

**JUDGES RECRUITMENT SYSTEM REFORM TO ENSURE THE
INTEGRITY OF JUDGES**

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ABSTRACT

The emergence of bribery cases involving Judges in Indonesia, for example the major Judges in Indonesia, namely former Chief Judge Akil Mochtar and constitutional judge Patrialis Akbar and many others, shows that there is a decline in the integrity of judges in Indonesia and many raise questions against the selection system for Judges in Indonesia. This study intends to evaluate the judicial recruitment system in Indonesia. This research is a normative legal research with statutory, legal approach. The results of this study indicate that the system of recruitment of judges in Indonesia still has several problems. The first problem is the issue of requirements related to how to assess integrity, morality, statesmanship, and the devotion of candidates to God. The second is the problem of the judicial selection mechanism in Indonesia. The mechanism for selecting judges in Indonesia is not transparent and accountable, and the reformulation of the judicial recruitment system in Indonesia to be even better is needed. This study proposes several recommendations. First, it relates to tracking the integrity of candidates, therefore an assessment tool is needed to affirm the integrity and morality of prospective judges in the judicial selection mechanism in Indonesia. Second, the selection mechanism must be transparent and open to the public; and third, the importance of clear legal reform in the Judicial Authority Act.

Keyword: *The Judges in Indonesia, System Recruitmen Judges, The better model of judges recruitment system.*

1. INTRODUCTION

The bribery case which involved the judges of the District Courts created a "distrust" of the public against the courts. Toton, a judge at the Bengkulu district court was arrested by the Corruption Eradication Commission from an accusation for accepting a bribe in the case of abuse of honorarium as supervisor and commision of RSUD M. Yunus Bengkulu. The case has given a bad impact on the Court itself which made public lose trust on the court, and particularly on the integrity of judges in Indonesia.

The important things to improve the future of legal development including law enforcement in Indonesia, is how to exercise judicial power in accordance with the objectives of the 1945 Constitution and Law No. 48 of 2009 on the rulers of the judiciary. The realization of law enforcement in the field of free and independent judiciary is one of the goals to be achieved within the framework of the rule of law and democracy.

The 1945 Constitution and Law No. 4 of 2004 which has been amended by Law No. 48 of 2009 on Judicial power, has provided a basis for the judicial power to uphold justice, but the legal facts generally indicate a lack of confidence in society on judicial power as one of the main factors the judge's verdict has not reflected the value of justice coveted by the seeker of justice.

Regarding judicial reform in Indonesia, the judicial review and advocacy institution of the judiciary in 1999 confirmed that what shall be reformed by judicial power are as follows: First, establishing judicial power as an independent institution; Second, restore the essential function of the judicial power to bring about justice and legal certainty; Third, perform check and balance principles; Fourth, encourage and facilitate and uphold the principles of a democratic constitutional state in order to realize the sovereignty of the people; Fifth, protect human dignity in the most concrete form.

The great challenges that continue to overshadow the development of judicial power in Indonesia is the effort to place the appropriate role of judges in realizing the certainty of law, justice, usefulness, and placing the position of interaction with the people and the state. Judge as one of the law enforcement officers has the task to determine a case from the dispute parties. In order to resolve any problems or conflicts faced by the parties, in the decision-making process, the judge must be independent and free of influence from any parties. The judge in taking the decision is only tied to the relevant events or facts and the legal principles which become juridical basis in making decision.

However, realizing the judge's decision based on legal certainty, justice and benefit is not easy, let alone the demands of justice, because is not easy to find a benchmark in the concept of justice in the judge's decision. Where it is fair for one party, it is not necessarily felt the same by the other party. It is based on the nature of justice itself. The statement is in accordance with the opinion of Sudikno Mertokusumo stating that "The essence of justice is a judgment of someone to others, who are generally seen from the parties' interest".

The Judge is in the position that has a responsibility to receive, process and decide cases until no further problems arise. If the law is unclear, incomplete, or even absent then the judge must seek the law or make a legal finding (*rechtsvinding*). The role of the judge is in line with the principle that the Republic of Indonesia is a state based on law and the consequence according to the 1945 Constitution is that there should be an independent judicial power and free from any influences of government power.

The judge is a profession known as representative of God to conduct justice and law enforcement. In accordance with the 1945 Constitution, the authority of the judiciary is mentioned in article 24 Paragraph 1 and article 24 A Paragraph 2 which states:

Article 24 Paragraph (1):

“The judicial powers shall be independent with the authority to organize the judicature in order to uphold law and justice.

Article 24a Paragraph (2):

“Each supreme justice must have integrity and a personality beyond reproach, just be professional and experienced in matters relating to law.

Furthermore, a Judge is placed on a position which is very much filled with worldly temptations. Imagine, in the hands of judge the future of a person will be determined. A person who is wealthy and famous can suddenly fall and lose his dignity as a human being due to the decision of judge. Therefore it has become a common view that if the person is dealing with the court, they will do anything to justify everything as long as the judge's decision support their concern.

With regard to the position of the judge, the Prophet Muhammad *shallallahu 'alaihi wasallam* once said, "two thirds of the part of judges will go to hell". The message seems to be tough, and it is difficult for judges to avoid the threat. Why did the Prophet Muhammad SAW say so? Because the temptation the judge will face in breaking a case is enormous. Even though the temptations for a judge are great, the judge is not a meaningless position, he is the noble figure as mentioned above. Why is that? A judge's ruling which is done honestly using the earnest mind, will produce true value, so that a principle appears: "justice can't do wrong".

Seeing the dilemma, on the case of some of the judges, the author think that the requirement system for candidate of judges need to be evaluated. A good judge is not born but it is built by a long process. It means that a good judge is a judge who has the professionalism, integrity and quality. They are not born but they are built by a long process through

the requirement system and therefore the recruitment system of judges is important to be evaluated. Accordingly, this research will evaluate the recruitment system of judges in Indonesia.

2. RESEARCH METHOD

2.1.Type of Research

The type of this research is normative legal research. Normative legal research method is a scientific research procedure to find the truth based on legal scientific logic.

The source is derived from secondary data. The data used are from literature: journal, books and encyclopedia, among others. This research aims to study the norms or regulations in practice pertaining to the recruitment system of judges in Indonesia.

This research also uses a comparative approach. Comparative approach is a research methodology in social science that aims to make comparisons with other countries system. The writer chooses to compare the system of judicial recruitment in Indonesia to judicial recruitment systems in other countries.

2.2.Type of Data

The data used in this research is secondary data. The secondary data consists of primary legal material, secondary legal material, and tertiary legal material. The detailed data will be explained as follows:

1. Primary legal material consist of legislation as follows:
 - a. The 1945 Constitutions
 - b. Law No. 48 of 2009 on Judicial Power
 - c. Law No. 22 of 2004 on Judicial Commission
 - d. Other Legislation: Indonesian Constitutional Court Law
2. Secondary legal material consists of several documents that relates to the primary legal material as follows:
 - a. Books;
 - b. Scientific Journals;

- c. Other legal document related to the issue;
 - d. Trusted internet sites; and
 - e. Other non-legal documents related to this research.
3. Tertiary legal material, as follows;
- a. Dictionary
 - b. Encyclopedia

2.3.Data Collection

The method of data collection in this research is by library research through literature study. In this method, the data is collected by selecting legal materials related to the topic. Moreover, some experts were also interviewed to confirm the author's accuracy in understanding the reading material.

2.4.Data Analysis

The data was analyzed systematically, through descriptive qualitative approach, by systematically means that the research will be analyzed best on constitutional, legislation, and other theory related to the issue of the recruitment system of judges in Indonesia.

3. DISCUSSION

3.1. The Judges Recruitment System in Indonesia based on Legislations

Judicial power is the power of the state to administer the judiciary. It is based on article 24 paragraph (1) of the 1945 Constitution that "Judicial Power is an independent judicial power to administer justice to uphold law and justice". To realize an independent judiciary power, it requires independence from the judicial authorities. According to Law No. 48 of 2009 on Judicial Power, the perpetrators of judicial powers are held by the Supreme Court and the Constitutional Court. The independence of these two state institutions is greatly influenced by the independence of judges.

In judicial power, judges occupy an important and central position. This is one of the important reasons why the judge's definition is included in Chapter 1 General Provisions of Law No. 48 Year 2009 on Judicial Power. The role of judges is very important in relation to upholding law and justice. Therefore, from the beginning, the recruitment or filling of court officials (judges) should be noted. Based on Law No. 43 of 1999 to Law No. 8 of 1974 on the Principal of Personnel of judges called state officials. Chairman, Vice Chairman, Chief Justice and Supreme Court Justice to the Supreme Court as well as Chairman, Vice Chairman and Judge at all Courts of Justice are state officials. Thus there are some recruitment of judges that exist in Indonesia, among which are:

1. The Requirements of Being Supreme Court Judge in Indonesia

Supreme Court Justices who are judges of the Supreme Court as the supreme supervisor of the proceedings of the judiciary, in the nuances of reforms have a role as role models for subordinate judges as well as the public, and the judge becomes the final support for the justice and truth seekers community. Therefore, certain conditions are required for those who want to sit as Supreme Court Justices.

Article 24 paragraph 2 of the 1945 Constitution determines the general requirements of the Supreme Court judge:

- a. integrity;
- b. an impeccable personality;
- c. fairness;
- d. professionalism; and
- e. experienced in the field of law.

The requirements of the Supreme Court were determined more specifically in Law No. 3 of 2009 on the Supreme Court, distinguish between the criteria of the Supreme Court's career candidate and not career. For the career path, for example, it takes

20 years to become a judge, including at least 3 (three) years to be a high judge, and aged at least 45 (four five) years with a law degree or other undergraduates with expertise in the field of law. A non-career path requires professional experience or as a legal academic for at least 20 (twenty) years and holds a doctorate and master of law based on a law degree or other undergraduates who has expertise in law.

2. The Requirement of Being Constitutional Judges in Indonesia

The requirement to be a constitutional justice is regulated in Article 24C paragraph (5) and Article 25 of the 1945 Constitution, in Article 15 of Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 regarding the Constitutional Court. According to Article 24C Paragraph (5) of the 1945 Constitution, "Every Constitutional Justice must have integrity and personality that is honorable, and to be fair, is a person who has a constitutional command and a public institution, and does not hold office as state official". Furthermore, Article 25 of the 1945 Constitution further presupposes, "the appointment and dismissal of judges shall be governed by law". The details of the article are contained in Article 15 of Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 regarding the Constitutional Court, which states that:

- 1) The Constitutional Court must meet the following requirements:
 - a. Having integrity and a respectable personality;
 - b. Must be fair; and
 - c. The statesman who holds the constitution and constitutional system.
- 2) To be appointed as a constitutional judge, in addition to meeting the requirements as referred to in paragraph (1), the candidate must meet the following requirements:
 - a. Citizen of the Republic of Indonesia;

- b. Certified with doctoral and master degree with legal background;
 - c. Devoted to God Almighty and has good morality;
 - d. Must be at least 47 (forty-seven) years and at most 65 (sixty-five) years old at the time of appointment;
 - e. Physically and spiritually capable of performing duties and obligations;
 - f. Have never been sentenced to prison based on court decisions that have obtained permanent legal force;
 - g. Never declared bankrupt with a court decision; and
 - h. Have at least 15 (fifteen) years of legal experience and/or become a state official.
- 3) In addition to the requirements referred to in paragraph (1) and paragraph (2), the candidate of constitution of judge must also fulfill the administrative requirements by submitting:
- a. A statement of willingness to be a constitutional justice;
 - b. Curriculum Vitae;
 - c. Photocopies of certificates that have been legalized and show the original diploma;
 - d. List of assets and sources of income of candidates accompanied by supporting documents that have been approved and approved by the authorized institution; and
 - e. Taxpayer Identification Number (NPWP).

If we look at Article 15 paragraph Law No. 8 year 2011 above, there is a requirement of that, every judge of the constitution must have integrity and a respectable personality, to be fair, is an Indonesian person having constitutional command and public institution, and devotion to God Almighty and have good morality. In connection with these requirements, there is no definite explanation. If traced back to the debate on the terms, it is usually still unclear. About what and how to interpret it further, it is all

submitted to the dynamics of the implementation of the provisions in the field later. In other words, the implied interpretation of personality requirements is entirely left to the subjective consideration of the parties that determine it in the field. That is, to the President, the House of Representatives (DPR) and the Supreme Court to interpret it when they are asked to determine who will be elected to the constitutional judges.

3. The Requirement of Being A Judge in Islam

The system of recruitment judges in islam is They must fulfill this requirement: Namely:

- a) Quality of being a male (al-dhukuriyyah): As for being a male, he says that qadis should be a man and not a woman because a woman in her nature is not endowed with complete authority (kamal al wilayat). In addition, the testimony given by a woman alone is not as complete as a man.
- b) Maturity and common sense (al-bulugh wa al'-aql): Regarding the qualities of maturity and a healthy mind, al-Qadi Abu Ya'la argues that if children or slaves are not allowed to take care of their personal affairs, they should not be entrusted with the affairs of society, and moreover both have no discretionary authority on decisive decisions even in common matters;
- c) Freeborn Status (al-huriyyah): Regarding the quality of being a freeborn, al-Qadi Abu Ya'la holds that this quality is important because a slave is not deemed eligible to hold an authoritative position and has no full social status allowing them to testify in court;
- d) Islam: Regarding the quality of being a Muslim, al-Qadi Abu Ya'la holds that if it is not permitted to appoint a fasiq (immoral person) as a qadi, then it is also a requirement that a non-believer should not be raptured;

e) Truth (al-'adalah): Regarding the quality of truth, al-Qadi Abu Ya'la maintains that if a person can become a faculty in his religious practice, it is more appropriate to say that such a person should not be appointed to serve as qadi because of the act of judgment requires someone to be trusted and have a good character;

f) The perfection of the sense of hearing and sight (al-salamah fi al-sam 'wa al-basar); and: As for the quality of the perfection of the sense of hearing and sight, al-Qadi Abu Ya'la asserted that this allowed the person to distinguish between the plaintiff and the defendant. Therefore, this ability, maintained by al-Qadi Abu Ya'la will be difficult for the blind or deaf. Al-Qadi Abu Ya'la also holds that the perfection of the limbs is not considered as part of the requirement of qadi's appointment. This is unlike the case of al-Imamah al-kubra (Great Imamate) where it is considered part of the requirement because defects in the limbs will inevitably affect the priest's ability to perform his duties.

g) Knowledge (al-'ilm): As for knowledge, al-Qadi Abu Ya'la affirms that it is obligatory for a person who is designated as qadi to have knowledge of al-Ahkam al-Shar'iyyah (Rules of Law of Islamic Law). This quality, as mentioned above, is that the person must have knowledge of the four main sources of sharia. This are as follows:

- i. He must have some knowledge of the Book of Allah (the Qur'an).
- ii. He must have knowledge of the Sunnah (hadith of the Prophet) derived from his actions and speeches.
- iii. He must have knowledge of the opinions of previous scientists (aqawil al-salaf) on what they may have agreed or disagreed with so as to follow the consensus of their opinion by which he should seek to apply his

own intellectual reasoning where there are differences of opinion.

- iv. He must have a decent knowledge about Qiyas (analogical deduction).

4. The Problems of Recruitment System of Judges in Indonesia

In response to the shortage of judges, the Supreme Court recently issued the Supreme Court Regulation No. 2 of 2017 on the Procurement of Judges. The regulation stipulates the stages of procurement of judges beginning with Planning, Procurement Announcement of Judges, Application, Selection, Announcement of Selection Result, Appointment as CPNS/Prospective Judge, Candidate Judge Education and Appointment as Judge. Meanwhile, the selection process consists of Administration Selection, Basic Competence Selection, Selection of Field Competency, Legal Substance Selection, Psychotest, and Interview. Special candidates for Religious Court judges must be able to read the book.

According to the perspectives and views of Saiful Anam, there are some problems over the legalization of the regulations, which are:

- a. The position of the judge as State Official is not sufficient in the case of arrangements concerning recruitment and procurement shall be governed only by the provisions of laws or regulations of the Supreme Court. Although it is not prohibited, it will certainly be a bad precedent in order to maintain the implementation of the principle of the establishment of legislation. Primarily, it relates to the principle of conformity between the type, hierarchy and the material content of legislation. It is proper that the position of judges as State Officials in respect of their recruitment shall be regulated by law as part of the further regulation concerning the judicial powers contained in the 1945 Constitution.

b. The Supreme Court positions the candidate for the judge as a candidate for Civil Servants (CPNS) before being appointed as a judge. This formula is considered to be excessive and has reduced the authority and position of judges as State Officials. The judge should not be viewed as a civil servant even though he has not been appointed a judge. However, his position remains as a Candidate of State Officials. That is because the position between CPNS, civil servants and State Officials is very much different in the organizational structure of the State and Government Implementation System in Indonesia.

c. Procurement system of judges is very different from the procurement system of CPNS or civil servants in general. Judges who are domiciled as State Officials cannot be equated in terms of recruitment with CPNS or civil servants who have been often done in an effort to attract prospective judges in Indonesia. The Supreme Court perspective is such an old point of view. In the past, the judicial recruitment system followed the CPNS recruitment system in general, because at that time the position of the judge had not been explicitly acknowledged as the State Official.

5. The Importance of Reformation of the Court System in Indonesia

In reforming the judicial system in Indonesia in the jurisdiction of judicative power, there are two matters underlying reformulation. First, set the constitutional foundation. Second, merit system of appointment of judges.

1. Organize the Constitutional Foundation

The idea of the fifth amendment of the 1945 Constitution is not a taboo to discuss. Reflection of the constitution for more than a decade has clearly shown so many urgent weaknesses to be addressed. Particularly in the clan of judicative power,

rearranging the constitutional foundation is a matter of realizing the stability of the administration of judicial power.

There is some content material that must be reformulated so that the political law of judicial power has a constitutional clarity.

First: to rectify the judicial independence interpretation. Of course the question arises as to what will the independence of the judiciary do to be guaranteed in the constitution?

Textually, the constitution too gives a very minimalist definition of judicial independence but it is interpreted liberally. If analyzing Article 24 Paragraph (1) of the Post-Amendment 1945 Constitution which states: "Judicial Power is an independent power to administer the judiciary to enforce law and justice", the definition of independence of judicial authority becomes a very minimalist concept. This is because the independence of the judiciary becomes vague (vague) in the sense of justice or the meaning of non-yustisi. This vagueness is then made complicated by the rule of law (further regulation) which states that independence covers all aspects of both yustisi and non-yustisi.

Second: to ensure the existence of the Independent State Commission as the new branch of power. The development of the state administration of Indonesia today can not be separated from the role of independent state organs. The mushrooming of independent state organs post-constitutional amendment requires a separate portion as the fourth branch of government.

America is one of the pilot countries that has acknowledged the existence of independent state organs as the fourth branch of power. Checks and balances are no longer interpreted as a balance of power between the executive, the legislature and the judiciary, but have been developed and balanced by the

functioning of independent state organs. What is practiced in America becomes the entrance of the state administration of Indonesia.

The need for the political will to provide its own portion in the constitution is not impossible. The Judicial Commission (KY), the General Election Commission (KPU), the Corruption Eradication Commission (KPK), the Supreme Audit Board (BPK) are among the most likely to receive constitutional importance in the Constitution. Provision of this portion can not be separated from its function to maintain the stability of the balance of power (checks and balances). The will to recognize the existence of independent organs as the new branch of power, is nothing but to reduce resistance to the relation of power to the major state organs. State experience has proven that independent state organs are highly vulnerable to develop conflicts with major organs that are so strong and patterned. KPK versus Polri, KY versus MA and MK, are a number of stories that should be minimized and should not even exist in the future.

2. Merit System

If the Constitution has purified the independence of the judiciary and align the relations of the Supreme Court, the Judicial Commission and the Constitutional Court, the time comes for the law to regulate the procedure of appointment of judges which is more based on merit. Admittedly merit system in the judge appointment system is the most popular approach adopted by continental European countries. Even a research report from Global Corruption Report in Judicial System in 2007 stated that to prevent politicization in the system of appointment of judges in a country, at least there are three indicators; (1) involving independent state organs, (2), based on

merit-based systems and (3) involving civil society participation. Therefore, merit system formulation needs to be done comprehensively including career judges, Supreme Court justices and constitutional judges.

4. CONCLUSION AND SYGGESTIONS

4.1. Conclusion

Based on the previous discussion in chapter four, it may be concluded that to appoint a judge, the candidates must fulfill some requirements and go through the process of education, training, coaching and career development systems to produce truly sincere people competent to occupy the position of a judge.

To create a better model of recruitment of judges, there must be based on merit system and a more transparent and accountable recruitment.

Merit system is the policy and HR management of the state apparatus based on qualifications, competence, and fair performance. The definition of Transparent is a condition in which the rule and reason behind the regulatory steps are free, clear and open, while accountable is an increase in the sense of responsibility, a higher quality of responsibility.

4.2. Suggestion

This relates to the requirements to become a judge in Indonesia. There are still unclear requirements, namely the requirements for integrity, good morals, statesmen and devoting themselves to God. There must be an assessment tool to confirm whether prospective judges are people who devote themselves to God and have good morality. There is no other way except to track candidate records. The system is carried out in Islam to recruit chief judges to find out the quality of prospective judges. By tracking records, the moral and

nature of a potential judge can be accounted for. So, the Committee that selects judges in Indonesia must track the candidates' records.

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