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Legal Hermeneutics as a Method Of Rechtsvinding In Judicial Practice

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ABSTRACT: Legal certainty and justice constitute fundamental objectives of law enforcement. However, statutory provisions are often incomplete and unable to fully anticipate concrete legal events. In such circumstances, judges are required to engage in legal discovery (*rechtsvinding*). This study examines legal hermeneutics as a philosophical and methodological foundation for legal interpretation in judicial practice. Using normative legal research with a conceptual approach, this article argues that legal hermeneutics enables judges to bridge the gap between legal texts and social realities through a dialogical process between text, context, and contextualization. The hermeneutic circle, fusion of horizons, and pre-understanding play central roles in shaping judicial reasoning. The case of *Marbury v. Madison* (1803) demonstrates how hermeneutic reasoning contributes to creative legal development. Legal hermeneutics thus provides an alternative paradigm beyond strict legal positivism, enabling a balanced realization of legal certainty, utility, and justice.

KEYWORDS : Legal Hermeneutics, Rechtsvinding, Judicial Interpretation, Hermeneutic Circle, Legal Philosophy

INTRODUCTION

Human beings fundamentally require legal certainty and justice in order to actualize their dignity and social existence. Law functions as an instrument to establish order and fairness within society. The classical triad of legal objectives legal certainty (*rechtssicherheit*), utility (*zweckmäßigkeit*), and justice (*gerechtigkeit*) must be balanced in judicial practice (Sidharta, 1999).

However, statutory regulations are inherently limited. Legislation cannot anticipate every concrete legal event. Judges are therefore prohibited from refusing to adjudicate cases on the grounds of legal ambiguity or incompleteness. Instead, they must engage in legal discovery (*rechtsvinding*) through interpretation and legal reasoning.

In this context, legal hermeneutics becomes relevant as a philosophical foundation for understanding and interpreting legal texts. Hermeneutics provides a methodological framework that moves beyond rigid positivism and acknowledges the dynamic interaction between legal norms and social realities (Hamidi, 2005).

RESEARCH METHOD

This study employs normative legal research with a conceptual and philosophical approach. Primary materials consist of legal doctrine and hermeneutic theory, while secondary materials include scholarly works on legal philosophy and judicial reasoning. The analysis is conducted qualitatively through interpretative and analytical methods.

DISCUSSION

Philosophical Foundations of Legal Hermeneutics

Hermeneutics originates from the Greek term *hermeneuein*, meaning to interpret. In philosophical development, hermeneutics evolved from textual interpretation into a comprehensive theory of understanding. Gadamer (1965) emphasizes that interpretation is influenced by tradition, prejudice (*Vorurteil*), and historical consciousness (*Wirkungsgeschichte*).

Understanding occurs through what Gadamer terms the “fusion of horizons,” namely the encounter between the interpreter’s horizon and the horizon of the text. Interpretation is therefore not mechanical but dialogical. According to Sidharta (2007), legal interpretation cannot begin from a neutral position (*tabula rasa*). Every interpreter is historically situated within a legal and cultural tradition that shapes pre-understanding. This insight provides ontological and epistemological grounding for legal science. Hamidi (2005) defines legal hermeneutics as a holistic interpretative method that connects text, context, and contextualization. Similarly, Faiz (2002) emphasizes that interpretation must consider the horizon of the text, the author, and the reader.

Hermeneutic Circle and Legal Discovery

Legal interpretation operates within the hermeneutic circle (*hermeneutische zirkel*), a dynamic movement between parts and the whole (Gadamer, 1965). A legal norm can only be understood within the broader legal system, and the legal system is understood through its constituent norms.

Sidharta (1999) argues that legal hermeneutics provides philosophical foundations for legal reasoning because judicial decision-making involves interpreting both legal texts and social facts. The subjectivity inherent in interpretation can be minimized through rational argumentation tested in legal forums. Thus, hermeneutics does not undermine legal certainty but enriches it by integrating justice and utility into interpretative reasoning.

Legal Hermeneutics in Judicial Practice: *Marbury v. Madison*

The landmark case *Marbury v. Madison* (1803) illustrates hermeneutic reasoning in judicial practice. Chief Justice John Marshall declared Section 13 of the

Judiciary Act of 1789 unconstitutional, thereby establishing the doctrine of judicial review.

Marshall's reasoning went beyond literal interpretation. He considered constitutional supremacy, political context, and institutional stability. According to Kusuma (2002), this decision reflects creative legal discovery through hermeneutic reasoning, resulting in a new constitutional principle that remains authoritative. This case demonstrates that judges are not merely "the mouth of the law" but active interpreters capable of developing legal norms within constitutional boundaries.

CONCLUSION

Legal hermeneutics constitutes a philosophical and methodological framework for legal discovery. Interpretation is a dialogical process involving text, context, and contextualization within the hermeneutic circle.

Judicial reasoning grounded in hermeneutics enables a balanced realization of legal certainty, justice, and utility. Rather than undermining the authority of law, hermeneutics strengthens its responsiveness to social realities and constitutional values.

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