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Freedom of Opinion of Judges in Dissenting Opinion in a Criminal Verdict

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ABSTRACT

Dissenting opinion refers to the views expressed by one or more members of the panel of judges who disagree with the majority's decision. In Indonesia, although a dissenting opinion is the view of a minority of judges, it does not change the decision that has been agreed upon in the deliberations of the panel of judges, either for now or in the future. The main purpose of dissenting opinions in Indonesia is to accommodate the freedom of judges to express legal opinions that differ from the majority. Unlike the United States, where dissenting opinions can become the basis for jurisprudence and be referenced in similar cases, the legal impact of dissenting opinions in Indonesia is more limited. In the United States, dissenting opinions of judges can immediately become part of the development of the applicable law, in line with social changes and community needs. In contrast, changing the law through dissenting opinions in Indonesia requires a long process through the legislative institutions. Although there are differences in the application of the concept of dissenting opinion between the two countries, they both strive to maintain judicial transparency and accountability. In the United States, judges' dissenting opinions can shape the law without going through the legislative process, while in Indonesia, while not changing the verdict, dissenting opinions still reflect judges' independence and transparency in decision-making. This comparison shows differences in legal approaches, but both aim to ensure legal certainty and accountability to the public.

KEYWORDS

Dissenting
Opinion;
Judge;
Comparative
Law



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INTRODUCTION

Literally, “dissenting opinion” must be deciphered word for word. The word “Dissenting” in the English dictionary is a verb derived from the word ‘dissent’, which means to disagree, while the word “Opinion” can be interpreted as opinions, thoughts, and feelings.¹ And when interpreted together, a dissenting opinion means that there is a difference of opinion on a legal issue.² The state power that organizes the judiciary is called the judicial power. This power is exercised by the Supreme Court and the judicial bodies under it in the general, religious, military, and state administrative courts, and by a Constitutional Court. The exercise of judicial power is delegated to judicial bodies and is determined by law. Based on the highest constitution, namely the 1945 Constitution of the Republic of Indonesia in Chapter I Article 1 paragraph (3), it is explained that Indonesia is a State of Law, thus that the law functions as a means of regulating every behavior of its citizens to achieve state goals, one of which is through the judiciary and its law enforcers.

Walter Stager wrote a sentence that until now can still be used as a guide for judges to be able to determine or find decisions, even though this writing was made in 1925, but this is still very relevant to the development of law today:³

“Judgment, generally, is not the result of education alone, but is dependent, more or less, upon heredity and environment—on questions of law as well as on other matters, as politics, religion; and the greater the difference, in these respects, between judges, the greater the likelihood of diverse views, at least upon most important questions, and especially upon important new question”.

Dissenting Opinion or a different opinion made by one or more members of the panel of judges who disagree with the decision taken by the majority of the members of the panel of judges. Although a dissenting opinion is the opinion of one member of the panel of judges, it will not change the initial decision of the panel of judges. This difference of opinion is caused by the way of looking at the existing system in society, some view from *das sollen* or a necessity or idealists who cling to the view that the law must be a guideline and follow the guidelines, but some view the law from *das sein* or reality who understand that the law must be viewed based on reality with certain situations and conditions.⁴ However, the Dissenting Opinion will still be written in the decision so that the dissenting opinion of the panel of judges is an integral part of the decision.

Dissenting opinions have played an important role in reforming the law and correcting mistakes made by the majority opinion of judges. It also illustrates the freedom of opinion for judges, although there are limits that must be adhered to in implementing Dissenting Opinion; however, this opinion must still be respected in

¹ S Wojowasito & WJS Porwadarminta, *Kamus Lengkap Inggris Indonesia, dan Indonesia Inggris* (Bandung: Penerbit Hasta, 2001).

² Huon Snelgrove, Nick Gosling & Greg McAnulty, “The dissenting opinion: Can simulation-based multi-professional training reduce ‘groupthink?’” (2011) 87:1027 *Postgrad Med J* 323–324.

³ Virginia Law Register, “Dissenting Opinions . Their Purpose and Results Author (s): Walter Stager Source: The Virginia Law Register, Nov., 1925, New Series, Vol . 11, No . 7 (Nov., 1925), Published by: Virginia Law Review Stable URL: <https://www.jstor.org/stable/110>” (1925) 11:7 395–399.

⁴ Moh Md Mahfud, *Politik Hukum di Indonesia*, 1st ed (Jakarta: Pustaka LP3ES, 1998).



court decisions.⁵ In the Indonesian legal system, Dissenting Opinion has only been introduced so that it is still relatively new with Law Number 4 of 2004 concerning Judicial Power (hereinafter abbreviated as Judicial Law) because Law Number 14 of 1970 concerning Basic Provisions of Judicial Power as amended by Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning Basic Provisions of Judicial Power, does not regulate Dissenting Opinion. Currently, the Judicial Power Law has been replaced by Law Number 48 of 2009 in article 14 paragraph (3) “If the deliberation session cannot reach a unanimous consensus, the dissenting opinion of the judge must be contained in the decision.”

This is in line with Law Number 14 of 1985 concerning the Supreme Court, which previously did not regulate Dissenting Opinion, but in its successor law, Law Number 5 of 2004, in article 30 paragraph (3), provisions regarding Dissenting Opinion have been regulated. If the deliberation session cannot reach a unanimous consensus, the dissenting opinion of the Supreme Court judge must be contained in the decision. For the first time expressly written regulation of Dissenting Opinion is in Law Number 4 Year 2004 on Judicial Power, article 19 paragraphs (4) and (5), which stipulates that:

- (4) In the deliberation session, each judge shall be obliged to submit written considerations or opinions on the case being examined and shall become an integral part of the decision.
- (5) If a unanimous consensus cannot be reached in the deliberation session, the dissenting opinions of the judges shall be contained in the judgment.

The provision explains that this independent judicial power implies a judicial power that is free from interference from other State powers, and freedom from coercion, directives, or recommendations coming from extra-judicial parties.⁶ The existence of a Dissenting Opinion allows the public to know the background of the decision. The public can also assess the quality of judges from these dissenting opinions, especially to find out which judges listen more to the sense of justice that develops in society. Dissenting Opinion is an opinion/decision written by one or more judges who disagree with the opinion of the majority of the panel of judges.

As an example in the criminal sphere, the Criminal Procedure Code (KUHAP) is considered incapable of fulfilling the rights of suspects/defendants who are subject to abuse of power or arbitrary actions of government officials, and many biased or vague circumstances require judicial interpretation.⁷ The vagueness and ambiguity of legal concepts and norms in Indonesian Criminal Law mean that judges must carefully make decisions, even though they are authorized to consider and have freedom of opinion. However, the difference of opinion will be a mirror of the position that will be viewed by the judge.⁸

⁵ Yogesh Pratap Singh, Afroz Alam & Akash Chandra Jauhari, “Dissenting opinions of judges in the supreme court” (2016) 51:5 Econ Polit Wkly 13–16.

⁶ Tsuwaibah Abidah et al, “Comparison of the Civil Law System between the Netherlands and Indonesia in the Application of Criminal Law” (2025) 1:1 J Verum Legis Indones 38–44, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/41>>.

⁷ Nur Basuki Minarno, “Authorities of Preparation and Hospitality of Applications for Post-Conditions Post-Decision of Constitutional Court” (2019) 35:1 Yuridika 75.

⁸ Anthony D Amato, “Public Law and Legal Theory Research Paper” (1978) 468:10 Yale Law J.



Furthermore, from the criminal realm we can go to the realm of constitutional law, in its application to the Constitutional Court in the Republic of Indonesia, judges must be based on the principles of judicial independence and the principle of neutrality that does not favor anyone.⁹ It is argued that how judges decide a case is influenced by their conception of the law, not just what a statute might say, or previous cases that have been tried, but the meaning of the law in terms of the interpretation of the statute or the case at hand. Looking at the various cases regarding this Dissenting Opinion, the existence of this Dissenting Opinion is an act of rejection by the minority members of the decision taken (agreed) by the majority members of the Panel of Judges about a case. Because in deciding a case, the panel of judges can differ in opinion as follows:¹⁰

1. Concerning the basis of consideration up to the core/dictum of the decision.
2. The grounds for consideration, but not the core/dictum of the judgment.
3. There are similar considerations but different contents/dictum of the decision.

Dissenting Opinion can even be the object of interesting academic studies and educate the public. What needs to be understood is that a dissenting opinion from other judges does not mean that the decision issued is wrong. Dissenting opinions can also be wrong. The existence of differences in these decisions makes the public freer and more able to know the background of the decision. The public can also assess the quality of judges from these dissenting opinions. Especially to find out which judges listen more to the sense of justice that develops in the community. In addition, the existence of dissenting opinions has given the public now have new hope that court decisions will be of higher quality. This is because judges can no longer hide their thoughts in decisions. By analyzing the decision, the public will easily be able to find which judges have been contaminated and which are still pure with legal opinions that promote a sense of justice. Dissenting opinions will encourage other judges to have choices in determining decisions in the same case. This will encourage the birth of more permanent jurisprudence.

However, dissenting opinion itself originated and is more often used in countries that adhere to the Anglo-Saxon legal system, such as the United States and the United Kingdom. In this legal system, a dissenting opinion is used when there is a difference of opinion between a judge and another judge whose decision is the majority. The judge's opinion that differs from the decision will be attached to the decision and become a dissenting opinion.¹¹ In the United States the occurrence of debate and dissent by judges is when cases are examined, this is intended as part of the creation of a new law because in principle judges have the idea and principle that "judge made law" which is where judges in the United States have the burden to be able to answer and provide legal certainty to problems that exist in society. Many Anglo-Saxon countries use dissenting opinions to create new laws because the law always evolves with society. In the Anglo-Saxon legal system, similar cases where there is a difference of opinion among the judges can become a legal basis.

⁹ Radian Salman, Sukardi Sukardi & Mohammad Syaiful Aris, "Judicial Activism or Self-Restraint: Some Insight Into the Indonesian Constitutional Court" (2018) 33:1 Yuridika 145.

¹⁰ Marshal NG, "Dissenting Opinion Dalam Hukum Indonesia" (2018) 30:39 Varia Huk.

¹¹ Peter De Cruz, *Perbandingan Sistem Hukum Common Law, Civil Law dan Socialist Law* (Bandung: Nusa Media, 2010).



Although dissenting opinions are now commonly found in countries with a common law legal system where more than one judge hears cases, especially in higher courts, such countries include the United States. However, in essence, a dissenting opinion becomes a jurisprudence for similar cases where there is a difference of opinion among the judges, but it can be used as a legal basis. This is different when compared to the continental European legal system, where the dissenting opinion is only part of the reference because the Civil Law legal system only recognizes codified law.¹² The decision-making process in procedural law begins with deliberation on the case submitted. The deliberation is conducted by the judges in a deliberative meeting. The opinions or considerations of the judges must be submitted in writing, not just orally. The next stage is to seek agreement in deliberation. However, if an agreement is not reached despite earnest efforts, a decision will be made based on a majority vote. The Constitutional Court Law also states that the role of the chairman of the session is very important in a situation of equally divided decisions.¹³ In this context, the Chairman determines whether a judicial review case is rejected or granted, either partially or inadmissibly (*niet ontvankelijk verklaard*).

METHOD

The Comparative Law approach that the author uses is the Micro-Comparative Law approach method, namely comparisons relating to legal rules, cases, and institutions that are specific/actual, which then the author uses is the Legal Concept Approach, or an approach with Legal Concepts between the two countries. Comparative law should be able to resolve deliberate and divisive differences in law in society, at the current stage of cultural and economic development that occurs globally, almost all over the world. Comparative law is also expected to reduce the distance in law caused by the political, moral, or social qualities of a nation. Dissenting Opinion has been applied in various countries, both countries that use civil law legal systems and those that use common law. European countries such as the Netherlands and France even have the concept of Dissenting Opinion. Even a review of history reveals that although few and isolated, there are several examples of Dissenting Opinion recognition in civil law because Dissenting Opinion is not only increasingly developing in general courts, but also in constitutional courts.¹⁴

RESULT & DISCUSSION

I. Dissenting Opinion in Legal Perspective in Indonesia and the United States of America

In Indonesia, the concept of Dissenting Opinion used is stated in Article 14 paragraph (3) of Law Number 48 of 2009 concerning Judicial Power, which reads "If the deliberation session cannot reach a unanimous consensus, the dissenting

¹² *Ibid.*

¹³ Zandy Wulan Ayu WP & Haidar Adam, "Putusan Ultra Petita Mahkamah Konstitusi Dalam Perkara Pengujian Konstitusionalitas Undang-Undang" (2014) 29:2 Yuridika 168-190.

¹⁴ Sunny Ummul Firdaus, Putri Anjelina Nataly Panjaitan & Rizky Kurniyanto Widyasmito, "Peran Dissenting Opinion Hakim Konstitusi dalam Pembaharuan Hukum Nasional" (2020) 20:1 J Penelit Huk Jure 1.



opinion of the judge must be contained in the decision". However, a decision can be called fair if each judge can exercise his or her right to express his or her views freely, openly, and honestly using legal considerations, until a collective decision is made. Several factors influence judges in making decisions, namely:¹⁵

1. Raw input, i.e., factors related to ethnicity, religion, informal education, etc.
2. Instrumental input, factors related to work and formal education.
3. Environmental input, environmental, socio-cultural factors that influence the life of a judge, such as the organizational environment, and so on.

For example, in the Netherlands, as one of Indonesia's legal meccas, Dissenting Opinion has also been recognized in its legal system. In the Dutch courts, dissenting judges can give a Dissenting Opinion in a decision made by a consensus of the panel of judges. However, there are several different opinions from legal scholars in the Netherlands, so the application of the Dissenting Opinion has encountered various obstacles in practice. Dissenting opinions in the Netherlands are rare. This is because the decisions made by the panel of judges have usually reached consensus in determining the law and facts in the case. In addition, judges in the Netherlands tend to find compromises and solutions that are acceptable to all parties involved in the case, thus reducing the likelihood of a dissenting opinion. However, when a dissenting opinion is given, it can be a useful tool in providing a different perspective in complex or controversial cases. In addition, dissenting opinions can strengthen human rights and protect against unfair or prejudicial decision-making. From the perspective of comparative law, it is stated that a dissenting opinion is the terminology and substance of the Anglo-Saxon legal system, such as the United States and the United Kingdom, and is part of the legal opinion itself. To be comparative, the essence of legal opinion can consist of the following:¹⁶

1. Judicial opinion is in criminal and civil cases on the opinion of the judge, in providing consideration in the decision of a case.
2. Majority opinion is where the majority of judges in a court agree with the opinion or view of one judge.
3. Dissenting opinion is a judge's opinion that differs substantially from that of other judges and is contained in writing in the issued decision.
4. A concurring opinion is a judge's opinion that is the same as the majority of other judges but has differences in terms of rationality or reasoning.
5. Plurality opinion is an opinion that is characterized by more than one or plural, where this opinion is in one court and is accepted by the majority of other courts.
6. Memorandum opinion is a note given by a higher authority court to a lower court.

As a comparison discussed in the writing of this comparative legal research, the concept of Dissenting Opinion in the United States which adheres to the Common Law or Anglosaxon legal system is used as a comparison as stated in several judicial decisions. For example, in *Katz v. United States*, the Court adopted a different view from *Olmstead v. United States* when they held that wiretapping violated the Fourth

¹⁵ Sunarmi, "Dissenting Opinion Sebagai Wujud Transparansi Dalam Putusan Pengadilan" (2007) 12:2 J Equal 3-7.

¹⁶ Imam Mahdi, *Hukum Tata Negara Indonesia* (Yogyakarta: Teras, 2011).



Amendment right against unreasonable searches and seizures. The United States uses dissenting opinions to discover new laws that are likely to come into existence in the future, so that the law continues to grow and evolve in society.

The legal system in the United States is different from the legal system used in Indonesia, but in essence, both countries have a constitution.¹⁷ The Constitution of the United States of America largely defines the boundary between federal and state law, it also divides federal power among the legislative, executive and judicial branches of government thereby creating a separation of powers between each branch and creating a balanced control between powers and each making a distinctive contribution to the legal system. Within that system, the constitution outlines the types of laws that can be enacted.¹⁸

Dissenting opinion in the United States refers to the views expressed by judges who later disagree with the majority decision in a court case. When a court case is heard, the justices will usually vote on the outcome, and the majority decision becomes the decision. However, one or more judges may have a different opinion on the matter, and they may choose to write a dissenting opinion explaining their view. Unlike its function in Indonesia, the Dissenting Opinion in the United States has an important role in the legal system. They allow judges to express their views on a particular case, even if those views are not shared by the majority. Dissenting opinions can also influence future cases and legal debates. In some cases, a dissenting opinion may eventually become the majority opinion in a subsequent case.

Dissenting opinions are very common in the US Supreme Court, where justices are appointed for life and have wide freedom to express their views. Some of the most famous legal opinions in US history are Dissenting Opinions, such as Justice Harlan's Dissenting Opinion in *Plessy v. Ferguson*, which laid the groundwork for overturning "separate but equal" racial segregation laws. Overall, Dissenting Opinions are an important part of the US legal system, providing a forum for judges to express their views and contribute to the legal debate.¹⁹

Dissenting opinions are important because they provide a way for judges to express their disagreement with the majority opinion in a written format that is public and permanent. This is particularly important in the US Supreme Court, where its decisions can have far-reaching consequences for the entire country. In addition, Dissenting Opinions can be a valuable counterpoint to majority opinions, which may be influenced by politics, ideology, or other factors. Dissenting opinions can help clarify the legal issues at stake, highlight weaknesses or potential flaws in the majority opinion, and offer an alternative approach to the case. Dissenting Opinions can also be important in shaping future legal debates and decisions. For example, a Dissenting Opinion in a Supreme Court case may be cited in subsequent cases as persuasive authority, helping to sway the opinion of other justices or judges.

¹⁷ Muh Zafri Ramadhan, "Failure of Criminal Sanctions in Law Enforcement Environmental Crime in Indonesia" (2025) 1:1 J Verum Legis Indones 28-37, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/31>>.

¹⁸ Biro Program Informasi International Departemen Luar Negeri AS, "Garis Besar Sistem Hukum Amerika Serikat", (2010).

¹⁹ Ashgar Ali, Ali Mohamed Ahmad & Ibrahim Kulliyah, "Dissenting Opinion: the Voice of the Future" (2016) 4:4 Malayan Law J Artic 495-517.



Additionally, Dissenting Opinions can serve as a restraint on majority power. By expressing their dissenting views, judges can help ensure that the legal system remains open to a diversity of perspectives and opinions, rather than being dominated by a single perspective or ideology. Overall, Dissenting Opinions are an important aspect of the US legal system, providing a platform for judges to express their views, contribute to legal debate, and promote a more balanced and nuanced understanding of the law.

This results in Indonesia, the Dissenting Opinion must be contained at the end of the decision so that it is known what the legal basis or reasons are. This is almost similar to what exists in the United States; however, in the United States, the concept of Dissenting Opinion is more acceptable because it is based on legal sources from previous judges' decisions, even in this case, even made legal decisions due to dissenting opinions by previous judges. When compared back to Indonesia, this kind of decision is taken in line with efforts to reform the law and judicial institutions even though it cannot be used as a source of law, but this is used as a basis that judges are known to know the law, even though a deliberation of the Panel of Judges has been taken to reach unanimous consensus, but if there is a Dissenting Opinion judge, then it is not a violation of the law considering that the freedom or independence of judges is guaranteed by law and legislation. This is because the State of Indonesia, through its Dissenting Opinion Concept, provides freedom and new legal views that are only theoretical, but have an equal position, even though they cannot be binding. At least, with the concept of Dissenting Opinion in the Indonesian judicial system, the law becomes less rigid and dynamic over time. Some Dissenting Opinions issued by Judges have changed the course of history. Consider that the US Supreme Court once legalized segregation based on race in *Plessy v. Ferguson* (1896). In one dissent in *Plessy*, Justice John Marshall Harlan I wrote that "in matters of civil rights, all citizens are equal before the law." It was Harlan's vision in his only dissent that prevailed in the *Brown v. Board of Education* decision (1954), which went on to become a Legal Consideration and is celebrated 58 years later.

II. Judge's Freedom and Criminal Justice Principles in Dissenting Opinion

Indonesian legal experts agree that judges' independence is a key element in realizing a fair trial. Judges' independence includes the internal freedom to have their legal judgment in deciding cases. Satjipto Rahardjo, a progressive legal theorist, emphasized that judges should not be shackled to rigid legal texts. According to him (in line with the American realist view of Holmes and Frank), judges do not have to always be the mouthpiece of the law; if the written rules are considered incomplete, unclear, or lacking a sense of justice, then judges are obliged to carry out legal discovery (*rechtsvinding*) through legal interpretation and construction. With this freedom of interpretation, judges can take a different stance from the majority when necessary. Dissenting opinion is one of the concrete forms of freedom to interpret and apply the law according to the judge's conscience. Sudikno Mertokusumo also emphasized the importance of judges exploring the values of justice in society when deciding cases, so that their decisions not only provide legal certainty but also fulfill a sense of justice and expediency. This principle is very relevant in criminal law, where the judge's decision has a major impact on the human rights of the defendant as well as the sense of justice of the victim and the community.



In criminal justice practice, freedom of speech for judges is guaranteed by the Constitution and law, provided that it is used responsibly.²⁰ Dissenting opinions must be based on strong juridical arguments and not merely subjective opinions. Although judges are free to dissent, they are still bound by ethical and legal restrictions, such as not disclosing confidential deliberation facts other than their own legal opinions and maintaining the dignity of the judiciary. As long as these limits are maintained, dissenting opinions must be respected as part of the court's decision. From the perspective of the principles of criminal justice, dissenting opinions play a role in supporting the establishment of substantive justice. The principle of fair criminal justice requires that every court decision reflect the search for the maximum material truth. By allowing judges to express dissenting opinions, the judicial system recognizes that the search for truth and justice can result in different views. Dissenting judges often express alternative viewpoints on the facts or law in a criminal case, such as different assessments of the fulfillment of the elements of the offense, the validity of evidence, or the application of the principle of *in dubio pro reo* (doubt for the accused). The existence of such minority opinions ensures that all pro and contra arguments are accommodated in the judicial process, so that the rights of the defendant are optimally protected and the consideration for imposing punishment is truly mature. This is in line with the principle that it is better to acquit the guilty than to convict the innocent. If there are significant doubts in the mind of a judge, a dissenting opinion allows those doubts to be documented rather than drowned out by the majority vote.

On the other hand, it should be recognized that dissenting opinions can pose a challenge to the principle of legal certainty. Some people are concerned that the dissenting opinions of judges in a decision make the decision less certain and solid, as if the legal truth in the case becomes relative. However, this view can be compromised by understanding that legal certainty does not always mean uniformity of opinion. Legal certainty is achieved by the existence of a final decision that remains binding, while the dissenting opinion is only part of the consideration. The inclusion of dissenting opinions strengthens long-term legal certainty if the dissenting opinion is later used as a reference to perfect the law or jurisprudence. In other words, in the short term, a dissenting opinion may give the impression of uncertainty because the opinion is not unanimous, but in the long term, it contributes to the self-correction of the judicial system to achieve substantive justice, which is the main purpose of law. As Ahmad Ali argues, the function of law is not only for legal certainty, but also justice and benefit for society.

In conclusion, the theory and views of Indonesian legal experts place dissenting opinions as an important element in modern criminal justice. Mahfud MD, Satjipto Rahardjo, Sudikno Mertokusumo, Bagir Manan, and many national legal academics agree that the freedom of judges to dissent is a prerequisite for the establishment of justice in court. Thus, dissenting opinions provide space for judges to uphold their independence and scientific integrity, as well as encourage the development of law in a more progressive and just direction. Within the framework of the Pancasila state of law, where independent judicial power is guaranteed by the

²⁰ Yusron Ashalirrohman, "Deontology and Equality in Corruption Law Enforcement" (2025) 1:1 *Juris Philos J* 1-10, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Jurisphilosophiajournal>>.



constitution, dissenting opinions are not something that threatens the authority of the judiciary, but rather a means of maintaining internal checks and balances and ensuring that the slightest voice of justice is heard. Therefore, dissenting opinions of judges have significant positive value in the practice of Indonesian criminal justice, as long as they are applied wisely, as a guardian of the purity of the principles of criminal justice and respect for the freedom of judges as upholders of justice.

CONCLUSION

The concept of Dissenting Opinion in the United States is applied as a legal foundation that evolves, allowing judicial opinions that differ from the majority to be used as a basis for future law. These dissenting judicial opinions can be part of the broader development of the law, creating *Rechtvindung* that leads to changes in legal norms according to the needs of society. This reflects the judges' freedom to interpret the law and contributes to a more dynamic legal consciousness. In contrast, in Indonesia, although the Dissenting Opinion allows for dissent amongst judges, it does not change the essence of the decision taken by the majority. In the Indonesian legal system, a Dissenting Opinion is considered a form of individual freedom of judges that cannot affect legal certainty. Despite dissenting opinions, the binding decision is still the one made by the majority of judges, ensuring legal certainty.

Dissenting opinions in Indonesia function more as a reflection of judges' freedom and transparency in the judicial process, although they do not contribute directly to legal change. Legal certainty is maintained because the applicable decision is the result of the majority vote of the judges. However, dissenting opinions provide accountability to judges in the decision-making process, providing an opportunity for the public to assess the quality of reasoning in a decision. In Indonesia, judicial dissent does not necessarily change the applicable law, unlike the United States, where judicial dissent can directly shape new jurisprudence without going through the legislative process. As a result, despite the freedom of judges to express dissenting opinions, changes to the law in Indonesia must go through a long process and involve relevant institutions.

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Andrew Wijaya is a writer from the Faculty of Law, University of Narotama. During his studies, he showed dedication to the principles of law and was active in academic activities. With a patriotic and nationalist spirit, Andrew has a dream to contribute to building and leading the nation. His legal background provides a unique perspective in his written works, where he explores themes of justice and the legal system as important pillars of the nation's progress.