

## Case Law and the Principle of Freedom of Judicial Power in the Law Finding by Judges

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### Abstract

*Case law is a complementary source of law for law finding carried out by judges. The tendency of judges to refer to case law is intended so that judges' decisions have a predictable nature and eliminate disparities in judges' decisions. On the other hand, the principle of freedom of judicial power is a condition sine qua non for law enforcement and justice through judges' law finding as the implementation of judicial power. The position of case law is a manifestation of legal certainty for judges' decisions and a denial of judges' freedom when deciding cases. This study aims to provide an in-depth analysis of the position of case law as a source of law for judges to use in law finding. The statute approach method by examining laws and regulations and judges' decisions related to the focus of this study, then complemented by a conceptual approach by moving on to legal principles that can be found in laws and regulations, judges' decisions, and legal doctrines, it is understood that judges' law finding are essentially aimed at upholding justice so that judges are not fixated on the provisions of laws and regulations or case law. Justice is the starting point for judges' law finding; then judges construct legal norms that are stated into their decisions.*

**Keywords:** Case Law; Judge's Decision; Judge; Justice.

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### Introduction

The Indonesian legal system places provisions of legislation as the primary source of law in practical legal development activities that include the formation of law and the law finding. The legislation will not be able to regulate all legal relations in society because of the form of written legislation, so when it has been enacted in the state gazette or an additional state gazette, it is conservative towards the dynamics that occur in society. The dynamics of society are reflected in the regulations in community life, and there is even a shift in the legal values that exist in society.

Case law is a complementary source of law to the inability of legislation to provide guidelines for behavior in society. Case law is a judge's decision due to law finding activities when facing existing cases. A judge's decision qualified as case law is a judge's decision with permanent legal force; the decision is decided on a case that does not yet have a legal rule that regulates it, or there is a legal rule that regulates it. However, the

regulation needs to be clarified, and the next judge must repeatedly follow the decision in deciding the same case as a landmark decision for the next judge.<sup>1</sup>

Law finding conducted by judges when facing a case has been regulated in the provisions of Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (from now on referred to as the Judicial Power Law), which states that the court is prohibited from refusing to examine, try, and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it. This provision is the basis for the judge's great authority to uphold law and justice through law finding activities when facing existing cases.

Law finding, in principle, means finding the right legal solution for an existing case. This general understanding can be interpreted as anyone with the ability in jurisprudence to carry out law finding. This study focuses on law finding conducted by judges, considering that the result of the judge's law finding is the judge's decision, some of which can be qualified as case law. The Indonesian legal system places case law as a complementary source of law for practical legal development activities (legal dogmatics), meaning that judges can refer to case law when making law finding regarding existing cases.

The principle of judicial independence is a principle that underlies the law finding carried out by judges, where judges, when exercising judicial power, are impartial, and other parties do not intervene with judges when deciding a case. This interpretation, if followed, has the potential for one judge's decision to be different from another judge's decision on the same case (disparity in judges' decisions). This certainly has an impact on those seeking justice (*justifiable*) because the judge's decision is unpredictable.

The Indonesian legal system does not adhere to the precedent principle, so judges are not obligated to follow previous judges' decisions in the same case. The meaning of precedent is as follows:<sup>2</sup>

The common law doctrine of precedent: the basic idea is that similar cases should be decided alike. This is, first of all, an empirical truth, for in every jurisdiction, a judge tends to decide a case like another judge did in a similar case. For clarity,

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<sup>1</sup> Ahmad Kamil and M Fauzan, *Kaidah-Kaidah Hukum Yurisprudensi* (Prenadamedia Group 2004).[12].

<sup>2</sup> Stefano Civitarese, 'A European Convergence Towards a Stare Decisis Model?' (2015) 14 *Revista Digital De Derecho Administrativo* <<https://ssrn.com/abstract=2720484>>.[175-176].

in a legal system where case law is meant to produce a coercive effect, judges are not just obliged to consider a previous decision of another judge on a similar case. However, they have decided on a similar case: the precedent is said to be “binding” and not simply persuasive.

Statutory provisions are the primary source of law in the Indonesian legal system. However, in the framework of preventing legal gaps between judges’ decisions for similar cases, there is a tendency for judges to emulate previous judges’ decisions. It is always understood that if the previous judge’s decision no longer reflects justice in line with the dynamics in society, the next judge can decide differently by stating the legal reasoning that underlies it, which is contained in the judge’s legal considerations (*ratio decidendi*).

The provisions of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution) state that judicial power is an independent power to administer justice in order to uphold law and justice. This provision is then concretized in the provisions of Article 1 number 1 of the Law on Judicial Power, which states that judicial power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the Republic of Indonesia’s Legal State.

The two provisions above mean that judges are not only institutionally independent but also personally independent, namely, judges are free and independent and cannot be influenced by other powers in trying a case, including by fellow judges who did not decide the case or judges who have handled similar cases before. This understanding is what causes debate in the position of case law because case law is considered a denial of the independence of a judge from the intervention of other judges,<sup>3</sup> case law is conceptually a judge’s decision that subsequent judges have repeatedly followed in deciding the same case as a landmark decision for subsequent judges.

This study is conducted in-depth so that it touches on the philosophical realm through an analysis of the position of case law in the law finding made by judges. This

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<sup>3</sup> Moh Fauzan Januri, *Analisis Yurisprudensi* (Pustaka Setia 2018).[92].

is logical considering that the law finding by judges is part of legal dogmatics, which concerns developing practical law in the form of solving concrete legal problems in community life (legal problem solving). Jurisprudence narrowly refers to legal dogmatics, but broadly, jurisprudence also includes legal theory and legal philosophy. The position of legal theory and legal philosophy underlies legal dogmatics or is commonly referred to as meta-theory. However, it does not directly regulate community life; legal theory and legal philosophy also provide regulations for community life by underpinning legal dogmatics. Judges carry out law finding activities that are always based on legal theory and guided by the reasoning of legal philosophy, which is manifested in the judge's legal considerations when deciding cases.

### **The Principle of Freedom of Judicial Power Underlies Judges' Law Finding**

The provisions of Article 1 paragraph (3) of the 1945 Constitution state that Indonesia is a state based on law, meaning that all aspects of national, state, and social life are always based on law. The characteristics of a state based on law are as follows:

- 1) Recognition and protection of human rights; 2) Free, independent, and impartial justice; 3) Division of power in the state power management system; 4) The application of the principle of legal legality in all its forms, namely that all state actions must be based on laws that have been made democratically and the laws made are "supreme" or above all else, and everyone is equal before the law.<sup>4</sup>

The topic of this study is the characteristics of a state of law in the form of a free, independent, and impartial judiciary. This is the essence of the principle of freedom of judicial power in the trial process by judges. This freedom of judges is limited by law so that there is no arbitrariness by judges in deciding cases.

The phrase "freedom" is not necessarily interpreted as absolute freedom but is always interpreted as something inseparable from the law. Judges exercise judicial power with the freedom to interpret the law and find legal principles as the basis for every judge's decision, which is done by the sense of justice of the Indonesian people. The judge's freedom is given limitations so that the judge in deciding the case remains

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<sup>4</sup> Abdul Hamid, *Teori Negara Hukum Modern* (Pustaka Setia 2016).[25].

based on the applicable law, and the justice given by the judge in his decision must be built according to the law, not just the will of the judge concerned.<sup>5</sup>

The concept of judicial power freedom includes four forms, as follows: 1) Constitutional freedom is associated with the doctrine of *Trias Politica* according to Montesquieu regarding the separation and division of state powers, the institutional position of judicial power has freedom from the political influence of executive power and legislative power; 2) Functional freedom is related to the duties of a judge when facing a case, namely regarding the law finding by a judge that results in a judge's decision. This judge's freedom includes legal interpretation by interpreting legal rules to clarify the provisions of the legal rules, as well as legal construction when a judge encounters a legal vacuum or absence of legal rules by seeking legal principles that underlie existing legal norms, then from these legal principles new legal norms are constructed which are stated into the judge's decision; 3) Personal freedom of judges is related to the freedom of judges individually in facing cases; 4) Practical freedom, namely judges have the freedom to be impartial. Judges should accommodate societal dynamics to become material for consideration and testing provisions in existing legal rules.<sup>6</sup>

Judicial freedom is concretely interpreted as the freedom of judges to carry out law finding activities to decide on the cases they face. Law finding aims to find the right legal solution to existing cases within the framework of upholding justice, either using the law finding method in the form of legal interpretation or the legal construction method. The legal interpretation method is applied when judges clarify the provisions of laws and regulations through interpretation so that they can be applied to the cases faced (based on rules). The legal construction method is when judges start from legal facts and then determine the underlying legal principles (based on principles). Then, the judge

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<sup>5</sup> Elisabeth Nurhaini Butarbutar, 'Kebebasan Hakim Perdata Dalam Penemuan Hukum Dan Antinomi Dalam Penerapannya' (2011) 23 *Mimbar Hukum*. [62-63].

<sup>6</sup> Ahmad Kamil, *Filsafat Kebebasan Hakim* (Prenadamedia Group 2016) [215-217]; dalam Christiani Widowati, 'Asas Contra Legem Dalam Penemuan Hukum Oleh Hakim Untuk Menegakkan Keadilan Di Indonesia (Analisis Filosofis Putusan Perdata Bidang Hukum Keluarga)', *Disertasi* (Universitas Gadjah Mada 2023). [57-58].

constructs legal norms that are stated into his decision.<sup>7</sup>

Legal interpretation expresses the meaning of law as a text precisely to uphold justice. The legal interpretation that underlies a fair decision is basically one that is able to consider all legal facts, the provisions of statutory regulations as legal rules in written form and customary law as legal rules in unwritten form, as well as legal principles as the legal ratio of legal provisions, so that the parties involved in the case obtain their rights.<sup>8</sup>

The placement of the principle of judicial freedom as the principle underlying the law finding by judges is based on the understanding that the equitably law finding is reflected in a judicial institution that has freedom as a judicial institution so that the judicial institution can maintain the provisions of laws and regulations while anticipating the demands of the dynamics of community life that have the potential to produce new laws that are responsive to social dynamics. Law finding by judges is, in principle, intended to complement positive law, which is unable to provide guidelines for behavior in all aspects of community life; if associated with the meaning of judicial freedom, then judges must remain subject to the law to guarantee the freedom of every individual who is threatened by the freedom of judges.<sup>9</sup>

### Case Law as a Source of Law for Judges' Law Finding

The activity of law finding then culminates in a judge's decision. The judge's decision is a product of the judicial process, which contains the judge's legal considerations as a representation of the court's authority.<sup>10</sup> The provisions of Article 53 paragraph (1) of the Judicial Power Law state that judges are responsible for the decisions and rulings they

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<sup>7</sup> Christiani Widowati, 'Yurisprudensi Mempositifkan Hukum Kebiasaan Untuk Menegakkan Keadilan' in Oemar Moechthar (ed), *Hukum Sebagai Pancaran Moral Dalam Rangka Memperingati 70 Tahun Guru, Sahabat, Dan Bapak Kami Prof. Dr. Peter Mahmud Marzuki, S.H., M.S., LL.M.* (Prenadamedia Group 2019).[259].

<sup>8</sup> Urbanus Ura Weruin, Dwi Andayani B and St Atalim, 'Hermeneutika Hukum: Prinsip Dan Kaidah Interpretasi Hukum' (2016) 13 *Jurnal Konstitusi* 95 <<https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1315>>.[104-105].

<sup>9</sup> Zainal Arifin Hoesein, *Kekuasaan Kehakiman Di Indonesia Sejarah, Kedudukan, Fungsi, Dan Pelaksanaan Kekuasaan Kehakiman Dalam Perspektif Konstitusi* (Setara Press 2016).[57].

<sup>10</sup> M Natsir Asnawi, *Hermeneutika Putusan Hakim: Pendekatan Multidisipliner Dalam Memahami Putusan Peradilan Perdata* (UII Press 2014).[4].

make in examining and deciding cases. Then, paragraph (2) states that the decisions and rulings, as referred to in paragraph (1), must contain the judge's legal considerations based on appropriate and correct legal reasons and bases. Judges' decisions, which are qualified as case law, are a complementary source of law that judges refer to when making law finding.

Case law refers to principles of law established by courts. It is primarily based on legal precedents in earlier court decisions with similar factual situations. Following precedent affords a greater likelihood that citizens will be treated equally, and it has the added advantage of allowing a degree of predictability in future disputes.<sup>11</sup> The functions of case law are: 1) Creating legal standards; 2) Creating a unified legal basis and a unified legal perception; 3) Creating legal certainty; 4) Preventing disparities in court decisions.<sup>12</sup>

Judges tend to follow case law because a judicial practice in Indonesia applies persuasive precedent, namely the recommendation for judges to emulate the decisions of previous judges for similar cases. This is an effort to maintain consistency between the decisions of one judge and the decisions of another, which leads to legal certainty in the form of predictability of the judge's decision. This legal certainty is interpreted as a means to uphold justice.

This sub-chapter will examine the case law of the Supreme Court of the Republic of Indonesia, Number 179/K/SIP/1961, as part of the analysis in this study. This case law has given equal status to men and women as heirs in a society that adheres to patrilineal customary inheritance law. The provisions of patrilineal customary inheritance law place men as the only heirs. This case law has become a landmark decision for subsequent judges' decisions. The *ratio decidendi* or legal reasoning used by the judge in this case law has been used in subsequent decisions in similar cases. The legal considerations by the judge that underlie his decision are referred to as the *ratio decidendi*, namely the reason for the decision. The ratio of a case can be discovered by considering the material facts and the decision based on those facts.<sup>13</sup>

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<sup>11</sup> Michael W La Morte, *School Law: Cases and Concepts* (Seventh Ed, A Pearson Education Company 2002).[10].

<sup>12</sup> Edward Simarmata, 'Kedudukan Dan Relevansi Yurisprudensi Untuk Mengurangi Disparitas Putusan Pengadilan' (2010) *Laporan Penelitian*, Puslitbang Hukum Dan Peradilan Mahkamah Agung RI, Jakarta.[118].

<sup>13</sup> Ian McLeod, *Legal Method* (The Macmillan Press Ltd 1993).[116-117].

Judges construct gender equality norms in patrilineal customary inheritance by basing themselves on the principle of justice, which is concretized by interpreting justice related to inheritance rights in the form of equal status between men and women in every condition, including in a society whose social construction is based on a patrilineal kinship system. Social discrimination in the provisions of patrilineal customary inheritance is considered an injustice for judges, so judges make law finding that lead to this case law.

The Supreme Court of the Republic of Indonesia Number 179/K/SIP/1961 as case law became a reference for subsequent judges when deciding on patrilineal customary inheritance cases. The judges' decisions that followed this case law were:<sup>14</sup>

No.	judges' decisions	Date	Legal Norms
1.	Decision of the Supreme Court of the Republic of Indonesia Number 415K/SIP/1970	June 16, 1971	Customary law in the Tapanuli region has now developed towards granting equal rights to female and male children
2.	Decision of the Supreme Court of the Republic of Indonesia Number 4766K/Pdt/1998	November 16, 1999	Women in Bali have the right to inheritance from the testator even though the inheritance system in Bali itself adheres to the male majority inheritance system
3.	Decision of the Supreme Court of the Republic of Indonesia Number 1048K/Pdt/2012	September 26, 2012	Women's inheritance rights are equal to men. This means that customary law not by legal developments in society, such as customary law that does not recognize women's rights as equal to men, can no longer be maintained
4.	Decision of the Supreme Court of the Republic of Indonesia Number 147K/Pdt/2017	April 18, 2017	In the context of gender equality, the rights of women and men are the same in law, then it is fair and proper that the deceased's property must be divided equally by the heirs without distinguishing between men and women, especially the unwritten Chinese customary law and must adapt to the times. It is unfair to position the eldest son as the sole recipient of his parents' inheritance of fixed property while the daughter only gets jewelry

<sup>14</sup> Pokja Yurisprudensi Biro Hukum Dan Humas Badan Urusan Administrasi Mahkamah Agung Republik Indonesia, *Yurisprudensi Mahkamah Agung* (2018).[10-11].



The Indonesian legal system places statutory provisions as the main source of law and judges' decisions as a complementary source of law for law finding made by judges, so that the Indonesian legal system does not adopt the principle of precedent in the form of a legal obligation for judges to follow previous judges' decisions for similar cases, but in practice, judges follow previous judges' decisions. This results in legal certainty and legal protection for each individual. Legal certainty is interpreted narrowly as the consistency of statutory provisions and includes the consistency of judges' decisions for similar cases. Conceptually, law is a set of statutory regulations and judges' decisions.

Law is essentially a guide to behavior in social life consisting of legal norms.<sup>15</sup> These legal norms are contained in legal rules, written in the form of provisions of laws and regulations and unwritten legal rules in customary law. Judges also interpret legal norms when making law finding to decide cases. The judge's interpretation results in a judge's decision that can give rise to new legal norms. Some legal norms in the judge's decision are placed in legal rules; this continues to happen so that the law is always in motion.<sup>16</sup> Law conceptually includes legal rules and judges' decisions, so the meaning of legal certainty includes the consistency of legal rules and judges' decisions.

### **Philosophical Analysis of Case Law as a Source of Law for Judges' Law Finding**

The provisions of Article 1 number 1 of the Judicial Power Law which states that judicial power is the power of an independent state to organize trials to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the Law of the Republic of Indonesia. This provision expressly states that the judicial power carried out by judges in the form of law finding when deciding cases is aimed at upholding justice.

Justice is philosophical and abstract, so there is an opportunity to make it concrete so that it is applicable in practical terms as a guideline for behavior for every individual in community life. Judges are always guided by the reasoning of legal philosophy when deciding cases aimed at upholding justice. One judge's concretization of justice may

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<sup>15</sup> Philipus Mandiri Hadjon, 'Pengkajian Ilmu Hukum Dogmatik (Normatif)' (1994) 6 *Yuridika*. [9].

<sup>16</sup> JH Bruggink, *Refleksi Tentang Hukum, Terjemahan Bernard Arief Sidharta* (Citra Aditya Bakti 1999). [141].

differ from that of another judge.

The general principle of the idea of justice is that individuals are entitled to respect each other to a particular relative position of equality or inequality. This is something to be respected in the vicissitudes of social life when burdens or benefits fall to be distributed; it is also something to be restored when disturbed. Hence, justice is traditionally thought of as maintaining or restoring a balance or proportion, and its leading precept is often formulated as “treat like cases alike”. However, we must add “treat different cases differently”.<sup>17</sup>

Therefore, understanding justice is not aimed at equalizing but at proportional treatment. The same things are treated the same, while different things are treated differently.

Judges’ decisions qualify as case law and are complementary references for judges when making law finding to decide cases while still placing the provisions of laws and regulations as the primary source of law. This understanding should always be accompanied by continuing to refer to the purpose of law finding by judges, namely, to uphold justice. Judges make law finding by considering the text and context of the provisions of laws and regulations and the cases they face so that judges can explore the most profound meaning of the normative text in laws and regulations by linking it to the context of the existing case.<sup>18</sup>

The purpose of law finding carried out by judges is to uphold justice; if the judge considers the existing case law not to provide justice when applied to the existing case, then the judge can set aside the case law. The judge constructs legal norms based on justice, which will be stated in the judge’s decision. Judges’ law finding, whether legal interpretation or construction methods, is carried out according to the principle of freedom of judicial power. This means that the judge can set aside the intervention of other parties in the form of case law. Law finding activities carried out by judges are also based on the principle of freedom of judicial power.

The principle is the basis for legal norms, so it is called *ratio legis*; it is also the basis for a judge’s decision, called *ratio decidendi*. The judge who decides the case can mention the setting aside of case law based on the judge’s assessment stating that the case law is unfair when applied to the case he is facing; the stated out of the judge’s assessment

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<sup>17</sup> Anthony D’amato, *Analytic Jurisprudence Anthology* (Anderson Publishing Co 1996).[251-252].

<sup>18</sup> Widowati (n 6).[130].

of the case law is in the *ratio decidendi*. The setting aside of the existing case law is a manifestation of the principle of freedom of judicial power.

The judicial practice in Indonesia, which states that judges are bound to refer to case law, is aimed at legal certainty in the form of predictability of judges' decisions. Thus, it can be deviated for the sake of upholding justice. The relationship between justice and legal certainty is an antinomy. The definition of antinomy is a condition that contradicts each other but cannot be separated because both need each other.<sup>19</sup> Justice is given primary attention in compiling the substance of the law, be it legal rules or judges' decisions, and legal certainty is manifested in the consistency of legal rules and judges' decisions in regulating community life.

The close relationship between law and justice begins with a general understanding of law as rules of behavior that have validity in certain areas of a country, which is called positive law (*ius positum*) as a determination by the authorities in a country in the form of statutory regulations. This understanding is different from society's understanding of law as a demand that social life be regulated fairly through taking actions that are in accordance with norms that go beyond legal norms in statutory regulations, namely justice as a fundamental normative value. Society is orderly if all the interests of members of society are well regulated, in the sense that both public interests and individual interests are regulated in a balanced manner by the state.<sup>20</sup> Justice is placed as a *ratio legis*, the law is interpreted as the provisions of legislation and also the judge's decision. The existence of statutory regulations and judges' decisions is to concretize justice.

Judges are naturally human beings who have feelings about justice and always want justice in every aspect of social life, always carrying out law finding activities when deciding cases to uphold justice. The objectives of law in the form of legal certainty and expediency are not necessarily eliminated, but both are means used to achieve justice. Judicial practice shows that it is difficult for judges to decide cases that cover the three legal objectives, namely justice, legal certainty and expediency simultaneously.

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<sup>19</sup> Fence M Wantu, 'Antinomi Dalam Penegakan Hukum Oleh Hakim' (2007) 19 Mimbar Hukum.[389].

<sup>20</sup> Theo Huijbers, *Filsafat Hukum: Dalam Lintasan Sejarah* (Kanisius 1982).[273 and 287].

If a decision is closer to legal certainty, the judge's decision moves away from justice. The conflict that occurs between justice, legal certainty and expediency when deciding this case is the background for judges to use legal considerations guided by legal philosophical reasoning to determine which one to put forward.<sup>21</sup>

Case law, a source of law for law finding made by judges, is used as a reference to determine if it is fair when applied to the case the judge faces. However, if the substance of the case law is not fair based on the judge's assessment when applied to the case at hand, then the judge can deviate from the case law. This deviation is based on justice, not the judge's arbitrariness in exercising his judicial power. Justice as a principle is concretized as the protection of the interests of every individual in community life. The application of case law as a reference for judges in making law finding must protect the interests of every member of society, *contrary to* the application of case law as a source of law for law finding made by judges, which threatens and damages their interests. The judge can deviate from the case law.

The judge's disregard for case law means there is a disparity in the judge's decision for similar cases; this is essentially true if it is aimed at upholding justice because, philosophically, the law finding made by the judge is aimed at upholding justice. The judge's attitude is then followed by the construction of legal norms, which are stated into his decision. Thus, the judge carries out the formation of law (judge-made law). The nobility of the judge's profession is apparent in this case, namely upholding justice. Justice is not only interpreted as conformity with statutory regulations as a product of state law (legal justice), but more in conformity with nature (natural justice) by treating humans in a social context as nature has arranged them by providing protection for the interests of every member of society as a whole balanced.<sup>22</sup>

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<sup>21</sup> Lintong O Siahhaan, 'Peran Hakim Agung Dalam Penemuan Hukum Dan Penciptaan Hukum Pada Era Reformasi Dan Tranformasi' (2006) XXI Varia Peradilan Majalah Hukum. [65-66]; dalam Rogaiyah, 'Putusan Contra Legem Sebagai Implementasi Penemuan Hukum Oleh Hakim Di Peradilan Agama (Studi Kasus Putusan Kasasi Nomor 16K/AG/2010 Dan Putusan Kasasi Nomor 110K/AG/2007)' (2018) 3 Qiyas: Jurnal Hukum Islam Dan Peradilan <<https://ejournal.uinfasbengkulu.ac.id/index.php/QIYAS/article/view/1316>>.[200].

<sup>22</sup> Widowati (n 6).[171].

## Conclusion

The law finding by judges is aimed at upholding justice. Case law, as a complementary source of law for judges in making law finding, is referred to by judges when it is fair if applied to existing cases. The application of case law is a legal certainty. However, if it is contrary to justice, justice is prioritized by concretizing it through the construction of legal norms stated into the judge's decision. Legal philosophical reasoning has guided judges in concretizing justice. This is an embodiment of the principle of freedom of judicial power possessed by judges in making law finding.

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