
RECONCEPTUALIZATION OF THE OFFICE OF JUDGE AS A STATE OFFICIAL

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ABSTRACT

This research aims to explore the essence of the position of judges as state officials, linking it to the principles of democracy, justice, and good governance. An in-depth review of legal literature and philosophical concepts reveals the need for adjustments in the perception of the position of judges as state officials, not only as interpreters of the law but also as agents of social change. This research involves an analysis of the concept of judicial independence, its relationship with the executive and legislature, and the policy implications that can be applied to ensure independence and efficiency in the judicial system. This thinking is accompanied by an exploration of the role of judges in the face of globalization, technology, and human rights demands. The results highlight the importance of establishing a new paradigm regarding the position of judges, which includes integrity, accountability, and engagement in legal policies that strengthen democracy and the protection of human rights. The implications of this reconceptualization are expected to bring positive changes in maintaining the rule of law, justice, and public trust in the justice system.

INTRODUCTION

Pasal 1 ayat (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) clearly states that the State of Indonesia is a state of law. In addition, the founders of the State in forming the government of the State of Indonesia have determined another pillar, namely the sovereignty of the people. The implementation of the rule of law is carried out in order to realize the national goals of the State of Indonesia as contained in the 4th paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, namely protecting the entire Indonesian nation and the blood of Indonesia, advancing public welfare, educating the nation's life, and participating in carrying out world peace, based on independence, eternal peace, and social justice (Issha Harruma, 2022).

The Pancasila State of Law, as a state of law in general, mandates legal certainty (Jimly Asshiddiqie, 2023). This legal certainty is outlined in legislation as a guarantee and must be implemented consequently (Bagaskoro, 2021). To ensure legal certainty, it is necessary to have a court that is free from the influence of other powers. For this reason, Indonesia regulates judicial power in CHAPTER IX of the 1945 Constitution of the Republic of Indonesia. The independence of judicial power is regulated by the phrase "judicial power is an independent power to administer justice to uphold law and justice".

Positive law has emphasized the position of Judges as State Officials. There are at least 3 (three) applicable laws, namely Law No. 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism, and Law No. 48 of 2009 concerning Judicial Power and Law No. 5 of 2014 concerning State Civil Apparatus (ASN UU).

One of the issues regarding judges in the Indonesian legal state is about their status (Usman, 2014). It must be recognized that judicial reform has resulted in a change in the status of judges who were originally judges as civil servants (PNS), judges are no longer civil servants but judges as state officials since the issuance of Law No. 43 of 1999 concerning Amendments to Law No. 8 of 1974 concerning Principles of Civil Service. From the existing laws and regulations relating to judges, both the Judicial Power Law and All Judicial Bodies, basically Judges have a clear position as State Officials (Nurdjanah, 2017).

Pasal 19 of Law No. 48/2009 on Judicial Power states: "Judges are State Officials who perform the functions of judicial power (Anjasmana, n.d.)." Status as a state official is clarified through Article 122 e of Law No. 5 of 2014 on the State Civil Apparatus (ASN UU), which states: "that State Officials, namely, "the Chief Justice, Deputy Chief Justice, Junior Chief Justice and Supreme Court Judges of the Supreme Court as well as the Chief Justice, Deputy Chief Justice, and Judges of all judicial bodies except Ad Hoc Judges." However, although in several provisions that have been explained, Judges are state officials, in several other provisions and in practice, some provisions regarding Civil Servants still apply to judges such as in terms of recruitment, rank system, and retirement (Vavakova, 2006).

This raises issues regarding the status of judges themselves because there are two statuses attached to them, namely as state officials and civil servants. Therefore, it is interesting to study the status of judges as state officials which will be described in this research.

METHOD RESEARCH

This research is a doctrinal or normative legal research that makes laws and several decisions of the Constitutional Court the object of study (granita ramadhani, 2023). The primary legal materials used in this study are Constitutional Court Decision Number 43/PUU-XIII/2015, Law No. 14 of 1970 concerning the Principles of Judicial Power, Law No. 48 of 2009 concerning Judicial Power, Law No. 43 of 1999 concerning amendments to Law No. 8 of 1974 concerning Principles of Civil Service which regulates changes in the status of judges from civil servants to state officials and Law No. 5 of 2014 concerning the State Civil Apparatus (ASN) (Flanagan et al., 2011).

While secondary legal materials used are in the form of books, journal articles, papers and so on that are relevant to the legal issues studied. The study approach used in this article is a statutory approach (statue approach), namely an approach using legislation and regulatory products (Marzuki, 2013).

RESULTS AND DISCUSSION

Reconceptualizing the Position of Judges as State Officials

Theoretically, the existence of Judges and their position in a state or nation or society cannot be separated from the existence of law. If the law exists together and develops with society (as the adage where there is law there is society and vice versa where there is society there is law or in the term *ubi societas ibi ius*) then it can be understood essentially that there

is no society without law in the community. This means that in every society there is definitely a law in it. Likewise, the organ that moves or represents the law in concrete, namely a judge whose existence is also certain of the law itself (Rachim et al., 2022).

The existence of judges in society is equal to the existence of the law itself, because sociologically the existence of judges is a manifestation of the law itself. Therefore, it is not wrong to say that the position of judge is as old as the age of society or human civilization itself. Basically, the State in granting a position or status to a judge must pay attention to the fundamental principle of judicial independence. Whatever the form and type of position, judicial independence must be manifested in it, whether institutional, functional or personal (HARIS, 2017).

Institutionally, the independence of judicial power must be kept away and maintained from all forms of interference and potential intervention from other state powers. While functionally, this independence serves to protect Judges from partisanship so that their impartiality is maintained in carrying out the task of receiving, examining, adjudicating and deciding and resolving cases before them so that their decisions can realize substantive justice in accordance with the *irah-irah*, namely "for the sake of justice based on God Almighty". Similarly, personally, Judges in carrying out their duties and functions of exercising judicial power must be provided with all their living needs (welfare) and security and professional protection guarantees so that they are fortified from temptation and persuasion and intimidation from interested parties to intervene.

This personal independence is represented in the construction of professional or managerial guarantees of the position. Opportunities must be closed from all aspects of intervention in terms of substance, structure and culture of the position of Judge so as to affect their personal independence which in turn disrupts and destabilizes their functional independence. Therefore, the misplacement and mismanagement of the position of Judge will have a profound impact on the continuity of judicial power.

The position and managerial position of the Judge is currently "double" or dualism, on the one hand definitive as a State Official but on the other hand some managerial civil servants are still held against him. It is indeed very inappropriate and violates the spirit of the judiciary if Judges are placed as civil servants who are in fact in the power of the executive. This is because the placement of Judges as Civil Servants (*ambtenaar*) is a legacy of the colonial regime which was set up to be subject to executive power so that it is easily intervened and used as a political tool by the Colonial Rulers (Bagir Manan, Valina Singka Subekti, Aidul Fitriaciada Azhari, Anwar Usman, Yosep Adi Prasetyo, Herlambang Perdana Wiratraman, Farid Wajdi, Shidarta, 2019).

The 1945 Constitution of the Republic of Indonesia as a source of law is a signpost that the regulations under it must not conflict with the 1945 Constitution of the Republic of Indonesia. Reform in the Legal Sector is a mandate of the people which was later crystallized in MPR Decree No X/MPR/1998 on the Principles of Development Reform in the Framework of Rescue and Normalization of National Life as State Policy.

The position of MPR Decrees after the Reformation is regulated in MPR Decree No. I/MPR/2003 on the Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and Decrees of the People's Consultative Assembly of the Republic of Indonesia from 1960 to 2002. Judging from its substance, MPR Decree No.

X/MPR/1998 falls into the category of point 4) MPR Decree which remains in force until the enactment of a law regulating the same substance, in accordance with the provisions of MPR Decree No. I/MPR/2003 which determines 6 categories of legal status of existing MPRS/MPR Decrees. The implementation of the substance of MPR Decree No. X/MPR/1998 is embodied in Law No. 35 of 1999 concerning amendments to Law No. 14 of 1970 concerning the Principles of Judicial Power, which regulates the unification of the roof. In relation to the recommendation to change the status of judges from civil servants to state officials, Law No. 43 of 1999 on amendments to Law No. 8 of 1974 on the Principles of Civil Service was issued, which regulates the change in the status of judges from civil servants to state officials.

Legal reform has not yet been completed and the ideals of TAP MPR No X/MPR/1998 have not been fully implemented. Fifteen years since judges in all judicial circles were named as State Officials, but there has been no alignment of derivative regulations, Judges are no longer included in the executive realm, independent management under the Supreme Court, has not been clearly regulated.

The existence of the position of Judges as State Officials has been guaranteed in legislation both in the ASN Law and the law on judicial power. Although it has been expressly stipulated in the legislation, the legislation and its implementation still use the civil servant system. The application of part of the civil servant employment management system to Judges is in fact contrary to the determination of Judges as State Officials. For example, the application of SKP, rank and retirement system to them indirectly degrades the position of State Officials of Judges back to government (executive) employment. In fact, the system of management and placement of Judges as executive employees is a legacy of the colonial regime which is no longer in accordance with the ideals of an independent Indonesian state. In addition, the placement of Judges as civil servants (even if it is partial), greatly allows for intervention in the freedom of Judges due to structural, psychological, and corps character issues as well as bureaucracy which usually carries or demands certain ties.

The reform era has positioned Judges in accordance with the spirit of independence, namely by determining the status of their position as State Officials so that they are seen as equal and not restrained in the control of other state powers (executive or legislative). Although they have the same status as State Officials (with other State Officials), Judges require differences in management and managerial systems. The "general" State Official system is not fully applied to Judges, such as the selection process involving other state institutions outside themselves (extra judicial) even by the Judicial Commission. In accordance with the decision of the Constitutional Court Number 43/PUU-XIII/2015 which essentially decided that the normative provisions involving other state institutions a quo the Judicial Commission were declared unconstitutional because they were contrary to the norms of judicial independence as guaranteed and affirmed in the constitution and the one-roof system policy. So it was decided that the selection process was only authorized by the Supreme Court, as well as further provisions submitted to the Supreme Court Regulation.

The specificity of the position of Judge as a State Official is a basic consequence of the existence of independent judicial power and therefore must be fundamentally accommodated in its managerial arrangements. A "special" management system for the position of Judge as a State Official is required (not "certain" as was implemented by Law No. 43/1999 on the Principles of Civil Service). The specificity of the position of Judge is in accordance with the

identity of the Judge as a State Official Performing Judicial Power as intended by Law No. 48/2009 on Judicial Power. Based on this, the reconstruction and reformulation of the position of Judge in a special law a quo Judge Position Law is quite important.

The current legal framework is not fully capable of regulating precisely, completely and implementatively the status of Judges as State Officials "Actors of judicial power". For example, the system of rank and classification for judges in the future will be related to recruitment, appointment, coaching, promotion systems and patterns and the transfer of judges in relation to determining the classes of existing courts. It does not have to be exactly the same as the system and pattern of rank for civil servants, but a specific system and pattern of rank for judges still needs to be formulated in the future. Failure to do so will clearly lead to confusion in the system and pattern of promotion and transfer of judges from one class of court to another, as well as from courts of first instance to courts of appeal. Not to mention how to determine the gradation among Judges, each of whom has a different length of service, experience and competence. It is necessary to consider the formulation of new legislation that regulates in accordance with the characteristics of the position of Judge as a State Official "Performer of Judicial Power" who holds state power in the judicial field. By formulating regulations on State Officials for Judicial Power Actors, it is hoped that it can guarantee the specificity of the position model and a special authority regulation system in the context of implementing independence and accountability in the implementation of judicial functions. This special authority is that Judges can concurrently hold structural positions as Court Leaders (appellate and first level) or the Supreme Court. For the general model of State Officials (in the executive sector), it is not allowed or prohibited to concurrently hold structural government positions both at the central and regional levels. For Judges, it must be applied differently because to lead the judicial "household" both at the central and regional levels, it cannot be led by other than Judges who are in fact the actors of judicial power.

CONCLUSION

The conclusion of this study is that researchers highlight the urgency to reconceptualize the position of judges as state officials. This is based on an evaluation of the roles and responsibilities of judges in an increasingly complex modern legal system, and new thinking about the independence of judges, although judges must remain independent, there needs to be an understanding that judges are also part of the state structure and must operate in accordance with the goals and principles of the state. It also underscores the importance of striking a balance between judicial independence and accountability to society and the state. This reconceptualization attempts to redefine the relationship between judges, justice and state duties.

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