

Reconstruction of the Authority of General Court Judges in Filling Legal Vacuum as an Effort to Strengthen Legal Certainty and Substantive Justice

Ismu Bahaiduri Febri Kurnia *, Riswadi

Borobudur University, Jakarta, Indonesia, ismubahaiduri@gmail.com

Borobudur University, Jakarta, Indonesia, riswadi@borobudur.ac.id

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*Correspondence: Ismu Bahaiduri Febri Kurnia

Email: ismubahaiduri@gmail.com

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Abstract: *In order to improve the balance between substantive justice and legal certainty in the Indonesian legal system, this study attempts to rebuild the power of general court judges to close legal gaps. In contrast to Article 24, paragraph 1 of the Republic of Indonesia's 1945 Constitution and Article 5, paragraph 1 and Article 10, paragraph 1 of Law Number 48 of 2009 concerning Judicial Power, judges have the normative legitimacy to investigate the legal values that exist in society rather than rejecting cases because the law is unclear or nonexistent. However, in practice, there are no systematic parameters regarding the limits of judicial discretion and methodological standards for legal discovery, thus potentially giving rise to inconsistencies and disparities in decisions. The study employs a normative juridical method with a statutory and analytical approach to examine normative construction, theoretical and practical problems, and formulate a model for reconstructing judges' authority based on the constitution, proportionality, and accountable legal arguments. The research findings indicate that more structured normative parameters and methodological guidelines must ensure that filling legal gaps remains within the framework of legislative supremacy and achieves substantive justice consistently and measurably.*

Keywords: *judicial authority; legal gaps; legal discovery*

Introduction

Rapid social, economic, and technological changes over the past two decades have given rise to new legal relationships that are not fully accommodated by existing laws and regulations (Sulistyawan, 2019). The development of the digital economy, the complexity of cross-jurisdictional transactions, and the transformation of civil and criminal relationship patterns demonstrate that positive law often lags behind societal dynamics (Dewi, 2025). In the context of a state based on Article 1, paragraph 3 of the Republic of Indonesia's 1945 Constitution upholds the rule of law, the law should be a regulatory and protective instrument that is responsive to change (Hadi, 2022). However, the procedural and political nature of the legislative process means that the formation of laws is not always able to respond simultaneously to these developments. As a result, in general judicial practice, situations often arise where legal norms are unavailable or inadequate to address specific

cases. Therefore, the phenomenon of legal vacuum is not merely a theoretical issue, but a structural and actual problem within the national legal system (Wiyanto, 2022).

Within a theoretical framework, it is important to distinguish between legal vacuum and normative ambiguity. A legal vacuum refers to the complete absence of regulations governing a specific legal event, whereas normative ambiguity occurs when existing norms are unclear or open to multiple interpretations. From a legal positivist perspective, judges are viewed as mouthpieces of the law, bound by normative texts. Therefore, a legal vacuum becomes a serious problem because the legitimacy of decisions depends on the existence of written norms (Nasir, 2017). Conversely, in a progressive legal approach and legal discovery theory, Article 5, paragraph 1 of Law Number 48 of 2009 concerning Judicial Power affirms that judges are allowed to investigate, adhere to, and comprehend the legal ideals and sense of justice that exist within society (Sukananda, 2018). The principle of substantive justice and the principle of legality, which requires clarity, are at odds as a result of this tension, which demands responsiveness. Therefore, the conceptual foundation of judges' positions in filling legal vacuums is crucial for in-depth analysis.

In the Indonesian judicial system, which adheres to the civil law tradition, general court judges principally carry out the function of implementing the law established by the legislature. Article 24, paragraph 1 of the 1945 Constitution, which declares that the judiciary is an autonomous authority to administer justice to uphold law and justice, affirms judges' status as executors of judicial power. Article 3, paragraph 2 of Law Number 48 of 2009, which highlights judges' obligation to uphold judicial independence, also highlights judges' independence (Suriadinata, 2018). Nonetheless, Article 10, paragraph 1 of the same statute stipulates that courts are required to analyze and decide a case and cannot refuse to do so on the basis that the law is obscure or absent. This clause implicitly provides normative legitimacy for judges to construct law when a vacancy occurs, making the debate over whether judges are merely law enforcers or also lawmakers increasingly relevant in the context of this research (Ngape, 2018).

In practice, filling legal vacancies by general court judges often raises the issue of inconsistencies in legal discovery methods. The lack of uniform methodological standards for using grammatical, systematic, teleological interpretation, as well as *argumentum a contrario* and analogy, has the potential to create disparities in decisions in similar cases (Hakim, 2023). This situation can erode the principle of equality before the law and disrupt legal certainty. On the other hand, judges' efforts to interpret progressively are often criticized as a form of judicial activism that exceeds their constitutional authority. The tension between legal certainty and substantive justice becomes apparent when innovative decisions are deemed morally just but questioned from a normative legitimacy perspective (Pramana, Arjaya, & Widiati, 2019). This demonstrates that the practice of filling legal gaps still leaves conceptual and operational problems that require systematic reconstruction.

The discrepancy between the normative framework and the reality of judicial practice becomes even more apparent when examined from the standpoints of substantive and procedural law. Although Law Number 48 of 2009's Article 50, paragraph 1 mandates that court rulings disclose the rationale and foundation for the ruling, as well as specific statutory laws or unwritten legal sources that serve as the basis for adjudication, this provision does not yet provide detailed guidelines regarding the limits of judges' discretion

in creating norms through decisions. Likewise, the Supreme Court's role in maintaining uniform application of the law through jurisprudence and internal regulations has not fully prevented differences in approach among judges. As a result, the scope for interpretation can become too broad, potentially creating uncertainty, or too narrow, thus hindering the achievement of substantive justice (Ginting, et al., 2023). This is where the gap between normative design and the needs of judicial practice becomes apparent.

Based on this description, the urgency of reconstructing the authority of general court judges becomes increasingly clear, particularly in balancing the principles of legality and legitimacy within a modern rule of law. This reconstruction does not mean granting unlimited authority, but rather the formulation of a conceptual model that provides theoretical legitimacy and clear normative boundaries for judges in filling legal gaps. This approach aligns with the constitutional mandate of Article 24, paragraph 1 of the 1945 Constitution, which places law enforcement and justice as the primary objectives of judicial power. Thus, this research not only has an academic contribution in enriching the theory about the role of judges in the civil law system, but also a practical contribution in formulating more measurable parameters for general court judges to be able to provide legal certainty while realizing substantive justice proportionally and constitutionally.

Methodology

This research uses a normative juridical research method that focuses on the study of legal norms as an autonomous system of rules, by placing law as a prescriptive structure that aims to find appropriate legal arguments, principles, and concepts in answering the problem of legal vacuum by general court judges. The approaches used include the statute approach and the analytical approach. when analyzed from both procedural and substantive legal perspectives. While Article 50, paragraph 1 of Law Number 48 of 2009 requires that court decisions reveal the reasoning and justification for the decision, as well as particular statutory laws or unwritten legal sources that serve as the basis for, to identify normative constructions, discretionary space, and the limits of judges' authority in filling legal vacuums. Meanwhile, an analytical approach is used to examine legal concepts such as legal vacuum, normative ambiguity, legal discovery, judicial discretion, legal certainty, and substantive justice through analysis of doctrines, legal principles, and theoretical arguments developed in literature and jurisprudence, so as to obtain a comprehensive understanding of the problems and the need for conceptual and systematic reconstruction of judges' authority.

Result and Discussion

Normative Construction of the Authority of General Court Judges in the Indonesian Legal System

The Indonesian legal system's normative formulation of general court judges' authority is based on constitutional principles that uphold the independence of the judiciary and the rule of law. The Republic of Indonesia's 1945 Constitution states in Article 1, paragraph 3, that Indonesia is a state founded on the rule of law. This means that all decisions made by state officials, including judges, must be grounded in the law. Additionally, the 1945 Constitution's Article 24, paragraph 1 declares that the court is an

autonomous body with the power to administer justice in order to preserve law and justice. This formulation demonstrates that the purpose of the judiciary is not only to uphold the law in a formal sense, but also to realize justice as a substantive value. Thus, constitutionally, judges are not merely implementers of the text of the law, but also guardians of the value of justice in the national legal system (Anggita & Andraini, 2025).

Further elaboration of the authority of judges is contained in Law Number 48 of 2009 concerning Judicial Power. Article 5, paragraph 1 of the law states that judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that exist in society. This norm provides explicit legitimacy for judges to make legal discoveries when written regulations are inadequate or unclear. This provision broadens the scope of the judge's role from merely being a mouthpiece for the law to an active subject who carries out creative interpretations in order to bridge legal gaps. However, the phrase "exploring and understanding legal values" also opens up a broad scope for discretion, thus requiring normative limitations to avoid excessive subjectivity (Bilaldzy & Ariani, 2022).

Article 10, paragraph 1 of Law Number 48 of 2009, which states that courts cannot refuse to study, try, and determine a case because the law is absent or confusing, further supports the legality of bridging legal gaps. Instead, they must investigate and test it. The clause requires courts to decide cases while also subtly acknowledging the potential for legal uncertainties or gaps. Judges are assumed to be knowledgeable about the law under the *ius curiae novit* concept, which serves as an ethical and professional basis, requiring judges not to seek cover behind incomplete regulations. However, this obligation does not specifically regulate the methods and limits of discretion that judges can use, leaving open the potential for differences in approach.

Conversely, Article 50 paragraph 1 of Law Number 48 of 2009 requires that court decisions contain the reasons and basis for the decision, as well as specific articles of statutory regulations or unwritten legal sources used as the basis for the decision. This provision emphasizes the principle of accountability and rationality of judges' decisions. In the context of filling legal gaps, judges are still required to construct arguments that are normatively and methodologically accountable. This means that even if judges construct law through interpretation or the exploration of legal values, this process must be formulated in systematic legal considerations based on valid legal sources, both written and unwritten.

In the civil law tradition adopted by Indonesia, judges essentially function as implementers of the law established by the legislature, in contrast to the common law system, which gives precedent a more dominant role. Article 1, paragraph 1 of the Criminal Code reflects the principle of legality, specifically in criminal law, which states that no act can be penalized unless it is founded on the force of criminal provisions in pre-existing legislation. This idea restricts state power and prioritizes legal certainty. However, in civil practice and other cases in general courts, the scope for interpretation is more open, allowing judges to play a significant role in developing the law through decisions. The

tension between the principle of legality and the demands of substantive justice is crucial in judicial authority.

Based on the overall normative construction, it can be concluded that constitutionally and legislatively, there is sufficient legitimacy for general court judges to make legal discoveries and fill legal gaps. Article 24, paragraph 1 of the 1945 Constitution provides the philosophical foundation, while Article 5, paragraph 1 and Article 10, paragraph 1 of Law Number 48 of 2009 provide the operational basis. However, these norms have not explicitly formulated the parameters and limits of judicial discretion systematically and comprehensively. The absence of structured methodological standards has the potential to give rise to disparities and debates regarding the legitimacy of decisions. Thus, an analysis of this construction serves as a starting point for formulating a more measured reconstruction of judicial authority within the framework of a state based on the rule of law that upholds certainty and justice in a balanced manner.

Problems of Filling Legal Vacancies by General Court Judges from a Theoretical and Practical Perspective

The problem of filling legal gaps by general court judges stems from Law Number 48 of 2009 respecting Judicial Power, Article 10, paragraph 1, requires courts to continue reviewing, deciding, and adjudicating issues even in the absence or ambiguity of the law. This norm mandates judges to construct law when faced with gaps or unclear rules. However, in practice, this obligation is not always followed by uniform methodological guidelines, leading judges to rely on various interpretive methods, such as grammatical, systematic, teleological, analogical, and *argumentum a contrario*, according to their individual preferences and frameworks. Consequently, this broad discretionary space creates problems of consistency and legitimacy in general judicial practice.

From a theoretical perspective, the legal positivism approach positions judges as implementers of written norms established by lawmakers. The predominance of the legalistic paradigm is symbolized by the principle of legality, especially as it is represented in Article 1, paragraph 1 of the Criminal Code, which states that no act can be penalized unless it is founded on pre-existing criminal norms. In this regard, the application of similarity in criminal law is even thought to be in conflict with the legality concept because it may expand the definition of offenses beyond the legislator's intent. However, in civil cases and other areas of general justice, analogy and teleological interpretation are often used to fill legal gaps in order to achieve substantive justice. This difference in interpretative scope demonstrates the structural tension between legal certainty and the need for judicial responsiveness.

Furthermore, Law Number 48 of 2009's Article 5, paragraph 1 mandates that judges investigate, uphold, and comprehend the legal principles and feeling of justice that permeate society, is often used as a legitimate basis for progressive legal discovery. In practice, this provision opens up space for judges to use teleological and sociological approaches to adapt norms to societal developments. However, the phrase "legal values that exist within society" is abstract and not operationally defined in legislation, potentially giving rise to subjectivity. Without clear methodological parameters, judges can interpret

these values differently, ultimately resulting in disparities in decisions in cases with similar characteristics.

The potential for disparity in decisions is also related to the suboptimal harmonization and consistency of jurisprudence. Although Article 24A, paragraph 1 of the 1945 Constitution grants the Supreme Court the authority to adjudicate cases at the cassation level and maintain the unity of the application of law, in practice, not all differences in interpretation can be eliminated. The differing approaches between judges at the first, appellate, and cassation levels indicate that standards for legal discovery have not been systematically established. This situation raises questions about the extent to which the practice of filling legal gaps fulfills Article 1, paragraph 3 of the 1945 Constitution upholds the idea of equality before the law as a component of the rule of law.

On the other hand, debate has arisen regarding judicial activism in the Indonesian civil law system. When judges engage in progressive interpretations or create new norms through decisions, some view this as a necessary step to address legal gaps, while others consider it an overreach of legislative authority that potentially violates the principle of separation of powers. Article 24, paragraph 1 of the 1945 Constitution emphasizes that the judicial power aims to uphold law and justice, but it does not explicitly mandate the creation of general and abstract norms. Herein lies the conceptual ambiguity regarding the boundary between legitimate legal discovery and law-making, which should be the domain of legislators.

From a theoretical and practical perspective, filling legal gaps by general court judges demonstrates a conceptual void and methodological inconsistency. The normative mandate in Article 10, paragraph 1, and Article 5, paragraph 1 of Law Number 48 of 2009 provides strong legitimacy for judges not to reject cases and to explore the value of justice, but it does not provide a structured formulation of discretionary parameters. As a result, judicial practice shifts between two poles: a rigid legalistic paradigm and a progressive approach that has the potential to overstep its bounds. This condition emphasizes the urgency of reconstructing the authority of judges so that filling legal vacuums is not only normatively legitimate but also consistent, measurable, and in line with the principles of certainty and substantive justice in a state based on the rule of law.

Reconstruction of the Authority of General Court Judges in Filling Legal Vacancies Based on Certainty and Substantive Justice

The reconstruction of the authority of general court judges to fill legal vacuums must begin with a reaffirmation of the constitutional foundations as stated in the Republic of Indonesia's 1945 Constitution, which established Indonesia as a state founded on the rule of law and the judiciary as an autonomous authority to uphold law and justice (Article 1, paragraph 3 and Article 24, paragraph 1). The reconstruction is not intended to expand judges' authority without limit, but rather to formulate clear parameters to ensure that judicial discretion remains within the framework of constitutional supremacy and law. Therefore, every action to fill a legal vacuum must be placed within a framework of constitutionality, proportionality, and accountability, so that judges do not fall into the trap of rigid positivism or excessive judicial activism.

The first normative parameter that needs to be reaffirmed is the limits of judicial discretion, as implied in Article 5, Law Number 48 of 2009 respecting Judicial Power, paragraph 1, and Article 10, paragraph 1. These provisions provide legitimacy for judges to explore legal values and not reject cases due to the absence or lack of clarity of the law. However, reconstruction demands that this discretion be operationalized through measurable standards, namely that filling a legal vacuum can only be done if there is a genuine normative vacuum that cannot be resolved through ordinary interpretation of existing norms. A concrete action is the formulation of internal Supreme Court guidelines in the form of Supreme Court Regulations or Circulars that establish objective indicators regarding the criteria for a legal vacuum and the methodological stages that judges must follow before constructing new laws.

The second parameter is strict and transparent legal argumentation standards, as mandated by Article 50, paragraph 1 of Law Number 48 of 2009, which requires decisions to contain clear reasons and legal basis. In the context of reconstruction, every legal vacuum must be filled based on multi-layered argumentation, starting with an analysis of relevant regulatory texts, an examination of general legal principles, references to consistent jurisprudence, and a consideration of constitutional values. A concrete action that can be taken is strengthening the obligation of judges to explicitly state the method of interpretation or legal construction used in legal reasoning, so that the public and academic community can test its rationality and consistency. Furthermore, ongoing education and training for judges regarding legal discovery theory and legal argumentation techniques needs to be systematically institutionalized by the judiciary.

Reconstruction must also integrate the principles of legal certainty and substantive justice proportionally. Legal certainty demands consistency and predictability of decisions, while substantive justice demands sensitivity to the values entrenched in society, as mandated by Article 5, paragraph 1 of Law Number 48 of 2009. The proposed model is a proportionality approach, in which judges gradually assess whether intervention through legal construction is necessary, whether the desired goal of justice is legitimate and constitutional, and whether the methods employed do not exceed judicial authority. A concrete action is to encourage the Supreme Court to compile a thematic compilation of jurisprudence that serves as a national reference to minimize disparities and strengthen the consistent application of the principle of proportionality.

Furthermore, a structured and constitutionally based legal discovery model needs to be developed. It means that any legal vacuum must first be filled against constitutional values, human rights, and the principles of the rule of law. The 1945 Constitution's Article 28D, paragraph 1, protects the right to protection, recognition, guarantees, and just legal certainty, must be the evaluative parameter in every decision. Concrete actions that can be taken include requiring judges to explicitly engage in constitutional reasoning in cases involving legal vacuums, and strengthening judicial dialogue between general courts and the Constitutional Court by referencing constitutional decisions as interpretive guidelines.

The reconstruction of judicial authority must strike a balance between legislative supremacy and the need for judicial responsiveness. Judges must not assume the function

of lawmakers in formulating general and abstract norms, but they must also not be constrained by legal vacuums that hinder the achievement of justice. A reconstruction model based on normative parameters, transparent argumentation standards, a proportionality approach, and strengthened jurisprudential harmonization are concrete steps to achieve a balance between legal and legal principles. Thus, the judge's authority to fill legal gaps is not only normatively legitimate, but also measurable, accountable, and in line with the ideals of a modern constitutional state that places certainty and justice as two inseparable pillars.

Conclusion

The overall discussion leads to the conclusion that general court judges have strong constitutional and legal authority to fill legal voids, especially under Article 24 paragraph 1 of the Republic of Indonesia's 1945 Constitution and Article 5 paragraph 1 and Article 10 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power. However, this legitimacy has not been accompanied by a systematic construction of discretionary boundaries and methodological standards, resulting in inconsistencies in approach, disparities in decisions, and tensions between the principles of legal certainty and substantive justice. This vacuum is not only normative but also conceptual, as no structured and integrated model for legal discovery embraces the principles of proportionality, constitutional reasoning, and jurisprudential harmonization. Therefore, the reconstruction of judicial authority is an urgent need to affirm objective parameters for filling legal vacuums without shifting the supremacy of legislation or exceeding the principle of separation of powers in a state based on the rule of law.

In line with these conclusions, it is recommended that the Supreme Court develop more measurable normative guidelines regarding the criteria for legal vacuum, the limits of judicial discretion, and the standards of legal argumentation that must be included in decisions, including the obligation to explicitly use interpretive methods and apply proportionality tests in cases involving new legal constructions. Furthermore, ongoing education and training for judges on legal discovery theory, constitutional reasoning techniques, and jurisprudential harmonization are needed to minimize disparities in decisions. At the legislative level, lawmakers also need to evaluate and update regulations responsive to social dynamics to minimize the space for legal vacuum. These steps are expected to create a proportional balance between legal certainty and substantive justice, enabling general courts to function optimally within the framework of a modern rule of law.

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