

## DISSENTING OPINION OF JUDGES ON RELATIVE COMPETENCY OF COURTS (A CASE STUDY OF KARAWANG STATE COURT'S DECISION NUMBER 52/PD.G/2021/PN KWG)

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### ABSTRACT

Judicial power in Indonesia is regulated in Law Number 48 of 2009. This power is exercised by courts divided into several judicial scopes. One of them is the general trial scope, namely, a trial for the people in general, both in civil and criminal cases. The authority to adjudicate a court in civil procedural law is divided into two: absolute and relative authorities. Article 118 HIR regulates relative authority. This research aimed to find out the differences in judges' legal opinions when assessing the court's relative authority in examining a case. The research employed normative research methods with conceptual, case, and statutory approaches. The data in this research consisted of primary and secondary legal materials. The research indicated that the relative competence of the Karawang District Court was not arbitrary because the competent court was the district court where the defendant was located, while the defendant's residence was not within the jurisdiction of the Karawang District Court.

**Keywords:** dissenting opinion, court, relative competence

### INTRODUCTION

Issues or disputes in Indonesia can be resolved in two ways: *litigation* and *non-litigation*. Dispute resolution through litigation is the resolution of disputes through the courts, and non-litigation is the process of resolving disputes outside the courts. The Indonesian judicial system is regulated in Article 24 of the 1945 Constitution, which states that judicial power is carried out by the Supreme Court and the judicial bodies subordinate to it and a Constitutional Court. The judicial bodies under the Supreme Court cover the judicial bodies in the scopes (Sugeng & Sujayadi, 2011):

1. General Court;
2. Religious Court;
3. State Administrative Court; and
4. Military Court.

Each of these judicial scopes has its competence. There are two types of court competence: absolute and relative. The absolute competence of each scope determines the jurisdiction of cases that can be adjudicated by it. The general trial scope is implemented by the District and High Courts. The trial scope has the competence or authority to examine and adjudicate general criminal and civil cases (Sugeng & Sujayadi, 2011). Furthermore, General Courts are regulated in Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 about General Courts.

The relative competence of the court can be seen through Karawang District Court's decision number 52/Pdt.G/2021/PN Kwg. The plaintiff filed a lawsuit regarding his dispute on the breach of contract committed by the defendant. The leading case in the lawsuit states that the plaintiff was a consumer of the defendant, who was a cooperative. Both of them entered into a credit agreement in which the Plaintiff was the Debtor, and the Defendant was the Creditor, amounting to Rp. 150,000,000,00 with the guarantee of Title Certificate number 6581/Jatikramat. The plaintiff stated, along with the evidence, that the plaintiff had paid his debt to the defendant. When Plaintiff wanted to take back his certificate, it turned out that Defendant's office had closed; hence, Plaintiff lost track of him. After his whereabouts were discovered, the defendant still had not returned the plaintiff's certificate. Therefore, the plaintiff filed a lawsuit with the Karawang District Court to resolve the case.

The judge's legal assessment contained in the decision stated that there were *dissenting opinions* among the panel of judges. One of the judges stated that the Karawang District Court should not have the authority to examine the lawsuit because the credit agreement contained the subject of the case about an agreement of legal domicile. Member Judge I, Ratmini, S.H., M.H., argued that filing a lawsuit for a case with the court based on Article 118 HIR paragraph (1), which must be submitted to the defendant's domicile or in paragraph (4) submitted to the court which has been mutually agreed upon in the agreement (legal domicile). In the credit agreement as the basis of the dispute, it is stated that the parties, namely the Plaintiff and the Defendant, have agreed to choose a legal domicile, namely the Bekasi District Court, to resolve legal issues related to the credit agreement; thus, the Karawang District Court has no authority to adjudicate *a quo* case.

Based on *a quo* case, there was a dissenting opinion from the panel of judges in adjudicating the case. These differences were then put aside because the decision was made by a majority vote, where the decision was to accept the lawsuit. Hence, it is essential to consider the provisions of Article 118 HIR, which states that the court's relative competence is related to the defendant's residence. Paragraph 4 of Article 118 HIR states that parties to an agreement can agree on a preferred domicile, which contains a clause that agrees to choose a particular district court that will have the authority to resolve disputes arising from the agreement (Harahap, 2017). There is the principle of *pacta sunt servanda* in the agreement, i.e., all agreements made legally apply as law to those who make them. Therefore, the researchers highlighted the issue of the relative competence of the Karawang District Court regarding the Karawang District Court Decision Number 52/Pdt.G/2021/PN Kwg.

## METHOD

This research employed legal research. Peter Mahmud Marzuki, in his book, explains that legal research aims to find the truth of coherence, i.e., whether there are legal rules based on legal norms or there are norms in the form of orders or prohibitions under legal principles, as well as whether a person's actions are based on legal norms (not just according to legal rules) or legal principles (Marzuki, 2013). The research methods used conceptual, statutory, and case approaches (Marzuki, 2013). The data in this research was secondary, namely library materials, including official documents, library books, statutory regulations, scientific works, articles, and documents related to study material. The secondary data includes several parts, namely primary and secondary legal materials. Primary legal materials were library materials that contained new or *up-to-date* scientific knowledge or new understandings about known facts or ideas. The research materials consisted of the Civil Code, HIR, R. Bg., Constitution of the Republic of Indonesia of 1945, and Law Number 48 of 2009 concerning Judicial Power. The secondary legal materials employed information about laws that apply or have previously been in effect in a country, which consisted of textbooks written by influential legal experts, legal journals, opinions of scholars, and legal cases (Soekanto & Mamudji, 2011). The data collection method in this research was carried out using a library study, which was a method of collecting data by searching and reviewing library materials, whether in the form of primary legal materials, secondary legal materials, and/or non-legal materials (Fajar & Achmad, 2010).

## DISCUSSION

### 1. Implementation of Dissenting Opinion in Civil Procedure Law in Indonesia

Several recognitions of *dissenting opinions* in history can be found in the civil law tradition. Along with its development, *dissenting opinions* are found not only in general courts but also in constitutional courts. The implementation of *dissenting opinions* is in line with the spirit of openness. If the reading of the decision of the panel of judges is open, then the process of forming the decision should also be open (Firdaus et al., 2020). In deciding a case, Charles Geyh states that "*...the judges are complicated creatures whose decisions are variously influenced by law, ideology, strategic objectives, self-interest, and the audiences they address is neither...*". The judicial activity of a judge opens up space for different interpretations from one judge to another. Judges are given the authority to interpret a case individually, although the applicable principles and regulations still bind them. Moreover, it emphasizes that a decision is not made based on compromise; according to Dyson Heydon, something can only happen in a court that 'forces' decisions always to be unanimous (Firdaus et al., 2020).

Conflicting judgments are the basis that legitimizes the differentiation of judges' (minority) judgments on court choices. A conflicting assessment is an assessment of at least one judge that conveys his dissatisfaction with the choice of the majority of judges in the panel of judges who decide on the choice in a court hearing. This assessment will be remembered for his choice. However, opinions that disagree with the sentiment will not start trends that limit or form part of the assessment. This assessment is starting to be used more and more frequently in countries that adhere to the entire Anglo-Saxon legal system, such as the United States and England. Throughout the law, conflicting judgments are used in cases where there is a difference in judgment between the appointed authority and another judge whose preference is greater. The different perspectives of judges and their choices will also be linked to the choice and become contradictory judgments (Dwipayana & Nurdin, 2021).

Literally, "*dissenting opinion*" must be explained word by word. "*Dissenting*" in the English dictionary is a verb that comes from the word "*dissent*", which means disagreement. "*Opinion*" is defined as opinions, thoughts, or feelings. If interpreted, "*dissenting opinion*" is the occurrence of a difference of opinion on a legal issue. According to Jimly Asshiddiqie, a *dissenting opinion* is an opinion that differs substantively, resulting in different decisions (Rusdi, 2019). Meanwhile, Gigih Wijaya states that *dissenting opinion* is something new in Indonesia's legal system. The dissenting opinion institution emerged after the issuance of Law Number 4 of 2004 concerning Judicial Power. According to Bagir Manan, *dissenting opinion* is an institution that justifies differences of opinion of judges (minorities) regarding court decisions. Artidjo Alkostar conveys that a *dissenting opinion* is a difference of opinion between a judge and another judge. However, Pontang Moerad states that a *dissenting opinion* is an opinion made by one or more members of the panel of judges who *disagree* with the decision taken by the majority of members of the panel of judges (Moerad, 2005).

Countries that adhere to the Continental European system do not recognize *dissenting opinions*. However, along with developments over time, *dissenting opinions* have become known and established in judicial practice committed by the Supreme Court of the Republic of Indonesia. When *dissenting opinions* first appeared in Indonesia, they did not have a formal juridical basis. It was due to the developing practices of judges. Initially, this *dissenting opinion* has a juridical basis in Bankruptcy Law No. 4 of 1998. *Dissenting opinions* were introduced in commercial courts. However, in line with current developments, *dissenting opinions* are now permitted in other courts, including in the judicial review of laws at the Constitutional Court (Adam, 2017).

Furthermore, Law No. 48 of 2009 regulates that deliberative meetings of the assembly are confidential and are attended by the Chairman of the Assembly, Member Judges, and Substitute Registrars. In practice, deliberation sessions of the panel of judges may only be attended and heard by the judges examining the case in question. Substitute Registrars are not permitted to attend, participate in, and hear the proceedings of the judge's deliberation session, which is held to make a decision. Thus, the task of recording everything related to the decision deliberations and then formulating the results of the judges' deliberations is carried out by the judges concerned (Wijayanta & Firmansyah, 2013).

In addition, *dissenting opinions* at normative levels are regulated in Article 30 paragraph (2) of Law Number 3 of 2009 concerning the Supreme Court, which stipulates that in a deliberative session, every supreme judge is obliged to convey written considerations or opinions on the case being examined and is an inseparable part from the verdict. Then, paragraph (3) states that a unanimous

consensus that cannot be reached at the deliberative hearing, the different opinions of the Supreme Court justices must be included in the decision. Furthermore, Article 19, paragraph (4) of Law Number 4 of 2004 concerning Judicial Power stipulates that in a deliberative trial, each judge is obliged to convey written considerations or opinions on the case being examined. It becomes an inseparable part of the decision. Then, paragraph (5) mentions that if a unanimous consensus cannot be reached at the deliberative hearing, the opinions of the different judges must be included in the decision. Meanwhile, Article 45, paragraph (7) states, "if the deliberations at the plenary session after serious efforts cannot reach a unanimous consensus, the decision is taken by majority vote". In contrast, paragraph (8) states, "In the case of deliberations at the plenary session of constitutional judges as intended paragraph (7) cannot be taken by majority vote; the final vote of the chairman of the constitutional plenary session determines" (Adam, 2017).

## 2. Dissenting Opinion in the Judge's Legal Considerations regarding the Relative Competence of Karawang District Court

Relative competence or authority is the opposite of absolute authority. This authority shows which district court has the authority to hear a case. The adjudicatory powers are distributed between similar courts, depending on where the defendant lives. The relative authority of district courts is limited in their jurisdiction. It has the authority of the district court only according to its area. It is in line with Article 4 paragraph (1) of Law No. 2 of 1986 that the district court is located in the Municipality or Regency, and its jurisdiction covers the area of the Municipality or Regency concerned. Based on this article, the authority of the district court is limited only to its jurisdiction. Moreover, the district court has no authority. The jurisdiction, according to each district court, only covers the Municipality or Regency area (Roy et al., 2022). Article 118 of the HIR states that this relative authority is called *distributie van rechtsmacht* in Dutch, which states that "the authority is the district court where the defendant is located", or in Latin, it is called "*Actor Sequitur Forum Rei*". In terms of the defendant's place of residence changes without leaving his new address, and his residence or place of residence is unknown, in this case, a lawsuit can be filed in the district court where the defendant's last place of residence is known (Sutantio & Oeripkartawinata, 2009).

In the Karawang District Court Decision Number 52/Pdt.G/2021/PN Kwg, there is a judge's *dissenting opinion* regarding the relative competence of the Karawang Court to examine cases submitted by Member Judge 1. The judge explained that the relative competence of the Karawang District Court is based on the provisions of Article 118 paragraphs (1) and (4) HIR and the Karawang District Court does not have the authority to examine this case. It is due to the Credit Agreement in the Karawang District Court Decision Number 52/Pdt.G/2021/PN Kwg, the parties to the agreement have agreed to choose their legal domicile, namely the Bekasi District Court. In this case, the plaintiff filed his lawsuit at the Karawang District Court. Thus, Member Judge 1 expressed the opinion that the Karawang District Court had no authority to examine the case submitted by the Plaintiff. However, because there were *dissenting opinions*, the decision was then taken based on the majority vote, i.e., assessments continued.

Article 118 HIR mentions the relative competence of courts, where Article 118 HIR explains that a lawsuit can be filed in the court where the defendant lives. However, if the defendant's place of residence is unknown, then the lawsuit can be filed in the court where the plaintiff lives. Paragraph (4) states that if both parties have previously agreed to determine the place of residence in resolving the case, the lawsuit can be filed at the agreed place but can also be filed at the court where one of the parties lives. Article 24 of the Civil Code also has the same purpose as Article 118 HIR paragraph (4), where the parties have the freedom to choose a place to resolve disputes based on domicile or the agreement agreed by both parties (Edison, 2021). Provisions in paragraph (4) indicate that there is openness to the article, which causes different interpretations. It is proven by the findings of Karawang District Court Decision Number 52/Pdt.G/2021/PN Kwg, where there is a *dissenting opinion* about the relative competence of the court. In this case, the authors convey that the Karawang District Court Decision Number 52/Pdt.G/2021/PN Kwg is not within the competence or relative authority of the Karawang District Court. As regulated in Article 1338 of the Civil Code, which contains the principle of *pacta sun servanda*; every agreement is a law for those who make it. Based on this principle, the plaintiff should submit his lawsuit to the District Court as agreed in the agreement he made with the defendant, namely the Bekasi District Court.

The choice of legal domicile as stipulated in Article 118 paragraph (4) HIR does not entirely rule out the *actor sequitur forum rei* principle, as mentioned in the sentence "...but can also be submitted to the court where one of the parties lives". However, the author viewed that the Karawang District Court still did not have the authority to examine this case. It was because the residence of both parties was not within the jurisdiction of the Karawang District Court. In this decision, the place where the Defendant lives is the Directorate General of Monetary Complex, Block C/9, RT.006, RW.013, Palmerah, West Jakarta, which should be the jurisdiction of the West Jakarta District Court if it is based on the *actor sequitur forum rei* principle.

## CONCLUSION

The relative competence of district courts lies in the parties' domicile involved in a particular legal area as regulated in Article 4 paragraph (1) of Law No. 2 of 1986 that the district court is located in the Municipality or District and its jurisdiction covers the area of the Municipality or District concerned. Article 1338 of the Civil Code contains the principle of freedom of contract and the principle of *pacta sun servanda*, which means that if the parties enter into a credit agreement, the agreement is valid as law for the parties. Based on the principle of *lex specialis derogate legi generali* (special law must override general law), the author viewed that the Karawang District Court did not have relative authority to examine and adjudicate *a quo* case. The agreement applied as law to the parties; thus, the court that had relative competence over *a quo* case was the Bekasi District Court, as agreed by the parties.

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