**OVERVIEW OF JUSTICE ANALYSIS**

**IN A LAND DISPUTE IN THE AMBON STATE COURT**

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**Abstract**

The main task of a court judge is to receive, examine and adjudicate and settle every case that is brought to him. Judges may not refuse to examine and adjudicate cases submitted on the pretext that the law does not exist or is unclear, but is obligated to examine and try them. The study of this decision is to test whether the decision of the panel of judges in the court of first instance reflects a substantively fair decision. This study uses a normative juridical research that is descriptive analytical through primary legal materials and secondary legal materials with literature study. The analysis used is qualitative analysis. The results of the panel of judges' considerations, if examined from Radbruch's opinion that the facts (facts) must be formulated in a clear way, so as to avoid mistakes in meaning and besides that they also need to be implemented, therefore the decision Number 242/Pdt.G/2020/PN .Amb against the lawsuit against the law between Hana Marthina Leuhery against Betty Leuhery/Huliselan in accordance with the legal certainty aspired by the litigants, especially the defendant, the panel of judges in this case draws conclusions to realize a legal certainty by observing and assessing both from the side based on the law as well as paying attention to the facts and reality.

Keywords: justice, judge's decision, fair decision

1. **INTRODUCTION**

Indonesia as a state of law as stated in the explanation of the 1945 Constitution, then all state activities must be based on law. The term rule of law is a translation of *rechtstaat* (Dutch), which according to Soetandyo Wignyosoebroto, the translation is only a literal translation and cannot be said to be a more conceptual and/or *syntagmatic* translation.[[2]](#footnote-2) It is further said that the term *rectstaat in Dutch* (or lawstate in English) can also be interpreted as "legal status". The meaning is the highest status in the hierarchy of norms of order in the life of the state and society, or what in English is said to be the supreme state of law. In other words, it is the law that must be referred to first, by overcoming or surpassing any other norms, for the realization of common life in state organizations. Furthermore, if it is said that the law will be the first reference, then the question arises, what is meant by law here or which law?.

Law is always related and/or related to human life, so when we talk about law, it cannot be separated from talking about human life.[[3]](#footnote-3)

In human life, humans always have interests, which have even existed since humans were born in the world. Human interests with each other in life together/society can be in harmony, different and can even be contradictory. So that the conflicting interests do not become a protracted conflict, guidelines or living regulations are needed. These guidelines or rules of life determine how humans should behave in society so as not to harm others or themselves. The guidelines for behavior in a shared life/community are called rules/norms or laws. Rules, norms or laws are expected to function to reduce or even eliminate these conflicts, so as to create order in society.

Conflicts between family members can be resolved through the courts and can also be resolved out of court, such as through Arbitration or *Alternative Dispute Resolution*. If conflict resolution is carried out in court, then the judge has the duty and authority to resolve it. Judges in carrying out their duties and authorities, namely to uphold law and justice, must be based on Pancasila and seek the legal basis and the principles on which it is based.[[4]](#footnote-4)

Radbruch's opinion as quoted by Satjipto Rahardjo states that the basic values ​​of the law that must be enforced are: legal certainty *(rechts-sicherheit)*, expediency *(zweckmassigkeit)* and justice *(gerechtigkeit).* These three basic values ​​have a *spannungsverhaltnis*, a tension with each other.[[5]](#footnote-5)

According to positivists, what is meant by law are norms of justice *(ius)* that have been formed *(constitutum, constitude)* into rules of life by a legislative body through various formal procedures, and which are then promulgated *(promulgated)* as law that applies with certainty. *(in-"yes"-right, positive)* in a certain territory of the country, which therefore will also bind all citizens without exception. This is also called statutory law *(lege, lex, ius constitutum)* so that the procedure is called formal law, which is then often also called state law, promulgated as a product of the legislature.

Hart's theory of positive law states that the essence of law lies in the use of the element of coercion.[[6]](#footnote-6) Then Lon L. Fuller emphasized the content of positive law, because it must meet eight formal requirements, namely:

1. General law requires regulations, meaning that this requirement touches the essence of the legal system. In order for a legal system to be enforced, efforts should be made to influence behavior and (possibly) settle disputes.
2. Rules should be announced so that they can fulfill their regulatory function. Both to guide behavior and to resolve disputes it is necessary that people know the rules in question.
3. Rules cannot be retroactive. If the rule of law is seen as a tool to guide (future) behavior, it is easy to understand that the law must not apply retroactively.
4. Rules must be clear, should not be interpreted in a double way. Rules must be maintained to help the solution so that it does not invite problems.
5. Rules should not be contradictory inwardly. Rulers must not command something and at the same time prohibit the same thing.
6. Rules should not demand the impossible.
7. Rules should have a certain state that does not change *(zekere consistentie).*
8. Rules should not only apply to justicials, but also apply to rulers.

The main task of a court judge is to receive, examine and adjudicate and settle every case that is brought to him. Judges may not refuse to examine and adjudicate cases submitted on the pretext that the law does not exist or is unclear, but is obligated to examine and try them.

This function or task does not only resolve conflicts/disputes, but the court also hears cases that do not arise from a dispute. Therefore, the legal products produced by the courts can be in the form of decisions *(vonnis)* and determinations *(beschikking).* A court product in the form of a decision is taken to resolve or end a dispute, while a court product in the form of a decision is taken on the basis of an application.

The function or task of the judge must be carried out by observing the principles that apply in the judicial system, namely the achievement of a simple, fast and low cost trial. The protracted or delayed judicial process resulting in reduced court authority *(justice delayed is justice denied)*.[[7]](#footnote-7)

This is also based on the idea that when the disputing parties take steps to resolve the dispute between them by asking for court assistance, this means that they are no longer able to resolve the dispute on their own or resolve the dispute directly (face to face). ).[[8]](#footnote-8)

A judge's decision is a statement by a judge as a State Official *(at the Supreme Court)* or as an Official of Judicial Power *(at the District Court and High Court)* who carries out the duties of judicial power, who are authorized to settle disputes/disputes. In other words, the judge's decision is a statement by the judge as a state official who is authorized to do so and aims to end or resolve a case/dispute. Therefore, the judge who makes the decision acts on behalf of the state which must protect every citizen in this beloved country through a just and authoritative decision. The decision also does not end in making a decision, but also completes it until its implementation.

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice and legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, well and carefully. If a judge's judgment is made in an imprecise, good and careful manner, the judge's decision that comes from the judge's consideration will be canceled by the High Court or the Supreme Court.

Law Number 48 of 2009 concerning judicial power in the provisions of article 5 paragraph (1) states that "judges and constitutional judges are obliged to explore, follow and understand the legal values ​​of the sense of justice that live in society" and also in paragraph (2) and (3) explains that “(2) judges and constitutional judges must have integrity and personality that is beyond reproach, honest, fair, professional and experienced in the field of law. (3) judges and constitutional judges are obliged to obey the code of ethics and the code of conduct of judges”.

Satjipto Rahardjo said law enforcement is an attempt to turn ideas about justice, certainty and social benefits into reality. The process of realizing these ideas is the essence of law enforcement. Justice is also defined as a constant and continuous improvement to give everyone's rights.[[9]](#footnote-9)

From the opinion above, it relates to the case of the District Court's decision Number 242/Pdt.G/2020/PN.Amb dated May 31, 2021 against the lawsuit against the law between Hana Marthina Leuhery (Defendant) and Betty Leuhery/Huleselan (Plaintiff), in excerpt of the verdict on page 10, namely:

“That the plaintiff's claim was denied by the defendant because according to the defendant it was true that in 1993 there had been a sale and purchase transaction of a plot of land with an area of ​​267 M2 (two hundred and sixty-seven square meters) amounting to Rp. 3,750,000 (three million seven hundred fifty thousand rupiah) which was committed between the father of the defendant and the husband of the plaintiff. That by giving a sum of money from the defendant's father to the plaintiff's husband, in 1994 the defendant's father built a permanent residence on the land (evidence attached) ".

If we look at the quote from the verdict, where the plaintiff, Betty Leuhery/Huleselan, should have been willing to give up a plot of land with an area of ​​267 M2 (two hundred and sixty-seven square meters) to the defendant, because of the sale and purchase carried out by the plaintiff's husband and the defendant's father since 1993.

Justice is a policy value for all that is measured by what should be done morally, not only measured by human actions and motives. If the value of the policy is not just a human motive, because the panel of judges decides on the dispute, it can be seen in the quote from the District Court's decision Number 242/Pdt.G/2020/PN.Amb, as quoted in the defendant's exception page 28, namely:

"That the plaintiff's petition, which is based on the argument of posita claim point 1 point 1, is not denied or explicitly denied by the defendant as stated in the argument for answer point 2, namely: that what the plaintiff argues in points 1 points 1, 2 and 3 is beyond the knowledge of the defendant's father , however in 1993 there was a transaction on a plot of land carried out by the husband of the plaintiff and the father of the defendant in which there was a sum of money given by the father of the defendant in the amount of Rp. 3,750,000 to the plaintiff's husband to buy a plot of land for their residence and the plaintiff's husband to give land to the defendant's father with an area of ​​267 M2”.

From the quote above, it is very unfair if the panel of judges does not consider the defendant's answer at all, because there is no legal basis for the plaintiff to file a lawsuit against the object of dispute against the defendant.

Each District Court Decision is determined by the Majlis Judges in assessing civil disputes, it must first outline objective legal considerations on matters that should be granted or rejected. This is different from the civil dispute between Hana Marthina Leuhery and Betty Leuhery/Huleselan at the Ambon District Court regarding land disputes, with the District Court Decision Number 242/Pdt.G/2020/PN.Amb dated 19 July 2021. The decision stated that in legal considerations by the Panel of Judges that the position of the Sale and Purchase Deed on a piece of land invalidates the legal force of the Certificate of Ownership issued by the National Land Agency. The legal considerations contained in the decision have ignored objective considerations, even more are subjective, focused on the plaintiff only. In the legal considerations, can the principle of ius curia novit still be maintained? Or is there an element of subjective judgment in it? sometimes the Panel of Judges always assumes that if the justice seeker is not satisfied with the decision issued, then there are other legal remedies that can be used, including an appeal, cassation and review.

The existence of these raises various issues in practice in the courts of first instance, namely how can judges mistakenly issue subjective civil law considerations? Can subjective judge decisions be defended against civil disputes Number 242/Pdt.G/2020/PN.Amb? How can justice be maintained, when objective judgment has been toyed with? Has the decision of the panel of judges in the court of first instance reflected a substantively fair decision in relation to Decision Number 242/Pdt.G/2020/PN.Amb?

Thus, this paper raises the following problems: does the decision of the panel of judges in the court of first instance reflect a substantively fair decision in relation to Decision Number 242/Pdt.G/2020/PN.Amb?

1. **METHOD**

This study uses a normative juridical research method, namely a doctrinal legal research method that examines, examines and analyzes various provisions of applicable laws and regulations relating to the problem under study. The nature of this research is analytical descriptive by examining legal materials, both primary legal materials and secondary legal materials through literature studies and other related literature. The analysis used in this study is a qualitative analysis to answer the problems studied.

1. **RESULTS AND DISCUSSION**

In Indonesia, the principle of freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Power, hereinafter referred to as the Law on Judicial Power, where it is formulated that judicial power is the power of an independent state to administer justice to uphold law and justice. The principle of freedom of judges includes the freedom for judges to formulate legal considerations, known as legal reasoning, which is carried out by a judge in deciding a case he is trying.

The freedom of judges contextually has 3 (three) essences in exercising judicial power, namely:[[10]](#footnote-10)

1. Judges are only subject to law and justice;
2. No one including the government can influence or direct the decision to be handed down by the judge;
3. There are no consequences for the judge's personality in carrying out their judicial duties and functions.

According to the Law on Judicial Power, judges' considerations are the thoughts or opinions of judges in making decisions by looking at things that can relieve or burden the perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision.

The judge is the personification of the judiciary, in making a decision on a case in addition to being required to have intellectual ability, a judge must also have high morals and integrity so that it is expected to reflect a sense of justice, guarantee legal certainty and can provide benefits to the community.

Judges must seek justice from a problem, so judges are obliged to properly hear all kinds of information or statements from parties obtained in civil court proceedings.[[11]](#footnote-11)

Formulating and compiling legal considerations or legal reasoning must be careful, systematic and in correct and good Indonesian. The legal considerations must be complete, containing facts of events, legal facts, formulation of legal facts, application of legal norms in positive law, customary law, jurisprudence and legal theories and others, based on aspects and methods of legal interpretation, even a judge can make discoveries. appropriate law in compiling arguments or reasons that form the legal basis for the judge's decision. For judges, legal reasoning is useful in making judgments in deciding a case. A judge before making his decision must pay attention to and try how much he can lest the decision to be handed down allows new cases to arise. Decisions must be final and not lead to new cases. The task of the judge does not stop with making a decision, but also completes it until its implementation. In civil cases, judges must assist justice seekers and try their best to overcome all obstacles and obstacles in order to achieve a simple, fast and low cost trial.[[12]](#footnote-12)

*Legal reasoning* of judges is closely related to the main task of a judge, which is to receive, examine and adjudicate and settle every case that is brought to him, then the judge examines the case and finally adjudicates which means giving the interested parties their legal rights. Such is the importance of legal reasoning of a judge in deciding a case in court, therefore it is very interesting to know about legal reasoning in making case decisions.[[13]](#footnote-13)

Legal considerations carried out by a judge are also one of the duties and obligations of judges, namely the obligation to explore, follow, and understand legal values ​​and a sense of justice that lives in society. This becomes material that is processed to make legal considerations. It is also implied that a judge in carrying out his duties can make legal discoveries or *rechtvinding*.[[14]](#footnote-14)

This civil dispute began when Betty Leuhery/Huliselan as the Plaintiff wanted land owned by Hana Marthina Leuhery as the Defendant which was located at Rumah Tiga, RT.002/RW.005, Teluk Ambon Baguala District, Ambon City, which already has a Certificate of Ownership Number 1739 based on Letter of Measurement dated May 5, 2011 Number 00038/house three/2011.

In this dispute, the Plaintiff argued that the Defendant occupied the land building which he still owned was part of the Sale and Purchase Deed Number 11.-/PPAT-TAB.-/1991, even though the land had been purchased by the Defendant's parents in 1993. Furthermore, in the answer-and-answer process through the arguments between the Plaintiff and the Defendant stated that the parents of the Defendant had purchased a plot of land with an area of ​​267 M2 (two hundred and sixty-seven square meters) from the Plaintiff's husband in 1993, so that the land area in the Deed of Sale Buy Number 11.-/PPAT-TAB.-/1991 to be divided.

Whereas the process of relinquishing the rights was carried out by the Plaintiff's child to the Defendant based on the 1997 payment receipt, with the approval of the Plaintiff himself. In this case, the Plaintiff automatically ordered his son to sign a receipt for the purchase of a land area of ​​267 M2 (two hundred and sixty seven square meters) to the Defendant.

Whereas on the basis of the receipt for the purchase of a land area of ​​267 M2 (two hundred and sixty seven square meters) from the Plaintiff's child, the Defendant may issue a Certificate of Ownership (hereinafter referred to as SHM) at the National Land Agency through Prona at that time. The process of making SHM made by the Defendant was witnessed directly by the Plaintiff and parties from the Ambon National Land Agency.

A review of legal considerations by the judge in the District Court decision Number 242/Pdt.G/2020/PN.Amb dated May 31, 2021 between Betty Leuhery/Huliselan (Plaintiff) against Hana Marthina leuhery (Defendant I) regarding the assessment of the position of the Sale and Purchase Deed with Certificate of Ownership , is very subjective. The judge's view in all legal considerations carried out is very subjective to the Plaintiff, so that justice for the Defendant has been neglected.

The legal consideration process by the judge is more subjective in nature, which is focused on a copy of the Plaintiff's lawsuit in its entirety, without being dominated by the Exception or the Defendant's Response in the District Court's decision Number 242/Pdt.G/2020/PN.Amb dated 31 May 2021.

As for several studies of legal considerations by judges that are subjective in the decision of the District Court Number 242/Pdt.G/2020/PN.Amb dated May 31, 2021, namely:

1. Considering, whereas regarding the petition for claim point (4) which requests that according to law the Plaintiffs, Suzanna Leuhery, Ferdy Leuhery, and Jimmy Leuhery are heirs of the late Daniel Leuhery, have the right to inherit and own the plot of land object in dispute based on the Sale and Purchase Deed Number 11. -/PPAT-TAB.-/1991;
2. Considering, whereas regarding the petition of the lawsuit, there is also no denial or rebuttal regarding the inheritance so that the inheritance of the late Daniel Leuhery to the Plaintiff and their children, then according to inheritance law, inheritance is open when the owner dies, thus the Plaintiff and their children has the right to inherit the property left by her husband, namely the late Daniel Leuhery, thus the petitum of the lawsuit deserves to be granted;
3. Considering, whereas regarding the petition for claim point 5 which requests to declare a plot of land + 450 M2 based on the Sale and Purchase Deed Number 11.-/PPAT-TAB.-/1991 with the remaining area of ​​+ 267 M2 whose boundaries are as follows: the north is bordered by SHM No. 1688; the south is bordered by the channel (got) / GS No. 110/1983; to the east it is bordered by Jalan Pari; the west is bordered by SHM 1688, is legal and valuable according to the law belonging to the plaintiffs, Suzanna Leuhery, Ferdy Leuhery, and Jimmy Leuhery;
4. Considering, whereas the petitum of the lawsuit is about the object of dispute with an area of ​​+ 267 M2 occupied by the Defendant;
5. Considering, whereas regarding the petitum of the lawsuit point 6 which asks to state according to law the control of the object of dispute by the Defendant without the permission and knowledge of the Plaintiff is an act without rights and violates the law;
6. Considering, whereas regarding the petitum of the claim point 7 which requests to declare according to the law the right to temporarily occupy the descendants of Dominggus Leuhery including the Defendant above the disputed object is revoked or withdrawn or returned to the Plaintiff as the legal owner of the disputed object;
7. Considering, whereas regarding the petition for claim point 8 which requests to state the statement letter Number: 827/KDR/KET/2008 dated August 25, 2008 made by Co-Defendant I is legally flawed and has no legal effect;
8. Considering, that regarding the petition for claim point 9 which requests to declare a certificate of ownership rights in the name of the Defendant, namely Hana Marthina Leuhery Number: 1739/Desa Rumah Tiga, 15 May 2011, Measurement Letter dated 5 May 2011 No. 00038/Rumah Tiga/2011, with an area of ​​267 M2 is legally flawed and has no binding legal force;
9. Considering, whereas regarding the petitum of the lawsuit point 10 which requests to state that the actions of the Defendant, Co-Defendant I and Co-Defendant II in the process of issuing certificates on the land object of dispute are unlawful acts;
10. Considering, whereas regarding the petitum of the claim point 11 which requests to declare the Defendant not entitled to the land parcel of the disputed object;
11. Considering, whereas regarding the petitum of the claim point 12 which requests to punish the Defendant and all those who receive rights thereof, they must immediately leave the object of dispute and hand over the object of dispute to the Plaintiff in a sustainable condition without any dependents, if necessary with the assistance of the security forces;
12. Considering, whereas regarding the petitum of the lawsuit in point 13 which asks to state that the security confiscation is valid and valuable, it is placed on the object of the dispute;
13. Considering, whereas regarding the petitum of the lawsuit point 14 which requests to punish the Defendant, Co-Defendant I and Co-Defendant II to submit to and comply with this decision;
14. Considering, that regarding the petitum of the lawsuit point 15 which requests to punish the Defendant, Co-Defendant I and Co-Defendant II to pay all costs incurred in this case.

According to the author, based on legal considerations by the judge in the District Court's decision Number 242/Pdt.G/2020/PN.Amb dated May 31, 2021, it is very concerned about the face of justice in Indonesia. Where is the justice that is upheld? Is the law just a series of dead words that are in a rule? Where is the legal consideration by the judge who is objective and listens to both parties, both the Plaintiff and the Defendant?

In the legal considerations by the judge in the District Court's decision Number 242/Pdt.G/2020/PN.Amb, it turned out that it was not in accordance with the legal considerations given because the judge only outlined a copy of the plaintiff's lawsuit in its entirety, without any legal judgment from the Defendant.

In this case, the judge only manipulated the legal considerations listed in the District Court's decision Number 242/Pdt.G/2020/PN.Amb, so that justice was ignored. The judge as a state official who is given the authority to give a decision on a dispute turns out to have deviated from the legislation, and there are no legal considerations.

In connection with the judge's decision that reflects benefit, it is necessary to analyze the judge's considerations in the District Court's decision Number 242/Pdt.G/2020/PN.Amb, against the lawsuit against the law between the plaintiff and the defendant. According to Radbruch, law is always useful for the people, as part of the ideals of law, justice and legal certainty require a complement, namely expediency. If examined from the side of benefit in the District Court's decision Number 242/Pdt.G/2020/PN.Amb, page 29, namely: "that land with an area of ​​267 M2 which was purchased from the plaintiff's husband and carried out a Certificate of Ownership Number 1739/Desa Rumah Tiga, 15 May 2011, the Measurement Letter dated May 5, 2011 belongs to the father of the defendant and his descendants”.

Furthermore, if the judge's decision contains elements of legal certainty to make a contribution to legal science, because the judge's decision in court will bind both parties to the dispute and have permanent legal force. According to Racbruch, he gave a fairly basic opinion regarding legal certainty, namely: (1) law is positive, namely legislation; (2) the law is based on facts or the established law is certain; (3) reality (facts) must be formulated in a clear way so as to avoid mistakes in meaning, as well as being easy to implement; and (4) positive law should not be easily changed.[[15]](#footnote-15)

If it is seen in the decision Number 242/Pdt.G/2020/PN.Amb, on page 33, namely: "considering, that regarding the petition for claim point 9 which requests to declare a certificate of ownership on behalf of the defendant, namely Hana Marthina Leuhery Number 1739/ Rumah Tiga Village, 15 May 2011, Measurement Letter dated 5 May 2011 with an area of ​​267 M2 is legally flawed and has no binding legal force”.

From the consideration of the panel of judges, if it is examined from Radbruch's opinion that the facts (facts) must be formulated in a clear way, so as to avoid mistakes in meaning and besides that they must also be implemented, therefore the decision Number 242/Pdt.G/2020/PN .Amb against the lawsuit against the law between Hana Marthina Leuhery against Betty Leuhery/Huliselan in accordance with the legal certainty aspired by the litigants, especially the defendant, the panel of judges in this case concludes to realize a legal certainty by observing and assessing both from the side based on the law as well as paying attention to the facts and reality.

In this case, the judge acts as an enforcer of justice, so legal considerations are very important in deciding a case. Thus, a basic conclusion can be drawn that "The judge's decision is the crown, culmination, and closing deed of the civil case process. Therefore, it is hoped that the judge's decision handed down should reflect the value of justice and truth based on the law so that it can be accepted, especially from both parties to the case and as far as possible avoid the emergence of new cases in the future and can be accounted for to justice seekers (yusticiabelen), the science of law itself , the conscience of judges and society in general, and for the sake of Justice Based on the One Godhead.[[16]](#footnote-16)

1. **CONCLUSION**

From the results of the discussion described previously, the authors can conclude that: The contents of the judge's decision in the District Court Decision Number 242/Pdt.G/2020/PN.Amb have provided three elements of legal objectives, namely aspects of justice, aspects of expediency and aspects of legal certainty. . In terms of justice, the judge erroneously considered the ownership of a plot of land with an area of ​​267 M2 with a certificate of ownership in the name of the defendant, namely Hana Marthina Leuhery Number 1739/Desa Rumah Tiga, 15 May 2011, Letter of Measurement dated 5 May 2011, so that justice was neglected. In the aspect of expediency, the judge erred in giving special consideration to the plaintiff without looking at the sale and purchase agreement made by the defendant's father and the plaintiff's husband in 1993. Meanwhile, in the aspect of legal certainty, the judge was very wrong in providing legal considerations related to ownership of a certificate of ownership on behalf of the defendant. The defendant is Hana Marthina Leuhery Number 1739/Desa Rumah Tiga, 15 May 2011, Letter of Measurement dated 5 May 2011 with a land area of ​​267 M2 issued by the Ambon City National Land Agency. Where the judge remains guided by the Deed of Sale and Purchase Number 11.-/PPAT-TAB.-/1991 belonging to Betty Leuhery/Huliselan as the Plaintiff. For this reason, the decision of the District Court Number 242/Pdt.G/2020/PN.Amb deserves to be rejected, because the judge erroneously applied the rules so that justice was ignored.

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