the Human Rights Court is carried out because it is necessary to see whether the act is included in gross human rights violations or not and whether the perpetrator is under 18 (eighteen) years old or more, this is in accordance with the provisions of Article 4 of Law Number 26 of 2000 concerning Human Rights Courts, which basically states that the Human Rights Court has the duty and authority to examine and decide cases gross human rights violations and the provisions of Article 6 of Law Number 26 of 2000 concerning Human Rights Courts, which basically states that the Human Rights Court is not authorized to adjudicate cases of gross human rights violations committed by a person under 18 (eighteen) years old.

4. Conclusion and advice

5. Conclusion's

Based on the discussion as referred to above, the following conclusions can be drawn:

1. In order for the legal component to be implemented, a forum commonly known as the Court is needed. Legal institutions have certain orderly ways to sort problems and deal with them. Briefly, the difference between countries adhering to the Continental European legal system and countries adhering to the Anglo Saxon legal system lies in the presence and absence of separation of judicial chambers. Judicial power in Indonesia is exercised by the Supreme Court and its subordinate judicial institutions, in the judicial power exercised by the Supreme Court there are several judicial bodies under it that have the authority to examine, adjudicate, and decide their respective cases. These courts include: (1) General Court; (2) Religion Courts; (3) Administrative Court; and (4) Military Court, The division of the four courts does not rule out the possibility of specialization in each judicial environment. Division of competencies (distributie van rechtmacht) or the adjudicating authority has 2 (two) principles. First, The powers and

procedures of judicial bodies are regulated by law. Second, that special courts deal only with certain cases established by law.

2. The District Court is one of the judicial bodies under the Supreme Court that exercises judicial power which basically aims to realize the implementation of independent judicial power and a clean and authoritative judiciary, which is carried out through structuring integrated justice system. The District Court (General) has the duty and authority to examine, decide, and settle criminal and civil cases in the first instance. The District Court as the executor of the General Court has a specialty in adjudicating certain cases, including (1) Corruption Court; (2) Juvenile Court; (3) Commercial Court; (4) Industrial Relations Court; (5) Human Rights Court; and (6) Fisheries Court. The very broad authority of the District Court resulted in more cases to be handled by the District Court Judge, this is because the Judge adheres to the principle of *ius curia novit*. The procedural law in the general court does not have a stage or process to examine whether the lawsuit or application submitted is complete and becomes the authority of the General Court or not, in contrast to the procedural law in the State Administrative Court which has a dismissal process stage to check the lawsuit. With the theory of legal transplantation, borrowing the stages of the trial of state administrative cases into general court hearings aims to minimize the accumulation of cases and prevent the panel of judges from deciding cases beyond their authority, this is because before the trial process research has been carried out first and on the one hand the dismissal process does not violate the principle of *ius curia novit* and the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. The concept of dismissal process in the General Court can be carried out by registering a lawsuit or application, then conducting research on the lawsuit or application before the determination of the composition of the Panel of Judges and the day of the hearing. However, in criminal cases it is not possible to dismiss the process. The concept of dismissal process can be applied to civil cases, commercial cases, industrial relations cases, and cases in the Human Rights Court.

6. Suggestions

1. Judges must fully understand the competence of each Court, so that no case decided by the Panel of Judges exceeds the competence of adjudicating, both absolute competence and relative competence of the Court;
2. There is a need for a Supreme Court Regulation (PERMA) that regulates the dismissal process in the General Court in civil cases, civil cases, industrial relations cases, and cases in the Human Rights Court as well as revisions to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations , revision of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, and revision of Law Number 26 of 2000 concerning Human Rights Court.

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