

Article Title

The Principle of Listening to Both Sides in the Sinjai District Court: A Case Study of Court Decision

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ABSTRACT

This study aims to examine and analyze the application of the principle of audi et alteram partem in Decision No. 01/Pdt.G.S/2016/PN.Snj. This study uses a normative juridical method with a statute approach. The collection of primary, secondary, and tertiary legal materials is carried out using literature study techniques. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach to describe court decisions and answer study purposes. The results show that the Sinjai District Court has summoned Defendant legally and worthy twice. The summons manifests the Judge's attitude to apply the principle of audi et alteram partem. In this case, the Judge must listen to both sides before deciding a civil case in court. In contrast, Defendant has not shown good faith, while the Sinjai District Court has summoned Defendant legally and worthy twice. Furthermore, the summons made by the Sinjai District Court also aims to mediate between Plaintiff and Defendant. On the other hand, with the efforts made by the Sinjai District Court, the trial process continues to the evidentiary stage even though the Defendant is not present. The proving process does not eliminate the essence of the audi et alteram partem principle, which is to be listened to by both sides. Therefore, it is recommended to establish new laws and regulations in the legal civil field because there are still laws and regulations that apply in Indonesia, which are a relic of the Dutch colonial era. In addition, the renewal of laws and regulations must pay attention to the audi et alteram partem as one of the principles that require Judges to listen to both sides in civil cases. Furthermore, Supreme Court Regulation No. 4 of 2019, as a basis for resolving civil cases through the procedure for simple lawsuits, should be improved because it is formed not in the Supreme Court Regulation but in a higher hierarchy of laws and regulations.

Keywords: Defendant; Listen to Both Sides; Plaintiff; Simple Lawsuits.

INTRODUCTION

An absolute requirement for the dignity and integrity of a country to be upheld is that its courts must be independent, impartial, competent, transparent, accountable, and uphold the authority of the law (Machmudin, 2013). In this case, the primary objective of law for the community is to provide justice, benefit, and legal certainty (Ingarasi & Suwigno, 2022). On the other hand, the dispute is a condition that inevitably occurs in social life in every country, anywhere in the world (Amar, 2022). For example, disputes over the distribution of rights in everyday life, disputes about who has the right to rule in a territory, promises that must be kept, disputes about losses that require compensation, or other disputes (Sinaga et al., 2022). In addition, dispute resolution can be carried out in two ways: litigation/court or non-litigation/Alternative Dispute Resolution Institutions. To maintain order and peace in society, the court is seen as a place for proper dispute resolution or conflict of interest resolution, so the court must be present to provide resolutions impartially and based on the applicable laws and regulations (Decarolis & Giorgiantonio, 2015).

As mentioned above, everything will be realized in a constitutional state if the Judge is the pivot and the central figure in the judicial process. Judges, as the executors of Judicial Power, must maintain integrity and moral intelligence and increase

professionalism in upholding law and justice for the people (Suherman, 2019). Judges also have the main task of providing dispute resolutions that occur both among fellow citizens and when conflicts occur between citizens and the state in a fair, humane, objective, and impartial manner (Andriyani, 2019).

The Judge bears a heavy responsibility in carrying out the duties and powers given by the state (Adonara, 2015). After all, the Judge's decision can have far-reaching consequences for people within reach of the decision because an unfair Judge's decision can make the person subject to the decision experience physical and mental suffering throughout his life. Therefore, Judges' decisions must also be based on and spiritually accountable to God Almighty so that they show the upholding of justice, the law, and the central truth (Spaltani, 2018).

From the description above, it can be understood that the Judge's decision must be objective and impartial. Therefore, a Judge's decision that provides a dispute resolution for a case must be based on the facts that were proven during the trial examination in court. In addition, decisions must also refer to general standards and principles that apply objectively, namely the positive legal principles that apply as formulated in laws and regulations whose implementation covers the facts proven in court.

The Judge's duty in resolving civil cases in court is to maintain the civil law order and determine what is regulated in the applicable laws and regulations (Aisyah, 2019). Therefore, Judges in examining and adjudicating civil cases in court must be based on Law of the Republic of Indonesia Number 8 of 1981 on the Code of Criminal Procedure (hereinafter referred to as Law No. 8 of 1981). In addition, Law No. 8 of 1981 also contains principles that must be a reference in upholding material civil law. On the other hand, legal principles are abstract things. They are not concrete even though these principles can be regulated in provisions or become a norm in laws and regulations.

The legal principle is the strongest and most extensive basis for forming applicable laws and regulations. Legal principles are the basics or directions in the formation of positive law. The principle of law is also necessary for Judges because it provides material for interpreting and implementing laws and regulations under the aspirations and views of the people's lives. On the other hand, it needs to be understood that as a system, law consists of various components or parts that influence each other. The consequence is that the parts or components contained in the legal system must be seen as a whole and cannot be viewed separately from one another.

Law No. 8 of 1981 contains the principle of justice, one of the derivatives known as the principle of *audi et alteram partem*. In this case, the Judge must listen to both

sides, giving each equal and fair time to express his opinion. Therefore, Judges may not listen to one-sided statements and Judge them as valid statements without listening to statements from the other side. Audi et alteram partem also cannot be interpreted as a stand-alone principle, so it is considered separate from other legal principles. In addition, the relationship between the principles must be interpreted as a whole. Therefore, every principle in the judicial process should be consistent with each other.

One thing that can be studied regarding the principle of listening to both sides related to disputes in civil cases is in the Sinjai District Court. In this case, the Decision of the District Court of Sinjai Number 01/Pdt.G.S/2016/PN.Snj (hereinafter referred to as Decision No. 01/Pdt.G.S/2016/PN.Snj) has adjudicated and stated that the Defendants had been legally and worthy summoned, but they were not present. In addition, Decision No. 01/Pdt.G.S/2016/PN.Snj also tried and granted Plaintiff's petition for partially. Therefore, Defendant has filed an objection to Decision No. 01/Pdt.G.S/2016/PN.Snj. In this case, the Judge must listen and consider the Defendant's statement regarding the dispute with the Plaintiff before making a decision.

Based on the description above, this study aims to examine and analyze the application of the principle of audi et alteram partem in Decision No. 01/Pdt.G.S/2016/PN.Snj.

METHOD

This study uses a normative juridical method with a statute approach (Qamar, 2021). The approach analyzes legal problems by referring to and originating from legal norms (Sampara & Husen, 2016). The types of data used are legal materials, including:

1. Primary legal materials include Law No. 8 of 1981, Supreme Court Regulation No. 4 of 2019, Decision No. 01/Pdt.G.S/2016/PN.Snj, the Civil Code, and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and online materials that discuss on listen to both sides; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The collection of primary, secondary, and tertiary legal materials is carried out using literature study techniques. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach to describe problems and answer study purposes (Qamar & Rezah, 2020).

RESULTS AND DISCUSSION

Applying the principle of audi et alteram partem in civil justice processes must also comply with the principle of proportionality (Amadea et al., 2022). In this case, both sides can prove again if one of the parties provides contradictory information and evidence. Therefore, the Judge must give equal opportunity to both sides to prove before deciding a civil case dispute. As for legal subjects or both sides in civil cases in Decision No. 01/Pdt.G.S/2016/PN.Sn timer, among others:

1. Syamsul Rijal Nawir, hereinafter referred to as the Plaintiff; and
2. Adi Amin, S.Kom., President Director of the Dana Tama Savings and Credit Cooperative, hereinafter referred to as the Defendant.

The incident began when Defendant took the initiative to present a service product from the Dana Tama Cooperative called term deposit. These service products provide benefits or interest of 2% of the deposit amount, and interest is given monthly to customers. Meanwhile, customers will still get the entire amount of money deposited and withdrawn in cash and in full. The customer can withdraw the entire deposit after the due date or based on the expiration time of the agreement between the Dana Tama Cooperative and the customer.

On the other hand, Plaintiff was an employee of the Tama Cooperative Fund before the dispute referred to in Decision No. 01/Pdt.G.S/2016/PN.Sn timer. Plaintiff is interested in the term deposit product from Dana Tama Cooperative. Plaintiff then deposited a sum of IDR 65,000,000.00 (sixty-five million rupiahs). Plaintiff has benefited from the product at an interest rate of 2% per month. At the end of the agreement or due date, Defendant held back or did not return the entire Plaintiff fund. In this case, only Defendant can or is authorized to withdraw part or all of the customer's funds, including Plaintiff's funds stored in the account.

Plaintiff then registered a simple lawsuit at the District Court of Sinjai with Case Number 01/Pdt.G.S/2016/PN.Sn timer. In this case, the summons for the Defendant was based on Article 13 section (3) and section (3a) of Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019 on Amendment to Regulation of the Supreme Court Number 2 of 2015 on the Procedure for Simple Lawsuit Resolution (hereinafter referred to as Supreme Court Regulation No. 4 of 2019), which regulates that:

"In the event that the Defendant is not present at the second trial after being worthy summoned, the Judge decides the case in a verstek. Against the decision referred to in section (3), Defendant may file a counterclaim (verzet) within 7 (seven) days after notification of the decision."

The provisions above show differences between simple and ordinary lawsuit resolution procedures in the summons limit. In addition, the summons made by the Sinjai District Court was intended to allow the Defendant to testify at trial. In this case, Defendant can present arguments and evidence to refute or justify the lawsuit from Plaintiff. On the other hand, the Sinjai District Court's summons manifests the Judge's attitude to apply the principle of *audi et alteram partem*. In this case, the Judge must listen to both sides before deciding a civil case in court. In contrast, Defendant has not shown good faith, while the Sinjai District Court has summoned him legally and worthy twice.

Furthermore, the summons made by the Sinjai District Court also aims to mediate between Plaintiff and Defendant. Meanwhile, it is known that the trial process, as based on Article 5 section (3) of Supreme Court Regulation No. 4 of 2019, regulates that *"a simple lawsuit resolution is no later than 25 (twenty-five) days from the day of the first trial."* Plaintiff finally asked the Judge to continue with the trial even though the Defendant did not attend the proceedings. Meanwhile, it is well known that the Judge's mediation and reconciliation efforts are also a manifestation of listening to both sides.

Based on the efforts made by the Sinjai District Court, as mentioned above, the trial process continues to the evidentiary stage even though the Defendant is not present. The proving process does not eliminate the essence of the *audi et alteram partem* principle, which is to listen to both sides. Tri Dharma Putra explained that:¹

"Continuing the examination without the presence of the Defendant as regulated in Supreme Court Regulation No. 4 of 2019, if the Defendant is not present on the second trial day, the Judge will still decide on the case. Posita must be examined in this case, and the examination process continues to the evidence stage. Furthermore, the court's decision will be submitted to the Defendant, and he can file an objection lawsuit."

According to the doctrine of objective legal theory, if the Plaintiff submits a lawsuit and requests the Judge to apply the legal provisions that apply to the events proposed, then the Plaintiff must prove the truth (Risidiana & Taquiuddin, 2021). As the executor of objective law in the events submitted by the Plaintiff, the Judge can only grant the lawsuit if there are objective elements based on the Plaintiff's petition. Tri Dharma Putra further explained that:²

"The Judge still gives the burden of evidence to Plaintiff and continues to ask for evidence that is owned even though Defendant is not present. The Judge also continues to assess whether the evidence supports or does not support his arguments."

¹Interview Results with Judge of the Sinjai District Court. Tri Dharma Putra, S.H., on June 17, 2019.

²Interview Results with Judge of the Sinjai District Court. Tri Dharma Putra, S.H., on June 17, 2019.

From the description above, Plaintiff must present documentary and witness evidence to prove the arguments of his petition. In addition, witnesses must be sworn in based on their convictions before giving information or testimony. Furthermore, the Judge examines the evidence to qualify it as valid evidence in this case. Of the two pieces of evidence submitted by Plaintiff, they all strengthen the arguments of Plaintiff's petition. In contrast, there is no counter-evidence because the Defendant did not attend the trial or did not order his representative to attend the trial after being legally summoned. Therefore, Plaintiff's petition did not receive any rebuttal or denial during the trial.

In Case Number 01/Pdt.G.S/2016/PN.Snj, Plaintiff presented his arguments and asked the Judge to declare that Defendant's actions were a breach of contract or default. In this case, Plaintiff has shown proof of deposit to Defendant of IDR 65,000,000.00. Apart from that, Plaintiff can also prove that Defendant has used the customer's money for Defendant's interests. For example, to fulfill household needs and pay debts to other parties. Defendant also bought household furniture and bought a private car. This action caused the Tama Cooperative Fund's finances to become jammed so that Defendant held back or did not return the entire Plaintiff fund and other customer funds with a due date from the term deposit. Therefore, Defendant's actions are against Article 1320 of the Civil Code. The Judge in Decision No. 01/Pdt.G.S/2016/PN.Snj then adjudicated in *posita*:

1. Declare that Defendants had been legally and worthy summoned, but they were not present;
2. Granted the Plaintiff's lawsuit in part;
3. Declaring a Plaintiff breach of contract (default);
4. Punish and order Defendant to hand over/return the money deposited as a term deposit to Plaintiff, in the amount of IDR 65,000,000.00 (Sixty-five million Rupiahs) immediately and at once.
5. Punish the Plaintiff to pay the case costs in the amount of IDR 345,000.00 (three hundred forty-five thousand Rupiahs).
6. Reject Plaintiff's lawsuit and the rest.

Based on the decision above, the Judge in Decision No. 01/Pdt.G.S/2016/PN.Snj has reflected the element of justice. In this case, the Judge has positioned both sides equally. The Judge also acknowledged that Plaintiff had rights as the winning party. In this case, Defendant is obliged to return the rights of Plaintiff of IDR 65,000,000.00 (Sixty-five million Rupiahs). The Judge has also decided this case based on the applicable laws and regulations. The Judge's decision is also under the sense of justice, and the community's wishes, namely that the winning party can claim the rights that belong to him, and the losing party must fulfill his obligation.

On the other hand, the emphasis on the purpose of justice in Decision No. 01/Pdt.G.S/2016/PN.Snj does not mean it has eliminated another legal objective: utility and certainty. Both of these objectives are still reflected in this decision. Fulfilling the goal of legal certainty can be seen as the Judge decided that the Defendant had defaulted and had to restore the Plaintiff's rights. Decision No. 01/Pdt.G.S/2016/PN.Snj illustrates that the Judge has provided a way out of the problem for both parties. The Judge has also provided equal opportunities for the parties involved in this case, but the Defendant has not used it well. Furthermore, the picture of fulfilling the purpose of expediency in this case decision shows that the Judge has eliminated the conflict for the disputing parties. In addition, Decision No. 01/Pdt.G.S/2016/PN.Snj has returned what is rightfully from Plaintiff.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the Sinjai District Court has summoned Defendant legally and worthy twice. The summons manifests the Judge's attitude to apply the principle of audi et alteram partem. In this case, the Judge must listen to both sides before deciding a civil case in court. In contrast, Defendant has not shown good faith, while the Sinjai District Court has summoned Defendant legally and worthy twice. Furthermore, the summons made by the Sinjai District Court also aims to mediate between Plaintiff and Defendant. On the other hand, with the efforts made by the Sinjai District Court, the trial process continues to the evidentiary stage even though the Defendant is not present. The proving process does not eliminate the essence of the audi et alteram partem principle, which is to be listened to by both sides. Based on the description of these conclusions, it is recommended to establish new laws and regulations in the legal civil field because there are still laws and regulations that apply in Indonesia, which are a relic of the Dutch colonial era. In addition, the renewal of laws and regulations must pay attention to the audi et alteram partem as one of the principles that require Judges to listen to both sides in civil cases. Furthermore, Supreme Court Regulation No. 4 of 2019, as a basis for resolving civil cases through the procedure for simple lawsuits, should be improved because it is formed not in the Supreme Court Regulation but in a higher hierarchy of laws and regulations.

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