



ENSURING JUDICIAL INDEPENDENCE BY EVALUATING THE RECRUITMENT PROCESS AND LEGAL FRAMEWORK FOR JUDGES IN INDONESIA

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ARTICLE INFO

Keywords:

Judges; Judicial Power;
Recruitment of Judges;
Judiciary

ABSTRACT

As the highest judicial institution, the Supreme Court exercises its powers freely and independently. Judges must have morals, principles of justice, and adhere to a code of ethics. Judges must uphold justice in resolving disputes or legal cases and ensure that society receives justice. As state officials, the recruitment process for judges should be separated from the recruitment of civil servants. The position of judges as state officials should be regulated comprehensively by law. This research examines the recruitment process of judges as independent implementers of judicial power. The research method used is descriptive, using qualitative data analysis with a normative juridical approach. Supreme Court Regulation Number 1 of 2021 concerning Amendments to Supreme Court Regulation Number 2 of 2017 concerning the Procurement of Judges regulates the need for judges in General Courts, Religious Courts and State Administration through the acceptance of Candidates for Civil Servants that needs to be improved. This need arises because there are no legal provisions regarding the recruitment of judges as state officials. In the future, provisions for the recruitment of judges should be regulated through Government Regulations so as not to impact the independence of judges as implementers of judicial power.

A. INTRODUCTION

The Supreme Court is Indonesia's highest state court of all judicial circles. The Supreme Court, as one of the institutions of judicial power that is free, independent and independent in administering the judiciary, requires great openness and responsibility towards judges in every decision,¹ because it can affect the image of the judicial institution.² Speaking of courts is undoubtedly very different from the judiciary itself, although the two have something in common, namely the word fair.

The term 'judiciary' primarily pertains to its role and function, while 'court' refers to the institution itself. As one of the main enforcers of the judicial function, the Supreme Court bears a significant responsibility in upholding the rule of law. In this context, the role of the Supreme Court is crucial to ensure that the law is implemented fairly and consistently. This responsibility includes the precise application of the law and oversight of legal processes to ensure they operate according to established principles.

The principles of the rule of law serve as the foundation for law enforcement and justice, as stipulated in the Judicial Power Law. This law asserts that judicial power is the independent authority of the state to oversee the legal system and administer justice based on Pancasila and the 1945 Constitution. The primary goal of these principles is to establish the Rule of Law in the Republic of Indonesia, where the law is respected, and justice is upheld regardless of an individual's status or position.

The judicial power as a state instrument stands independently and parallel to the other two state instruments, namely the executive and legislative powers.³ This indicates that the judiciary holds an independent position, free from interference by these two branches of government. This independent stance is a critical foundation in a democratic system, ensuring that the judiciary can perform its functions objectively and impartially.⁴ This independence also enables the judiciary to oversee and control the actions of the executive and legislative branches, creating a vital system of checks and balances essential for a healthy government. In the administration of justice,⁵

¹ Restu Permadi and Fifiana Wisnaeni, "Tinjauan Hukum Kemandirian Dan Independensi Mahkamah Agung Didalam Sistem Ketatanegaraan Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 406.

² Nuria Siswi Enggarani, "Independensi Peradilan Dan Negara Hukum," *Law and Justice* 3, no. 2 (2019): 86.

³ Henny Andriani, "Model Rekrutmen Hakim Sebagai Penyelenggara Kekuasaan Kehakiman Menurut Konsepsi Negara Hukum," *UNES Law Review* 6, no. 1 (2023): 2293.

⁴ Yani Andriyani, "Implementasi Kode Etik Hakim Dalam Memeriksa, Mengadili Dan Memutus Perkara," *Logika : Journal of Multidisciplinary Studies* 10, no. 1 (2019): 18.

⁵ Aunur Rohim Faqih, "Kode Etik Dan Pedoman Perilaku Hakim," *In Right: Jurnal Agama Dan Hak Azazi Manusia* 3, no. 1 (2013): 65.

the judiciary's responsibilities are not only limited to the application of existing laws but also include the oversight of law enforcement by the executive and legislative branches, ensuring that they act in accordance with the constitution and established laws.⁶

Although the judiciary enjoys freedom in carrying out its duties, judges as its executors are still bound by strict regulations. This freedom must not be abused, as judges must perform their duties in accordance with the applicable laws. This includes adhering to established ethical codes and professional guidelines, as well as maintaining integrity and independence in every decision made.⁷ These regulations are designed to ensure that each judge can guarantee the fair and proper administration of justice without external influence. In practice, judges must consider facts and evidence objectively, free from prejudice or pressure from any party.⁸ This way, the integrity of the judicial system can be maintained, and public trust in the legal system can be upheld. Misuse of judicial power not only undermines public trust but also threatens the fundamental principles of democracy and the rule of law that form the foundation of a legal state.⁹

Judges are not only required to understand positive law textually but must also be able to interpret the meaning behind established regulations.¹⁰ This is because judges play a central role in the communication process in court through legal interpretation. In performing their duties, judges must grasp the essence of each legal norm to ensure that justice is upheld in accordance with the spirit of the law itself. This task demands that judges not only possess extensive legal knowledge but also have deep analytical skills to understand the context and purpose of each regulation. As adjudicators who deliver the final decision in a case, the ability to interpret the law is crucial to ensure that it is applied fairly and wisely.¹¹

To carry out this noble yet demanding duty, judges must be equipped with moral resilience and adhere to strict guidelines and codes of ethics. Moral integrity is the primary foundation for a judge in making every decision,

⁶ Nur Fitra Annisa, "Peranan Hakim Sebagai Penegak Hukum Berdasarkan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman," *Lex et Societatis* 5, no. 3 (2017): 76.

⁷ Ryan Abdul Muhit, "Peran Kode Etik Profesi Kehakiman Terhadap Pertanggungjawaban Hakim Dalam Memutus Perkara Di Pengadilan," *Lex Languens: Jurnal Kajian Hukum Dan Keadilan* 1, no. 1 (2023): 20.

⁸ Basyarudin, "Pelanggaran Kode Etik Hakim Berdasarkan Keputusan Bersama Ketua Mahkamah Agung Republik Indonesia Dan Ketua Komisi Yudisial Republik Indonesia," *ARMADA: Jurnal Penelitian Multidisiplin* 1, no. 1 (2023): 45.

⁹ Budi Suhariyanto, "Kedudukan Hakim Dalam Pembaruan Sistem Pemidanaan Terorisme Untuk Mewujudkan Akuntabilitas Hukum," *Jurnal Penelitian Hukum De Jure* 17, no. 4 (2017): 5632.

¹⁰ Herowati Poesoko, "Penemuan Hukum Oleh Hakim Dalam Penyelesaian Perkara Perdata," *JHAPER* 1, no. 2 (2015): 29.

¹¹ Salma, "Urgensi Etika Profesi Hakim Dalam Penegakan Hukum Di Indonesia," *JPPi (Jurnal Pendidikan Islam Pendekatan Interdisipliner)* 1, no. 1 (2016): 50.

ensuring that these decisions are free from external influences and aimed at upholding justice. Codes of ethics and conduct guidelines serve as standards that each judge must firmly hold, providing a clear framework on how they should act in performing their duties. In practice, a judge must demonstrate moral courage and steadfastness in facing various pressures, both from within and outside the judicial system. The function and requirements of a judge as an official of judicial power, who must uphold justice in every legal dispute or case, must be realized in tangible actions. This is important because judges are the last bastion in the enforcement of law and justice in society.¹² The success of judges in performing their duties will significantly determine public trust in the prevailing legal and justice system.

The process of recruiting judges has a significant impact on the implementation of independent judicial power. In this context, the fundamental question is how this recruitment process affects the independence of judges in carrying out their duties. Additionally, the challenges faced in ensuring that judge recruitment can make a positive contribution to the realization of independent judicial power are important to investigate. With a deeper understanding of the dynamics of the judge recruitment process and the factors that influence it, we can identify the necessary steps to strengthen judicial independence and ensure that recruited judges can fulfill their duties with integrity and fairness.

B. RESEARCH METHODS

The research methodology employed in this study is normative juridical, utilizing a legal research approach that relies on secondary data and employs deductive reasoning. This research is guided by the criteria of logical coherence. The process of collecting legal data is conducted systematically, encompassing legal provisions and regulations related to judicial power, legal concepts, and established legal theories.¹³ All of this data is relevant to the topic of independent judge recruitment in the context of judicial power implementation. With this approach, the research can delve deeply into how the judge recruitment process can affect judicial independence and its implications in the judicial system.

¹² Sri Devy Gabrielah Budiman, "Akuntabilitas Lembaga Peradilan Yang Mandiri Menurut Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman Republik Indonesia," *Lex Administratum* VI, no. 4 (2018): 88.

¹³ Muannif Ridwan et al., "Approaches in Legal Research (A Introduction about Study Analysis Western Law and Islamic Law)." In *Proceedings of the 6th Batusangkar International Conference, BIC 2021, 11-12 October, 2021, Batusangkar-West Sumatra, Indonesia*. 2022: 16.

C. RESULT AND DISCUSSION

The discussion should explore the significance of the results of the work, not repeat them. Avoid extensive citations and discussion of published literature. In discussion, it is the most important section of your article. Here you get the chance to sell your data. Make the discussion corresponding to the results, but do not reiterate the results. Often should begin with a brief summary of the main scientific findings (not experimental results). The following components should be covered in discussion: How do your results relate to the original question or objectives outlined in the Introduction section (what)? Do you provide interpretation scientifically for each of your results or findings presented (why)? Are your results consistent with what other investigators have reported (what else)? Or are there any differences?

The Indonesian State of Law concept has characteristics sourced from Pancasila and the Constitution. Pancasila as a legal ideal (*rechtsidee*) and the 1945 Constitution as the highest source of law. Padmo Wahyono stated Indonesia as a country of law with a *rechstaat* formulation. The notion of *rechtstaat* is often associated with the notion of democratic (demokratisch *rechtsstaat*); it contains the meaning that the laws in force in the country of law must be arranged democratically as desired by the people.¹⁴ This is more concretely translated into the fundamental constitutional law, which is very fundamental, namely in Article 1 paragraph (3) of the 1945 Constitution as the State of Law. Sudikno Mertokusumo stated that the creation of this constitution is also intended to limit unlimited power in addition to regulating the constitutional administration of the government so that the administration of the state does not fall out of the norms or rules of law.¹⁵

The legal norms and regulations within the framework of laws are integral components of the national legal system, playing a pivotal role in the evolution of national law to establish a legal system rooted in Pancasila and the 1945 Constitution. The concept of the Rule of Law as stipulated in the 1945 Constitution and the trajectory of legal advancement are outlined in the National Long-Term Development Plan (RPJPN) for the period 2005-2025.

Article 1, Paragraph (3) of the 1945 Constitution declares Indonesia as a nation governed by the rule of law, elevating the significance of judicial authority to a paramount position. Within the framework of the RPJPN, guidance is provided for the progression of legal components, cultural aspects, and structural elements. In Law Number 17 of 2007 regarding the National

¹⁴ Wahjono Padmo, *Konsep Yuridis Negara Hukum Republik Indonesia* (Jakarta: Rajawali Pers, 1982), 48.

¹⁵ Sudikno Mertokusumo, "Penemuan Hukum Sebuah Pengantar," (*Yogyakarta: Liberty*, 2007), 71.

Long-Term Development Plan for 2005-2025, the developmental path for legal materials, legal culture, and legal structures is outlined as follows:

1. The development of legal materials aims to foster the ongoing rejuvenation of legal frameworks, replacing colonial-era laws and regulations with those that align with the social values and interests of the Indonesian people. This process also stimulates creativity and actively engages the community in supporting governance and national development, grounded in Pancasila and the 1945 Constitution. Constructing legal materials involves various stages, including legal planning, legal formulation, and legal research and development.
2. Legal planning as part of the development of legal materials should be conducted while considering various aspects that influence both within the society itself and in international society, conducted comprehensively and covering all areas of development, so that the resulting legal products can meet the needs of society, the nation, and the state's life, as well as anticipate the progress of the times;
3. Law formation is carried out through a comprehensive and democratic process, yielding legal products and implementation regulations that can be applied effectively. This is facilitated by legal research and development rooted in the aspirations and requirements of the community

The direction of development, encompassing legal materials, legal culture, and legal structure, is distinctly outlined in the National Long-Term Development Plan 2005-2025 and presents an opportunity during the reform era, particularly concerning the rejuvenation of judicial authority. This is especially true for the legal structure, which aims to reinforce and streamline a range of legal organizations and institutions, the legal profession, and judicial bodies, thereby enabling the legal personnel to perform their roles and responsibilities in a professional manner. Enhancing the quality and competence of the legal personnel is achieved through the enhancement of their professionalism and overall quality. The encouragement of quality, the ability of the legal apparatus, and independence became non-negotiable demands starting from the legal system. The basic principle of the legal system of civilized society is the principle of predictability, which is a certainty guaranteed by the existence of a legal system.¹⁶ There is a mandate of citizens entrusted to a judge to find the truth and give justice to those who seek it.

¹⁶ Mahkamah agung Republik Indonesia, *Kumpulan Naskah Pidato Ketua Mahkamah Agung RI* (Jakarta: Mahkamah Agung RI, 2005), 21.

Seating the function of judges as executors of judicial power after independent reforms, starting from the position of judges as state officials.¹⁷ Judges as state officials, the specificities must also be considered and can be considered and can be started from the recruitment of judges who must be separated from the needs of prospective Civil Servants, in line with Daniel S Lev's statement that the independence of the judicial body contains the hope of increasing the prestige and ability of their institutional forum and will even cause judges to be more responsive to professional interests especially if this body works by formal provisions, or in other words if the judicial body can be sharply distinguished from the government bureaucracy.¹⁸ The recruitment of judges who are united with the needs of Prospective Civil Servants should be expected to be able to affect the productivity of handling cases in court because it is feared that the volume of entry of cases is increasing year by year while the recruitment of judges is waiting for the needs of Prospective Civil Servants, this, of course, will be able to affect justice seekers who want to be resolved quickly, and cheaply.

The position of judges as state officials should be comprehensively regulated in the Law so that the people get justice in their services. However, in concrete institutions in legal reality, there are only a few articles, for example, in Law No.48 of 2009 concerning Judicial Power, especially Article 19, which states that judges and constitutional judges are state officials. Then Law No. 5 of 2014 concerning the State Civil Apparatus (ASN), especially in Article 122, states state officials, chairman, deputy chairman, young chairman, and chief justice at the Supreme Court. The analog of the two laws is simply the affirmation of "judges as state officials." However, the recruitment of judges is inconsistent because it is united with the civil service screening selection process. Its inconsistency in the arrangements regarding the recruitment of judges as state officials would be able to obscure the Supreme Court's position as a Judicial institution. Placing judges as state officials is a fundamental policy because, psychologically and structurally, it may be far from the form of intervention from the parent organization that houses them.

The issuance of Supreme Court Regulation No. 2 of 2017 on Judicial Recruitment, later amended by Supreme Court Regulation No. 1 of 2021 regarding Amendments to Supreme Court Regulation No. 2 of 2017 on Judicial Recruitment, currently serves as the appropriate solution for addressing the demand for judges, especially in general courts, religious courts, and the Administrative Court (PTUN), through the recruitment of prospective civil

¹⁷ Dina Natalia Kumampung, "Tugas, Fungsi Dan Diskresi Hakim Untuk Mengadili Dan Memutus Perkara Pidana," *Lex Administratum*, Vol. VI/No. 2 /Apr-Jun/2018 VI, no. 2 (2018): 152.

¹⁸ S. Lev Daniel, *Hukum Dan Politik Di Indonesia: Kesenambungan Dan Perubahan* (Jakarta: LP3ES, 1990), 46.

servants. This regulatory framework fills the gap in the absence of specific legislation pertaining to the appointment of judges as government officials. Supreme Court Regulation No. 2 of 2017, as amended by Supreme Court Regulation No. 1 of 2021, delineates the various stages of the judicial recruitment process, commencing with planning and culminating in the appointment of judges, including the stages of selection, announcement of results, induction of Civil Service Candidates (CPNS) or Prospective Judges, their education, and the official appointment as judges, with their placement being determined by the Chairman of the Supreme Court through a separate decree.

Commencing from the condition of 'rechtsvacuum' or the absence of specific legislation to implement Article 24 of the 1945 Constitution, including regulations governing the recruitment of judges, diverse perspectives on the Supreme Court Rules concerning the Procurement of Judges from a sociological standpoint are imperative due to the demand for judges to address cases entering the Supreme Court. For instance, in 2019, there were 19,369 cases, while in 2020, it received 20,544 cases, marking a 6.07% increase in case load compared to 2019.¹⁹ This surge underscores the pressing need for judges, making it a top priority requiring innovative solutions. From a juridical perspective, the content of the Supreme Court Rules embodies a principle of the Supreme Court applicable to all levels of the judiciary, encompassing provisions related to judicial procedural law. In accordance with Law No. 12 of 2011, supplemented by Law 15 of 2019 on Amendments to Law No. 12 of 2011 regarding the Formation of Laws and Regulations (Article 8, paragraph (1)), laws and regulations, including those established by the Supreme Court, are authorized. This grants the Supreme Court the power to create rules when necessary for the efficient administration of the judiciary. From a philosophical standpoint, these regulations must consider the philosophical and spiritual aspects of Indonesian society, rooted in Pancasila and the 1945 Constitution, particularly with regard to the concept of justice in national law, which is based on the foundational principles of the state. The issuance of Supreme Court Regulations serves as a practical solution to address the ongoing 'rechtsvacuum' in judicial recruitment, making it a pertinent and timely endeavor. However, it is imperative to implement innovative measures promptly to prevent any setbacks.

Ideally, the appointment of judges should be governed by laws and regulations that embody a philosophical principle aimed at ensuring the autonomy of the judiciary in upholding justice through the application of the law. The legal aspect of this is affirmed in Article 24 A subsection (5), which

¹⁹ Mahkamah Agung Republik Indonesia, *Laporan Tahunan 2020 Dalam Suasana COVID 19*, ed. Tim Kecil Laporan Tahunan MARI (Jakarta, 2020), 55.

outlines the legal framework governing the composition, positions, membership, and procedural rules of the Supreme Court and other judicial bodies. Article 25 further delineates the criteria for becoming a judge and the procedures for their removal from office. The pressing need for this from a sociological perspective is underscored by the increasing caseload and the fact that judges are government officials.

The Draft Law (RUU) regarding the Position of Judges has begun to be initiated in 2015 and has entered the National Legislation Program (Prolegnas) from 2015 to 2019 and even in 2018 as a priority. In 2015, the Legislature of the House of Representatives of the Republic of Indonesia received the NA and draft bill for the position of judges both from the research results of the Center for Research and Development of Law and Justice of the Supreme Court and the Judicial Commission, followed in 2016, by PP IKAHI (Central Board of the Indonesian Judges Association). Commission III also carried out harmonization, and finally, the three Academic Manuscripts were determined to be the initiative of the DPR. It can be interpreted later by laws and regulations to accommodate the management of the position of judges, from recruitment to the protection of judges in a forum of judicial power. Furthermore, at the level of Lawmaking institutions, it has not yet been realized so that there is an exploration as an alternative, a Regulation can be formed whose hierarchy under the Act for the regulation of the management of the office of judges, especially those governing the recruitment of judges, needs to be regulated separately and put the Judicial Power Act as its Umbrella Law. In the 1945 Constitution, Article 4 paragraph (1) states that the President of the Republic of Indonesia holds governmental powers according to the Basic Law. Article 5 paragraph (2) allows the President to establish government regulations to carry out the Law as it should be. Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, which now has been amended, Article 54 paragraph (1) states that in the preparation of the Draft Government Regulation, The Initiator forms an inter-ministerial committee and/or non-ministerial government institution, while Article 55 paragraph (1) In the practice of the Draft Presidential Regulation, the Initiator forms an inter-ministerial and/or inter-ministerial committee.

The issuance of the Supreme Court Regulation (Perma) to bridge the diametral, the legal order must be able to concoct it in order to overcome inequality by making a breakthrough that the Procurement of Judges can be regulated by Presidential Regulation in order to strengthen its main institution as a Judicial Institution. Although the content material of the Presidential Regulation in Article 13 of Law No.12 of 2011 contains material ordered by the later Law to implement Government Regulations or material to exercise government power. The alternative issue of the Presidential Regulation can

only be interpreted as a solution to the procurement of judges as "State Officials." So far, it has not been regulated in its regulation, not affecting the independence of judges as executors of judicial power.

Lawrence M Friedman posits that the field of law can be dissected into distinct legal subsystems, which he identifies as the legal structure, legal substance, and legal culture. These components within the legal system or subsystem play a pivotal role in determining the effectiveness of a legal system. The legal structure primarily underscores the efficiency and functionality of the legal machinery, encompassing both the legal apparatus and the infrastructure that supports it. Meanwhile, the legal substance delves into the comprehensive scope of legal regulations, encompassing all laws and statutes. Lastly, the legal culture encompasses the conduct associated with exercising rights and fulfilling obligations, including the behavior of law enforcement personnel and the behavior of the broader community. Supreme Court Regulations are primarily concerned with addressing aspects of legal processes that are not explicitly covered in the Criminal Procedure Code. For instance, they provide guidance on novel procedures such as electronic trials, as exemplified by Supreme Court Regulation No.1 of 2019 pertaining to electronic trial procedures.

For a moment, the setback regarding the position of judges as civil servants or not civil servants is not the only thing that determines the independence of judges, as stated by Bagirmanan:²⁰

1. The staffing nature of the judge must be accompanied by several specificities such as the procedure for appointment, term of office, dismissal, payroll system, and so on. Judges should not be confused with other civil servants who can be dismissed at any time; the term of office is determined, and the state budget regulates finances. If this happens, then the existence of judges of executive influence will be very small.
2. The definition of Civil Servants as stipulated in Law Number 8 of 1974, especially in article 3, will greatly affect the independence and freedom of judges. It is also determined that civil servants must be loyal and obedient to the government. That obligation does not allow judges to judge the government's discretion, as a public servant will make it difficult for judges to carry out administrative justice and test certain laws and regulations. Suppose the position of judges as civil servants is to be maintained. In that case, it is necessary to consider the

²⁰ Bagir Manan Magnar dan Kuntana, *Beberapa Masalah Hukum Tata Negara Indonesia, Alumni*, vol. 1 (Bandung: Alumni, 1993), 38.

specificities that will provide guarantees and protections for the independence and freedom of judges.

The issue of the position of judges has been answered after the reform of state officials, which was strengthened by the passage of the Judicial Power Act and the State Civil Apparatus Law. The demands and noble desire to maintain the judiciary's independence and the judges' freedom in deciding each case do not reduce the opportunity for the development of certain areas between the judiciary and the government, such as the renewal of the law in general. Begawan Hukum Satjipto Rahardjo's statement about a legal state that makes its people happy with a paradigm that requires that our way of legal State be encouraged not to be linear but rather progressive and meaningful. It is relevant to the applicable State of law that at any time, we need to dare to break free from the linear logic of the text to achieve the higher goal of humanity, which is to make the State of law a happy home for all people. Satjipto Rahardjo's progressive thinking can be learned as an answer to the legal problems that occur, especially in the absence of an Act regulating judges' recruitment.

D. CONCLUSION

Judges must be able to uphold the values of justice so that the existence of judges inherent in the eyes of society as sellers of truth can be erased; judges must carry out trials with a great foundation of soul about justice and the 1945 Constitution and Pancasila so that judges cannot be intervened from any authority. Judges have the highest position in the courts and have a major role in making decisions; therefore, judges must uphold the values of justice contained in every judge's decision and have a great sense of responsibility not only to those with a direct interest but also to the society in general. The role of judges as government officials, reinforced by the enactment of the Judicial Power Act and the State Civil Apparatus Act, maintains coherence with the process of appointing judges. The current Supreme Court regulation governing the selection of judges remains pertinent, as there exists no distinct framework for appointing judges. Looking ahead, the establishment of a new system for appointing judges could be considered, possibly through a Presidential Regulation. This innovative approach would not compromise the independence of judges in their capacity as enforcers of judicial authority but rather aligns with the framework of the Indonesian national legal system.

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