

THE LAW ENFORCEMENT IN JUDICIAL POWER FOR JUSTICE

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Abstract

The implementation of the limitation of judicial power in the competence of the commercial court to realize an independent judicial power is normatively spread out in various laws. The purpose of this research is to find out about the implementation of an independent and impartial judicial power or the independence of judicial power is something that absolutely must exist because it is a prerequisite for the realization of the ideals of the rule of law and is a guarantee for the rule of law and justice. The approach method uses a normative juridical approach. The results of the research obtained state that an independent judicial power is one of the pillars for a country based on a democratic system and a state of law. Judicial power that is free and impartial is not only meant to be free from the influence of executive power, but also free from interference in carrying out its duties. Judicial power is an important instrument to guarantee human rights and maintain justice which is a very important element in democracy. If the judicial power in a country has been co-opted by other powers outside it or has sided with certain parties, it can be ascertained that the country is not democratic. The independence of judicial power refers to independence from interference from other power holders in judicial matters.

Keywords : Enforcement; Judicial; Justice; Law; Power.

A. INTRODUCTION

Indonesia is a country based on law as a democratic rule of law, so the powers of any state organs and/or state institutions in this republic must be based on the constitution.¹ The concept of the rule of law, in addition to meaning that it is not a state of power, also implies the recognition of the principle of the rule of law and the constitution, the adoption of the principle of separation and limitation of power according to the constitutional system regulated in the constitution, the existence of guarantees for human rights in the constitution.²

Law is a set of rules regarding human behavior that are recognized by a group of people, compiled by people who are authorized by that community, valid and binding for all members of society in a country.³ Legal issues can be seen from the selective cutting of law enforcement in people's

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- 1 A. Salman Maggalatung, Indonesia Negara Hukum Demokratis Bukan Negara Kekuasaan Otoriter, *Jurnal Sosial dan Budaya Syar'I*, Vol. II No. 2 December 2015, page.209-220
 - 2 Zulkarnain Ridlwan, Negara Hukum Indonesia Kebalikan *Nachtwachterstaat*, *Fiat Justitia Jurnal Ilmu Hukum*, Volume 5 No. 2 May-August 2012, page.141-152
 - 3 Abdul Manan, *Hukum Dinamika Politik Hukum Di Indonesia*, Kencana, Jakarta, 2018, page.7

lives, so that people are more familiar with the law, sharp down and blunt up. On this day we are presented with many smart, intelligent and tie-dated people who commit criminal⁴ acts of corruption, by justifying various ways, and other things that are done by law enforcement in carrying out law enforcement, which tarnish the meaning and purpose of law as a tool that regulates people's lives in order to provide certainty, justice and benefits.⁵

Law enforcement in Indonesia in the implementation of control mechanisms is still considered weak. There are other factors as consistency of compliance with the law, namely the attitude of state administrators, law enforcers, and the people themselves. In the midst of such a situation, humans appear as if they are above the law. Whereas normatively, all citizens without exception have the same position in law and government and are obliged to uphold it. The spirit of obedience to the law is impossible to grow without being based on religious faith and obedience to the moral norms that live in society. Faith and morals encourage people to obey the law.⁶

In essence, in any kind of supervision, the main purpose which is always the essence of every form of supervision is the aim to prevent and avoid as early as possible the occurrence of various errors, mistakes, or abuse of authority, as well as to take action or remedy when these things have happened. Monitoring system that is well implemented will be a pressure valve for the possibilities for the occurrence of various forms of deviation.⁷

The independence of the judiciary as outlined by the law is basically born from the idea that the trial process is a process of thought, feeling, and creativity by judges with conscience as controllers and controllers which must not be infiltrated by any interests and intimidation from and in any form. The state guarantees this, so that the protection of judges as law enforcers and the main pillar of the court is a necessity. For this reason, it is absolutely not permissible to have any form of intervention or intimidation of judges who try a case.⁸

Aidul Fitriada Azhari, argued that an independent and responsible judicial power is the embodiment of the principles of people's sovereignty, the rule of law, and the separation of powers. However, there is a diametrical difference between the concepts of 'freedom' and 'responsible' from the judiciary. The meaning of 'freedom' indicates the absence of ties and is not subject to any power, while the meaning of 'responsible' refers to

4 Chuasanga A., Ong Argo Victoria, Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol. 2, No. 1 2019

5 Laurensius Arliman S, Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia, *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, Vol. 11 No. 1, November 2019, page. 1-20

6 Yusril Ihza Mahendra, *Dinamika Tata Negara Indonesia (Kompilasi Aktual Masalah Konstitusi Dewan Perwakilan dan Sistem Kepartaian*, Gema Insani Press, Jakarta, 1996, page, 56.

7 Paulus Effendi Lolutung, *Hukum Tata Usaha Negara dan Kekuasaan*, Salemba Humanika, Jakarta, 2013, page. 33.

8 M. Natsir Asnawi, *Hermeutika Putusan Hakim Pendekatan Multidisipliner dalam Memahami Putusan Peradilan Perdata*, UII Press, Yogyakarta, 2014, page. 4.

the opposite meaning. In other words, 'independent judicial power' means power that is not bound, free, and subject to other powers, while 'responsible judicial power' actually means that judicial power is in relation to and subject to other powers.⁹

An independent judiciary as one of the elements of the Pancasila state law requires a judicial system that can perform its function as a law enforcement institution and as a law discovery function within the framework of upholding human rights. The two functions above can work if the judiciary is free to exercise its power and is free from the intervention of other state powers.¹⁰

Bagir Manan explained that,¹¹ In the teachings of democracy where the people are sovereign, to supervise or control the administration of the state subject to the will of the people and do not exceed authority or arbitrarily, in addition to using political mechanisms, the people can sue state administrators before an independent court. In the teachings of the rule of law, one of the important elements of the rule of law is that there is an independent, impartial and fair judicial power.

An independent judicial power is closely related to the notion of limiting power, whether originating from the teachings of the separation (sharing) of power, the notion of a state based on law or democracy. According to Andi Suherman, judicial power is a consequence of the law and professionalism of judges in carrying out the functions of an independent judiciary to enforce law and justice through judicial bodies.¹² Based on the understanding of the separation of powers (Montesquieu), the separation of powers is needed as a means of limiting power to prevent arbitrariness. Power in one hand will lead to arbitrary actions.¹³

Judges in carrying out their functions are obliged to maintain the independence of the judiciary,¹⁴ therefore, any interference in judicial affairs by other parties outside the jurisdiction of the judiciary is prohibited. Then the judge must have integrity and a personality that is impeccable, honest, fair, professional, and experienced in the field of law, this is in accordance with the *adage ius curia novit*, judges are considered to know all laws. Thus, the judge has the authority to determine which objective law must be applied (*toepassing*) in accordance with the subject matter of the case concerning the legal relationship between the parties in concrete litigation.

9 Aidul Fitriadi Azhari, Kekuasaan Kehakiman yang Merdeka dan Bertanggung Jawab di Mahkamah Konstitusi: Upaya Menemukan Kesimbangan, *Jurnal Jurisprudence*, Vol. 2, No. 1, March 2005, page. 89-118.

10 Zainal Arifin Hoesein, *Kekuasaan Kehakiman di Indonesia Sejarah, Kedudukan, Fungsi dan Pelaksanaan Kekuasaan Kehakiman dalam Perspektif Konstitusi*, Setara Press, Malang, 2016, page. 14-15.

11 Bagir Manan, Prasyarat Kemerdekaan Kekuasaan Kehakiman, *Varia Peradilan Majalah Hukum*, Tahun XXX No.348 Nopember 2014, page.10-12

12 Andi Suherman, Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman, *SIGn Jurnal Hukum*, Vol. 1, No. 1 September 2019, page.42-51

13 Montesquieu dalam Rimdam, *Kekuasaan Kehakiman Pasca-Amandemen Konstitusi*, Kencana Prenada Media Group, Jakarta, 2012, page. 12.

14 Ahmad Kamil, *Filsafat Kebebasan Hakim*, Kencana Prenada Media Group, Jakarta, 2012, page.206-207.

Therefore, it is a matter of finding and applying objective law, not the rights and authorities of the parties, but the absolute obligation and authority of the judge.

The purpose of this study is to find out and analyze the implementation of an independent and impartial judicial power or the independence of judicial power is something that must exist because it is a prerequisite for the realization of the ideals of the rule of law and is a guarantee for the rule of law and justice.

B. RESEARCH METHODS

This research uses a normative juridical approach. The normative juridical research method is a legal library research conducted by examining library materials or secondary data.¹⁵ This research draws on legal principles in interpreting the legislation. In addition, this research can also be used to find legal principles that formulated either implicitly or explicitly. So that it can be found the legal principles underlying the positive legal norms.¹⁶ The comprehensive, fundamental and sepulative nature of philosophy makes the philosophy of law to explain its legal issues comprehensively, radically, and deeply.¹⁷ The implementation of an independent and impartial judicial power or the independence of judicial power is something that absolutely must exist because it is a prerequisite for the realization of the ideals of a state of law and is a guarantee for the rule of law and justice.

C. RESULT AND DISCUSSION

1. The History of Law Enforcement Independent Judiciary

Judicial power, even by the constitution, is seen as very important, especially in realizing the ideals of the Indonesian nation, namely the realization of an egalitarian, prosperous, just and prosperous society based on national law. That is, the law is a bridge to the realization of these national ideals through a series of rules and legal processes (due to process and rules of law).

In essence, judicial power as mentioned in the previous section, judicial power is one of the important elements in the constitutional structure that is part of the legal system of a country. In the concept of the rule of law, including the concept of *rechtsstaat*, as well as the rule of law, as well as Islamic nomocracy, judicial power is a pillar and an important element that supports a working state of law. In a state of law, judicial power is required to be free or independent from anyone's

15 Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2003, page. 13.

16 Bambang Sunggono, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2003, page. 27-28.

17 Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum di Indonesia*, Gramedia Pustaka Utama, Jakarta, 1999, page.16-17

influence. Judicial power must also be independent, separate from other powers, namely legislative power and executive power.¹⁸

The existence of judicial power in a state of law was also stated by the former Chief Justice of the 8th Supreme Court, Period 1992-1994, Purwoto Gandasoebrata, who very firmly stated that the consequences of a rule of law are Condition Sine Qua Non when in our country we must there is a judicial power or judicial body that is independent and authoritative capable of upholding the authority of the law, in the event of a violation or legal dispute in the community.¹⁹

Judicial independence also requires an effective contempt of court legal regime. This is important as a signal to ensure the authority of the judiciary and ensure that the judicial process can run effectively and efficiently. So that it is not only to protect the judge's personality, but also to protect the existence of the court in people's lives.²⁰

Judges must also understand and implement the meaning or freedom of judges as a responsible freedom, only within the corridor of order in the prevailing laws and regulations by carrying out the main tasks of judicial power in accordance with applicable laws and regulations without being influenced by any party.²¹

In the Indonesian context, the history of law enforcement shows that the judicial power has not yet been qualified as independent. Indications of this can be stated from the historical records as follows:

- a. In the era of Colonialism, judges at Hoogerechtshof and Raad van Justitie were employees who were separate from the government, while the chairman of Landraad in Java and Madura and in parts outside Java and Madura were government employees who were usually under the Ministry of Justice;
- b. During the Old Order period, judicial power was placed as a tool for legal revolution to fulfill the community's sense of justice, as stated in Articles 14 and 19 of Act No. 19 of 1964 concerning the Basic Provisions of Judicial Power that in the interests of the revolution, the honor of the state and the nation or the interests of the community that are very urgent, the President may participate or intervene in court matters. Likewise with the authorities of other law enforcement agencies. Therefore, during the Old Order, the President appointed the Chief Justice of the Supreme Court as Cabinet Minister with 3 (three) positions, namely: Minister of Legal Advisory to the President,

18 Dahlan Sinaga, *Kemandirian dan Kebebasan Hakim Memutus Perkara Pidana dalam Negara Hukum Pancasila Suatu Perspektif Teori Keadilan Bermartabat*, Nusa Media, Bandung, 2015, page. 1.

19 Purwoto Gandasubrata, Renungan Hukum, Ikatan Hakim Indonesia, dalam Ahmad Basuki, Pengawasan Terhadap Penyelenggaraan Kekuasaan Kehakiman Sebagai Upaya Dalam Mewujudkan Akuntabilitas Peradilan Pidana, *Jurnal Perspektif*, Vol.18 No. 1 Tahun 2013, page. 58.

20 Mila Kurnia Rahma, *Pengaruh Tekanan Opini Publik Media Massa Terhadap Kemandirian Hakim*, Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, Jakarta, 2014, page. 79.

21 *Ibid*, page. 81.

Minister of Justice, and Minister who served and also served as Chairman of the Supreme Court;²²

- c. During the New Order era, the President no longer placed the Chief Justice of the Supreme Court under the authority of the President, but the conditions for a judge to be appointed or dismissed were regulated in the law and in the said legislation there was authority from the President in determining the judge in question.²³

In the Constitution of 1945 of the Republic of Indonesia, it has been determined that the Supreme Court and the judicial bodies under it in the general courts, religious courts, military courts, and state administrative courts, are independent actors of judicial power, namely to administer justice to enforce law and justice. An independent judicial power is one of the important principles for Indonesia as a state of law. This principle requires judicial power that is free from interference from any party and in any form, so that in carrying out its duties and obligations there is a guarantee of impartiality of judicial power except for law and justice.²⁴

Based on the description above, it shows that the freedom of judges has two sides, namely freedom in the sense of being free from the influence of other powers and also being free to give their perceptions and interpretations. Basically the freedom of judges aims to realize objective decisions, which are not contaminated by certain interests, whether economic, political, class and so on. By imposing a judge's decision that is objective or transparent, it is hoped that the court will be able to give satisfaction to the litigants, other parties who have rights from it in particular, and the community in general. So that it can restore public confidence in the judiciary in Indonesia, which so far people do not trust the judiciary because they often give decisions that do not provide a sense of justice, both for the litigants and the community in general.

The judge as one of the law enforcement officers has a duty as one of the determinants of a case decision from the disputing parties. In order to resolve the problem or dispute for which a decision is requested, the judge must be independent and free from the influence of any party in the process of making a decision. Judges in making decisions are only bound by relevant events or facts and legal rules that become or are used as juridical foundations.²⁵

22 Philipus M Hadjon, *Lembaga Tertinggi Negara dan Lembaga-Lembaga Tinggi Negara sesuai Undang-Undang Dasar 1945: Suatu Analisa Hukum dan Kenegaraan*, Bina Ilmu, Surabaya, 1992, page. 69.

23 Ahmad Basuki, *Loc, Cit.*, page.59

24 Sophar Maru Hutagalung, *Praktik Peradilan Perdata Teknis Menangani Perkara di Pengadilan*, Sinar Grafika, Jakarta, 2011, page. 3.

25 Tata Wijayanta, Asas Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga, *Jurnal Dinamika Hukum*, Vol. 14 No.2 May 2014, page. 217.

Judges in making decisions do not only look at the law (the Denken system) but also have to ask their conscience by paying attention to justice and expediency when the decision has been handed down (the Denken problem). The result of a judge's decision that only applies to the law without using his conscience will result in the failure to present justice and benefits, even though the judge's decision (vonnis) is actually held to resolve a case or dispute within the framework of upholding law and justice.²⁶

2. Implementation of Judicial Powers in the enforcement of justice

In the perspective of the substance of the law enforced by the judiciary as a service of justice to the community. The concept of justice can only be understood if it is positioned as a condition to be realized by law. Efforts to realize justice in the law is a dynamic process that takes a lot of time.²⁷

Kelsen and Rawls generally explain the formal elements of justice as follows::

- a. Justice is a value that directs each party to provide protection for rights guaranteed by law (element of rights);
- b. This protection must ultimately provide benefits to each individual (benefits element).²⁸

Herlien Budiono explained the unique meaning of justice in Indonesia and its scope in national law. The meaning of justice which can be distinguished into procedural meaning and substantive meaning, is embedded and rooted in the condition of society. The procedural meaning of justice relates to the legal system or the rule of law. On the other hand, the substantive meaning of justice is related to social conditions, which provide an overview of legal politics and public legal awareness. The relationship between the two meanings of justice depends on the choice of the legitimacy of the principles that underlie life together or by establishing a pattern of values as the basis for material criteria for the meaning of justice.²⁹

Although the law must first be able to enforce order, the end goal is the development of justice, if possible, even if it is equally for everyone. Order without a further purpose may be an unjust order, just as an order with a purpose other than justice may exist.³⁰ Discussions on justice must be linked to real life, which is devoted to justice in terms of legal understanding, with the positive law of the unitary state of the

26 Soerya Respationo, Putusan Hakim: Menuju Rasionalitas Hukum Refleksif dalam Penegakan Hukum, *Jurnal Hukum Yustisia*, No.86 Th. XXII May-August 2013, page.43.

27 Ana Suheri, Wujud Keadilan Dalam Masyarakat Di Tinjau Dari Perspektif Hukum Nasional, *Jurnal Morality*, Vo. 4 No. 1 June 2018, page.60-68

28 Kelsen dan Rawls dalam Jogi Nainggolan, *Energi Hukum sebagai Faktor Pendorong Efektivitas Hukum*, Refika Aditama, Bandung, 2015, page. 52-53.

29 Herlien Budiono, *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia*, Citra Aditya Bakti, Bandung, 2006, page. 117.

30 Budiono Kusumohamidjojo, *Teori Hukum Dilema antara Hukum dan Kekuasaan*, Yrama Widya, Bandung, 2016, page.267.

Republic of Indonesia. Where it is added that linking the problem of justice with the meaning of law, namely by being sourced from the Constitution of 1945 of the Republic of Indonesia, means that justice must be related to two things in group life in Indonesia, namely; Justice is related to state order and justice is related to social welfare.³¹

The principle of independent judicial power requires that judges be free from interference, pressure or coercion, either directly or indirectly from the power of other institutions, peers, superiors, and other parties outside the judiciary. So that the judge in deciding cases only for the sake of justice based on law and conscience is indeed difficult, but it is not impossible for the establishment of the independence of judicial power.³²

The opinion of Supreme Court Justice Artidjo Alkostar, there is no civilized nation without an independent and dignified court. The function of the court is one of the pillars of the establishment of a sovereign state. One of the elements of the court is related to the factor of the existence of an independent court.³³

The principle of freedom of judges in deciding cases, basically their freedom is not absolute because the freedom of judges is limited both macro and micro, macro-limiting factors are the political system, government system, economic system, and so on. Pancasila, the Constitution, the Act, the public interest, morality, and the interests of the parties as judges in examining and deciding cases must not conflict with Pancasila, the constitution, the law, the public interest, morality, and the interests of the parties.³⁴

Judicial power in Indonesia is the power to examine cases handed over to him, the aim is to uphold law and justice based on statutory regulations and judicial powers must work properly so that objective and impartial decisions will be produced and uphold law and justice. In this regard, this judicial power must be free from other powers or the influence of governmental power as required by Article 24 of the Constitution of 1945. Judicial power must be independent. This is to prevent the emergence of arbitrariness or abuse of power. The independence of judicial power alone is not enough, but must be supported by judges with high integrity, morality, and dignity, namely to prevent judges who abuse their positions by taking refuge under the independence of the judiciary.³⁵

31 Bahder Johan Nasution, Kajian Filosofis Tentang Konsep Keadilan Dari Pemikiran Klasik Sampai Pemikiran Modern, *Yustisia*, Vol. 3 No.2 May - August 2014, page.118-130

32 Zulkarnain Rildwan, Kompetensi Hakim Konstitusi dalam penafsiran konstitusi, *Jurnal Konstitusi*, Vol. 3 No.2 2011, page. 85

33 Artidjo Alkostar, Membangun Pengadilan Berarti Membangun Peradaban Bangsa, *Majalah Hukum Varia Peradilan*, Vol.20 Issue 38 2005, page. 238

34 Sofyan Jailani, Independensi Kekuasaan Kehakiman Berdasar Undang-Undang Dasar 1945, *Fiat Justitia Jurnal Ilmu Hukum*, Vol. 6 No. 3 Sept-December 2012, page.6.

35 Eveline Fifiana, Eksistensi Kekuasaan Kehakiman (Judicative Power) Dalam Mewujudkan Independensi Peradilan Dan Peradilan Yang Bersih, *Solusi*, Vol.16 No 3. September 2018, page.266-273

D. CONCLUSION

An independent judiciary is one of the pillars of a country based on a democratic system and a state of law. Judicial power that is free and impartial is not only meant to be free from the influence of executive power, but also free from interference in carrying out its duties. Judicial power is an important instrument to guarantee human rights and maintain justice which is one of the most important elements in democracy. If the judicial power in a country has been co-opted by other powers outside it or has sided with certain parties, it can be ascertained that the country is not democratic. The independence of judicial power refers to independence from interference from other power holders in judicial matters.

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