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# JUDICIAL POWER AND JUDGES' STATUS IN INDONESIA'S CONSTITUTIONAL FRAMEWORK

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**ABSTRACT**

This study aims to analyze and formulate the ideal concept of regulating the position of judges as State Officials from the perspective of ius constituendum, by considering the principle of the rule of law adopted by Indonesia. In the Indonesian constitutional system, Article 24 of the 1945 Constitution affirms the judicial power that is independent and free from interference by other powers. However, reality shows that the dualism of the judge's status—as a civil servant and state official—causes ambiguity in the personnel system, administration, and judicial independence. This study uses a normative approach with a qualitative legal analysis method, supported by a philosophical and legislative approach. The results of the study show that the status of judges should be consistently recognized as State Officials to strengthen independence, professionalism, and integrity in carrying out judicial functions. Philosophically, the independence of judges reflects the noble values of Pancasila and the principle of Belief in the One Almighty God, as contained in the court rulings. Therefore, it is necessary to formulate new regulations that eliminate dualism of status and ensure institutional protection for judges. It is hoped that this conceptual reformulation can become the basis for the formation of legislation that is fairer, more progressive and in accordance with the ideals of Indonesian law.

## 1. Introduction

The amendment to the 1945 Constitution (UUD 1945) has brought significant changes to the constitutional system in Indonesia, not only in legislative and executive powers, but also in judicial powers. One important change is the establishment of the Constitutional Court based on Article 24 paragraph (2) of the 1945 Constitution, which emphasizes that judicial power is exercised by the

Supreme Court, the judicial bodies below it, and the Constitutional Court. This change is a mandate of the People's Consultative Assembly (MPR) through MPR-RI Decree No. IX/MPR/1998, which emphasizes development reform to save and normalize national life. The amendment also strengthens the concept of Indonesia as a state of law, as emphasized in Article 1 paragraph (3) of the 1945 Constitution, which demands an independent and independent judiciary to uphold law and justice.

The independence of the judiciary is a main pillar of the rule of law, as emphasized by Montesquieu, who stated that the judicial power guarantees individual freedom and human rights.[1] This principle was also reinforced by the International Commission of Jurists at the 1965 Bangkok Congress, which stated that an independent and impartial judiciary is an absolute requirement for a rule of law (International Commission of Jurists 1965). In the Indonesian context, this independence is realized through the strengthening of judicial institutions and judges as the perpetrators of judicial power. Judges, as a symbol of judicial independence, play a central role in maintaining the integrity of the judiciary as the last bastion for people seeking justice.[2]

However, the challenges in realizing judicial independence are still significant. One of the main issues is the position of judges as civil servants, which places them under executive control in terms of salary, career, and welfare. This dependence has the potential to reduce the independence of judges, because they are subject to the same personnel regulations as other civil servants. To address this, Law Number 48 of 2009 concerning Judicial Power stipulates judges as State Officials, a step to separate them from executive influence.[3] However, the implementation of this status is still problematic due to the lack of consistency in the recruitment, coaching, and administrative arrangement systems, which still follow the civil servant pattern.

This ambiguity is exacerbated by Constitutional Court Decision No. 43/PUU-XII/2015, which declared the involvement of the Judicial Commission in the selection of judges as unconstitutional (Constitutional Court Decision 2015). As a result, the selection process for judges is entirely in the hands of the Supreme Court by adopting a civil servant selection system, which is vulnerable to collusion, corruption, and nepotism.[4] This undermines efforts to create a truly independent judiciary and creates negative perceptions in society towards the integrity of the judiciary. The indicator survey in January 2016 showed that the level of public trust in the judiciary was only 57.9%, with 35.5% expressing distrust, reflecting serious challenges in building a credible image of the judiciary.

In addition, the regulation of the position of judges is still partial and overlapping

[1] Charles Louis de Secondat Montesquieu., *The Spirit of Law*, Jakarta, Gramedia, 1993, page.212. See too, A. Ahsin Thohari., *Komisi Yudisial dan Reformasi Peradilan*, Jakarta, ELSAM, 2004, page.121.

[2] Ismail Sunny., *Mencari Keadilan, Sebuah Otobiografi*, Jakarta, Ghalia Indonesia, 1982, page.132.

[3] Moh Thohir and Didik Sukriono., Implementation Authority of the Constitutional Court in the Indonesian Constitutional Law System, *Awang Long Law Review*, Vol.6, no.2, 2024, page.347.

[4] Basuki Rekso Wibowo., *Pembenahan Administrasi Peradilan*, Jakarta, Pusat Penelitian dan Pengembangan Sistem Hukum Nasional, Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM RI, 2012, page.423.

in various laws, such as Law Number 28 of 1999, Law Number 48 of 2009, and Law Number 5 of 2014 concerning State Civil Apparatus. This disharmony causes legal uncertainty, especially regarding the status of judges as State Officials. Although the law stipulates judges as State Officials, the word "can" in Articles 121 and 122 of the State Civil Apparatus Law creates ambiguity, because it is not imperative. As a result, the change in status from civil servant to state official is not followed by clear regulations regarding career development, welfare, and term of office, which are different from the characteristics of permanent Civil Servant positions.[5]

This sociological fact shows the need for comprehensive regulations to strengthen the position of judges as State Officials. The initiative to draft the Draft Law on the Position of Judges is one solution to create a clearer, firmer system that supports the independence of judges. This regulation is expected to guarantee the neutrality, professionalism, and integrity of judges, so that they can carry out their duties as enforcers of law and justice without external pressure.[6] In addition, strengthening the role of the Judicial Commission in the supervision and selection of judges needs to be reconsidered to ensure a transparent and accountable process.[7]

This study aims to analyze and find the concept of regulating the position of judges as State Officials in the perspective of *ius constituendum*, by considering the principle of the rule of law in Indonesia. By referring to the constitutional framework of Article 24 of the 1945 Constitution, this study focuses on how ideal regulations can support the independence of judges as perpetrators of judicial power. This approach is relevant considering that judges are not only tasked with implementing positive law, but also using legal reasoning, legal argumentation, and legal interpretation to achieve justice in accordance with social reality. Justice, although subjective and dependent on perception, remains the main goal of the judiciary, which can only be achieved through independent and professional judges.

Philosophically, judicial independence also reflects the values of Pancasila, especially the first principle, which places the judge's responsibility to God Almighty. This is reflected in the verses "For Justice Based on Belief in God Almighty" in every court decision, as regulated in Law Number 14 of 1970.[8] These verses underline the role of judges as representatives of God in upholding justice, while emphasizing that their decisions must be free from worldly influences. However, the reality of practice shows that intervention from various parties, including pressure from society or interest groups, is still an obstacle to the

[5] Munir Fuady., *Hukum Tentang Pembiayaan*. Cetakan IV, Bandung, Citra Aditya Bakti, 2006, page.123.

[6] Arbijoto Arbijoto., *Kebebasan Hakim (Refleksi Terhadap Manusia Sebagai Homo Religiosus)*, Jakarta, Mahkamah Agung RI, 2000, page.43.

[7] Taufik Firmanto and Sukirman Sukirman., Ius Constituentum Election Courts in Indonesia Ahead of National Simultaneous Elections, *Jurnal Hukum Volkgeist*, Vol.6, no.2, 2022, page.150.

[8] Bismar Siregar., *Buku Hukum Acara Pidana*, Bandung, Binacipta, 1983, page.143. See too, Bismar Siregar., *Surat-Surat Kepada Pemimpin: Bisikan Hati Seorang Mantan Hakim Agung*, Jakarta, Granit, 2008, page.132.

objectivity of judges.[9]

Therefore, this research is not only relevant but also urgent to contribute to strengthening the judicial system in Indonesia. By analyzing the weaknesses of the current arrangement and formulating a better concept, this research is expected to be the basis for the formation of laws that are able to guarantee the independence, professionalism, and integrity of judges. In the long term, this effort will increase public trust in the judiciary as a pillar of the rule of law, while ensuring that justice can be felt in real terms by all levels of society.

## 2. Research Methods

This research is a normative legal research that focuses on the analysis of positive law, especially laws and regulations related to the position of judges as State Officials in the context of judicial power in Indonesia. Normative legal research aims to find rules, principles, and legal doctrines to answer the legal issues faced, with an emphasis on the coherence of *ius constitutum* (applicable law) and *ius constituendum* (aspired law). Although normative in nature, this research utilizes empirical data as a support to sharpen the analysis, such as relevant court decisions that attract public attention.

The approaches used include: (1) Philosophical Approach, which examines ontology (the existence of judges and judicial institutions such as the Supreme Court, Constitutional Court, and Judicial Commission), epistemology (the theory of the rule of law, *trias politica*, authority, supervision, and independence), and axiology (moral and ethical values of judges as State Officials) and (2) Legislative Approach, which analyzes statutory regulations such as the 1945 Constitution, Law Number 48 of 2009, and the Draft Law on the Position of Judges.

Sources of legal materials include: (1) Primary Legal Materials, such as the 1945 Constitution, the Judicial Power Law, and court decisions; (2) Secondary Legal Materials, in the form of books, journals, and legal papers; and (3) Tertiary Legal Materials, such as legal dictionaries. The collection of legal materials is carried out through a review of regulations, libraries, and court decisions that meet the criteria of relevance and social impact. Legal materials are inventoried and grouped based on their nature using research record cards. Analysis is carried out using qualitative legal methods, utilizing legal reasoning, legal interpretation, and legal argumentation. A deductive approach is applied, with positive legal norms as the major premise and legal facts as the minor premise, to produce coherent conclusions and support the research objectives, namely formulating the concept of regulating the position of judges as State Officials from the perspective of a state of law.

## 3. Results and Discussion

### 3.1. Judicial Power in the Perspective of Trias Politica

Judicial power, often referred to as the judiciary, is one of the main pillars of the Trias Politica theory developed by Montesquieu in The Spirit of the Law (1748).

[9] Riris Ardhanariswari, Eko Nursetiawan, Syarafina Dyah Amalia, Enny Dwi Cahyani, and Rozlinda Mohamed Fadzil., Upholding Judicial Independence through the Practice of Judicial Activism in Constitutional Review: A Study by Constitutional Judges, *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, Vol.4, no.3, 2023, page.201.

This theory aims to prevent the abuse of absolute power, as occurred during the monarchy, by separating state power into three branches: legislative (making laws), executive (implementing laws), and judiciary (judging violations of laws). Montesquieu emphasized that these three powers must be separated both in terms of function and organization to ensure the independence of each branch.[10] Previously, Locke,[11] Two Treaties of Government also proposed a separation of powers, although with the concept of federative power as an addition, which relates to diplomatic relations.

This principle of separation of powers emerged to limit the potential for abuse, as expressed by Lord Acton: "absolute power tends to corrupt, and absolute power corrupts absolutely." In the judicial context, the judicial power is tasked with enforcing law and justice through the courts, ensuring neutrality in resolving legal disputes. In Indonesia, judicial power is not only based on the Trias Politica, but also on the principle of the rule of law as stated in Article 1 paragraph (3) of the 1945 Constitution, which demands an independent judicial power as an absolute requirement. Bagir Manan emphasized that the 1945 Constitution does not adhere to a strict separation of powers (*machtenscheiding*), but rather a division of powers (*machtenverdeling*), with judicial power as a condition *sine qua non* for a rule of law, guaranteeing freedom and control of government.[12]

Judicial power in Indonesia is exercised by the Supreme Court (*Mahkamah Agung*/MA), the judicial bodies below it (general, religious, military, and state administrative courts), and the Constitutional Court (*Mahkamah Konstitusi/* MK), as regulated in Article 24 paragraph (2) of the 1945 Constitution. Philosophically, this power aims to distribute judicial authority so that state power is not centralized, while at the same time guaranteeing law enforcement and justice. The term "court" refers to the body that administers justice, while "justice" refers to the process of enforcing law and justice. According to Soemitro,[13] justice includes the following elements: (1) abstract legal rules, (2) concrete legal disputes, (3) at least two parties, and (4) authorized judicial apparatus. Basah[14] added that justice also involves formal law for the application and discovery of law (*rechtsvinding*) in order to guarantee material law.[15]

Judicial power is a main characteristic of a state based on law (*rechtsstaat*) and

[10] Belly Isnaeni., Trias Politica dan Implikasinya dalam Struktur Kelembagaan Negara dalam UUD 1945 Pasca Amandemen, *Jurnal Magister Ilmu Hukum*, Vol.6, no.2, 2021, page.78. See too, Fatur Faturohman and Diki Rahmawan., Analisis Sistem Perbandingan Kekuasaan Kehakiman Antara Negara Indonesia Dengan Negara Prancis, *Uniku Law Review*, Vol.2, no.1, 2024, page.31.

[11] John Locke., Two Treatises of government, 1689, *The anthropology of citizenship: A reader*, Vol.12, no.2, 2013, page.42.

[12] Yoyon Mulyana Darusman, Elmer Micu Soriano, and Bhanu Prakash Nunna., Strengthening Judicial Commission Authority in Indonesia Judicial Power Institutions, Link to Trias Politica Theory, *Jurnal Dinamika Hukum*, Vol.24, no.1, 2024, page.80.

[13] Rochmat Soemitro., *Masalah Peradilan Administrasi dalam Hukum Pajak di Indonesia*, Yogyakarta, Eresco, 1976, page.121.

[14] Sjachran Basah., *Mengenal Peradilan di Indonesia*, Jakarta, Raja Grafindo Persada, 1995, page.121.

[15] Fauzan Fauzan., Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law, *Al-Istinbath: Jurnal Hukum Islam*, Vol.7, no.1, 2022, page.200.

the principle of the rule of law. Jamaluddin[16] emphasized that the court acts as a guardian of the constitution, an element of democracy, and the root of a state based on law. Judicial independence is a prerequisite for democracy, ensuring that judges are free from external intervention, including the executive and legislative, in carrying out their duties. However, in Indonesia, the status of judges shows inequality: supreme court justices and constitutional judges have the status of State Officials, while other judges are generally civil servants under the executive or ad hoc judges with contract status, which has the potential to reduce their independence. This is relevant to the purpose of the study to formulate regulations on the position of judges as State Officials in order to strengthen judicial independence.[17]

The regulation of judicial power in Indonesia has developed since independence, regulated in the 1945 Constitution and various laws. Article 24 of the 1945 Constitution before the amendment stipulates that judicial power is an independent power, exercised by the Supreme Court and other judicial bodies, with the guarantee of the position of judges regulated by law. The explanation of this article emphasizes that judicial power must be free from government influence, including the executive and legislative, although the 1945 Constitution does not adhere to a strict separation of powers. Post-amendment, Article 24 paragraph (1) emphasizes that judicial power is "an independent power to organize trials to uphold law and justice," with the addition of the Constitutional Court and the Judicial Commission as part of the judicial system.[18]

Historically, the regulation of judicial power began with Law Number 7 of 1947 concerning the Composition of Powers of the Supreme Court and the Attorney General's Office, which placed the Supreme Court on an equal footing with the Attorney General's Office under the executive, weakening independence. Law Number 19 of 1948 updated this arrangement, but maintained the obligation for judges to report to the President, indicating executive intervention. Law Number 19 of 1964 allowed for Presidential intervention for the "interests of the revolution," contrary to the principle of independence. Law Number 14 of 1970 attempted to improve matters by prohibiting external interference, but the organization, administration, and finances of the judiciary were still under the ministry, indicating dependence on the executive.

Post-reform 1998, the regulation of judicial power has experienced significant progress. Law Number 35 of 1999 began to transfer the organization, administration, and finances of the judiciary to the Supreme Court. Law Number 4 of 2004 and Number 48 of 2009 emphasized the independence of the judiciary, with Article 4 paragraph (3) of Law Number 48/2009 prohibiting interference from outside parties unless permitted by the 1945 Constitution, and Article 21 stipulates

[16] Muhammad Nur Jamaluddin., The role of the people in the Amendment of the 1945 Constitution based on democratic constitution making: Future prospects, *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, Vol.7, no.1, 2020, page.40.

[17] Demson Tiopan, Agus Setiawan, and Kevin Alim Rabbani., Implementation of The Trias Politica Concept and The Prospects For Establishing New High State Institutions in Indonesia, *UNES Law Review*, Vol.6, no.1, 2023, page.3441.

[18] Agung Sahib., The Implementation of Trias Politica Concept in The System of Government in Indonesian Constitution Post Amendment, *Alauddin Law Development Journal*, Vol.6, no.1, 2024, page.5.

that the organization, administration, and finances of the Supreme Court and the judicial bodies under it are under the authority of the Supreme Court. Article 24C of the 1945 Constitution regulates the authority of the Constitutional Court, including testing laws against the Constitution, resolving disputes over the authority of state institutions, dissolving political parties, and disputes over election results, with decisions that are final.

In the modern state system, the judicial branch of power is a branch that is organized separately as one of the essences of state activities. In fact, considering that Montesquieu himself was a judge (French), in his book, *'Esprit des Lois is'* he dreamed of the importance of an extreme separation of powers between the legislative, executive and especially judicial branches of power. In practice later on, Montesquieu's dream was never proven, especially in the relationship between legislative and executive functions. However, in the context of the function of judicial power, what he dreamed of became a universal guideline throughout the world. Therefore, until now, the principle of the independence of the judiciary has become one of the most important characteristics of every democratic state of law. No country can be called a democratic state without the practice of independent judicial power, even Mukti Arto said, the existence of the court institution is very important for three reasons, namely (a) The court is the guardian of the constitution; (b) An independent court is an element of a democratic state; and (c) The court is the root of a state of law.[19]

The inclusion in the 1945 Constitution as a written basic law has shown that judicial power is a fundamental power as the lifeblood of the Republic of Indonesia's constitutional state as a state of law. In the perspective of carrying out the judicial function to uphold law and justice, the regulation of judicial power is stated in the provisions of Article 24 of the 1945 Constitution, which states that judicial power is an independent power to organize trials to uphold law and justice. Furthermore, judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative judicial environment, and a Constitutional Court. Other bodies whose functions are related to judicial power are regulated by law.

It is necessary to state a note related to the provisions of Article 24 paragraph (1) of the 1945 Constitution, that the sentence: "independent power", shows that judicial power is a power that in carrying out its functions may not be intervened by any power, including government power. Thus, judicial power must be separated from other state institutions. This separation is intended to prevent the possibility of intervention or interference, especially executive power in enforcing law and justice.

In addition to being found in the provisions of Article 24 paragraph (2) of the 1945 Constitution, regarding judicial power, this can also be seen in the provisions of Article 24C of the 1945 Constitution, which is formulated in full that the Constitutional Court has the authority to try at the first and final levels, the decision of which is final, to test laws against the Constitution, to decide on disputes over the authority of state institutions whose authority is granted by the Constitution,

[19]John Alder and Peter *English, Constitutional and Administrative Law,* London, Macmillan, 1989, pahe.267.

to decide on the dissolution of political parties, and to decide on disputes over the results of general elections. The Constitutional Court makes a decision on the opinion of the People's Representative Council regarding alleged violations by the President and/or Vice President according to the Constitution. The Constitutional Court has nine constitutional judges appointed by the President, three of whom are proposed by the Supreme Court, three by the People's Representative Council, and three by the President. The Chief Justice and Deputy Chief Justice of the Constitutional Court are elected from and by the members of the Constitutional Court. Constitutional judges must have integrity and an impeccable personality, be fair and statesmen who master the constitution and state administration, and must not concurrently serve as state officials. The appointment and dismissal of constitutional judges, procedural law and other provisions regarding the Constitutional Court are regulated by law.

**Table 1: Comparative Authorities of the Supreme Court and Constitutional Court**

| Institution | Authority | Legal Basis |
|---|---|---|
| **Supreme Court** | 1. Adjudicate at the cassation level against final court decisions under its jurisdiction.<br>2. Review regulations under the law against the law.<br>3. Provide legal advice to state/government institutions.<br>4. Conduct highest supervision over courts under its domain.<br>5. Exercise other authorities as provided by law. | Law No. 14 of 1985 Law No. 5 of 2004 Law No. 3 of 2009 |
| **Constitutional Court** | 1. Test laws against the 1945 Constitution.<br>2. Resolve disputes over authority among state institutions granted by the Constitution.<br>3. Rule on political party dissolutions.<br>4. Rule on disputes in general election results.<br>5. Decide on the House's opinion concerning presidential/vice-presidential violations of the Constitution. | Law No. 24 of 2003 |

The Constitutional Court is a judicial institution in the field of state administration, which tries state administration disputes. However, when viewed from its function, this judicial institution is not much different from judicial institutions in general

which are under the auspices of the Supreme Court. Because the Constitutional Court also enforces law and justice, only its power is indeed limited, and its judicial body is also only one level whose decisions are final and binding.

## 3.2. Authority and Regulation of Judicial Power in Indonesia

The authority of judicial power is exercised by judges to examine, decide disputes, and impose penalties on violators of laws and regulations. Authority is the scope of public legal action, including making government decisions (*bestuur*), carrying out duties, and distributing authority based on laws and regulations.[20]

According to Hadjon,[21] authority consists of three components, namely influence (controlling the behavior of legal subjects), legal basis (authority must be based on clear law) and legal conformity (authority has general standards for general authority and specific standards for specific authority).

Legally, authority is the ability granted by statutory regulations to carry out acts with legal consequences, limited by positive law, written law, and unwritten law such as the general principles of good governance. Authority is divided into 1). bound authority (*gebonden bestur*): Actions bound by certain rules; and, 2) free authority (*vrijheid bestur*): Actions with discretionary policies.

The authority of judges is independent in influence, legal basis, and legal conformity. In Indonesia, the authority of judges in *ius constitutum* is divided based on the type of judge.

3.2.1. State Official Judge

Independent in influence, legal basis, and legal conformity as the executor of judicial power.

3.2.2. Civil Servant Judge

Independent in deciding cases, but as a civil servant is under the authority of the executive/government.

3.2.3. Ad Hoc Judge

Independent, but not included in the authority of the government or full judicial power. Judicial power is regulated in the 1945 Constitution before and after the third amendment. Before the amendment, Article 24 paragraph (1) stated: "Judicial power is exercised by a Supreme Court and other judicial bodies according to law." The explanation of this article emphasizes that judicial power must be independent, free from executive influence, as stated: "Judicial power is an independent power, meaning it is free from the influence of government power." This provision reflects the will of the founders of the state for an independent judicial institution to uphold law and justice.

As an embodiment of Article 24 paragraph (1), legislation related to the Supreme

[20] Dian Agung Wicaksono and A. S. A. T. Tonralipu., Mencari Jejak Konsep Judicial Restraintdalam Praktik Kekuasaan Kehakiman Di Indonesia, *Jurnal Hukum & Pembangunan*, Vol.51, no.1, 2021, page.203.

[21] Philipus M. Hadjon., Tentang Wewenang Pemerintahan (Bestuurbevoegdheid), *Pro Justitia*, Vol. 21, no.1, 1998, page.129.

Court emerged since the Old Order. The Supreme Court was positioned on a par with the Attorney General (executive) and was equated with the ministry, contrary to the mandate of the 1945 Constitution. Executive intervention, especially by President Soekarno, made the judiciary a tool of revolution, lasting from 1945 until Law Number 14 of 1970.

In 1966–1968, legal experts and Indonesian Judges Association (*Ikatan Hakim Indonesia*/IKAHI) protested the intervention, demanding an independent judicial power in accordance with Article 24 of the 1945 Constitution. Law Number 14 of 1970, Article 1, stipulates: "Judicial power is the power of an independent State to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the Constitutional State of the Republic of Indonesia." The explanation of Article 1 states that the judicial power is free from interference by other parties, unless permitted by law. This freedom is not absolute, because judges uphold law and justice based on Pancasila, reflecting the justice of the Indonesian people.[22]

Article 4 paragraph (1) of Law Number 14 of 1970 stipulates that court decisions use the principle "For the Sake of Justice Based on the One Almighty God," in accordance with Article 29 of the 1945 Constitution, which states that the state is based on the One Almighty God and guarantees freedom of religion. This principle applies to all courts (general, religious, state administrative, military, special), affirming the independence of judges without intervention, in line with the first principle of Pancasila.[23]

The next legal regulation related to the Judicial power is Law Number 14 of 1985 concerning the Supreme Court which stipulates the Supreme Court as a High State Institution (Article 1) and the Highest State Court, free from government influence (Article 2). Supreme Court justices have the status of state officials (Article 6 paragraph 1), but appellate and first court judges have the status of civil servants. Post-Reformation, Law Number 35 of 1999 strengthened the independence of the judiciary, placing the organization, administration, and finances of the judiciary under the Supreme Court (Article 11). The Third Amendment to the 1945 Constitution (2001) affirmed Indonesia as a state of law (Article 1 paragraph 3) and strengthened the independent judicial power, carried out by the Supreme Court, judicial bodies under it (general, religious, military, state administration), and the Constitutional Court. The Supreme Court has the authority to hear cassation and test regulations, the Constitutional Court tests laws against the Constitution and resolves disputes over authority, while the Judicial Commission proposes supreme court justices and maintains the integrity of judges.[24]

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[22] Andi Mudirah Ulya., Human Rights Law Regulations against Stunting Patients in Indonesia, *Sch Int J Law Crime Justice*, Vol.4, no.6, 2021, page.333. See too, Prisma Adhania Wulandari., Reform of Criminal Law on the Implementation of Restorative Justice by Prosecuting Institutions in Indonesia, *Ratio Legis Journal*, Vol.3, no.1, page.163.

[23] Suci Wulandari, Pingkan Utari, Fergio Rizkya Refin, Moh Bagus, Akhmad Fandik, and Amim Thobary., Peran Mahkamah Konstitusi sebagai pelaku sistem kekuasaan kehakiman di Indonesia, *Sosio Yustisia: Jurnal Hukum dan Perubahan Sosial*, Vol.3, no.2, 2023, page.220.

[24] Ahmad Fauzan, Ayon Diniyanto, and Abdul Hamid., Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court, *Journal of Law and Legal Reform*, Vol.3, no.3, 2022, page.421. See too, Usman Rasyid, Novendri Mohamad Nggilu, Fence Wantu, Julisa Aprilia Kaluku, and Ahmad Ahmad.,

The Indonesian judicial power is an independent power to administer justice to uphold law and justice based on Pancasila for the sake of the implementation of the Republic of Indonesia.[25] One of the important agendas of law enforcement in Indonesia is the issue of an independent judicial power. In 2009, dated September 29, 2009, the Indonesian House of Representatives together with the government approved the Law in the Field of Judicial Power, namely Law Number 48 of 2009 concerning Judicial Power, Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts, Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, and Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. The Judicial Power Law needs to be studied and understood critically so that the perpetrators of judicial power remain free and independent so that justice and truth can be upheld consistently, namely there is no discrimination in justice or even selective law enforcement.[26]

Law Number 4 of 2004 concerning Judicial Power is basically in line with the revision of the 1945 Constitution, but the contents of this law still do not comprehensively cover the management of judicial power. This means that the autonomous power exercised by the Supreme Court and the judicial institutions under it in the realm of general courts, religious courts, military courts, State Administrative Courts, and by the Constitutional Court, must hold trials to uphold law and justice. In this context, to strengthen the implementation of judicial power and create an integrated judicial system, the government needs to ratify Law Number 48 of 2009 concerning Judicial Power as a replacement for Law Number 4 of 2004 concerning Judicial Power.

In an effort to strengthen the foundation of independent justice, a revision was made to Law Number 14 of 1970 concerning Basic Provisions of Judicial Power with Law Number 35 of 1999 which regulates changes to the Law. The revision to Law Number 14 of 1970 has integrated policies related to technical aspects of the judiciary with organizational, administrative, and financial affairs under the authority of the Supreme Court.[27]

This policy is known as the "one-roof policy," which must be implemented no later than five years after the ratification of Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning Basic Provisions on Judicial Power. The implementation of this policy must be completed within five years since the ratification of Law Number 35 of 1999, which amended Law Number 14 of 1970 concerning Basic Provisions on Judicial Power. With the enactment of this Law, supervision of general, religious, military, and State Administrative courts becomes the responsibility of the Supreme Court. Given the specific history of the

Reformulation of the Authority of Judicial Commission: Safeguarding the Future of Indonesian Judicial Power, *Jambura Law Review*, Vol.5, no.2, 2023, page.411.

[25] Zaki Ulya., Dilematisasi Regulasi Kelembagaan Antar Lembaga Kekuasaan Kehakiman Ditinjau Menurut Konsep Check and Balances, *Jurnal Hukum dan Peradilan*, Vol.10, no.3, 2021, page.360.

[26] Ahmad Siboy., The integration of the authority of judicial institutions in solving general election problems in Indonesia, *Legality: Jurnal Ilmiah Hukum*, Vol.29, no.2, 2021, page.255.

[27] H. Adies Kadir., The Ideal Concept of the Position Judges as State Officials in the Ius Constituendum in Indonesia, *Britain International of Humanities and Social Sciences (BIoHS) Journal*, Vol.4, no.2, 2022, page.241.

development of religious courts in the judicial system in this country, supervision of religious courts is carried out by considering input from the Minister of Religion and the Indonesian Ulema Council.[28]

After the revision of Law Number 35 of 1999 with Law Number 4 of 2004, this transition has been further emphasized in the Transitional Provisions of Article 42 of the law. Here, it is stated that the transfer of organizational, management, and financial structures in the General Court and State Administrative Court systems must be completed no later than March 31, 2004. For transfers related to the organization, management, and finances in the field of religious courts, the deadline for completion is June 30, 2004. Similar transfers in the scope of military courts must also be completed no later than June 30, 2004. The process of transferring the organization, management, and finances mentioned above will be determined through a Presidential Decree. The decree must be determined no later than: (a) 30 days before the end of the time limit mentioned in paragraph (1); and (b) 60 days before the end of the period.

Articles 43 and 44 of the Law regulate the transfer of organization, administration, and finance to the Supreme Court. Employees of the Directorate General of General Courts, State Administration, District Courts, High Courts, and State Administration become employees of the Supreme Court, retaining their structural positions with allowances. Judicial assets are transferred to the Supreme Court. Employees of the Directorate for the Development of Religious Courts, Religious Courts, and High Courts become employees of the Supreme Court, with structural positions in accordance with regulations. Religious court assets are transferred to the Supreme Court. Development of military personnel of military courts in accordance with regulations, civil servants are transferred to the Supreme Court.

The changes that occurred above are in line with the spirit of reform, the peak of which is related to the amendment of the 1945 Constitution as the highest source of law in the management of the Unitary State of the Republic of Indonesia. The amendment of the 1945 Constitution has had a significant impact on national life, especially in the field of implementing judicial power. Through these changes, it is emphasized that the implementation of judicial power is carried out by the Supreme Court and various judicial institutions under it, in the context of general courts, religious courts, military courts, state administrative courts, and also by a Constitutional Court.

The provisions of Article 24C paragraph (1) of the 1945 Constitution stipulate that the Constitutional Court has the authority to adjudicate at the first and final level, the decision of which is final, to test laws against the 1945 Constitution of the Republic of Indonesia, to decide on disputes over the authority of state institutions whose authority is granted by the 1945 Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding the results of general elections. In addition, the Constitutional Court has the obligation to provide a decision on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the 1945 Constitution.

In addition to the changes concerning the institutionalization of the

[28] Ahmad Siboy., Decentralized Design of Dispute Resolution for Regional Head Elections in Indonesia, *Lex Scientia Law Review*, Vol.8, no.2, 2024, page.941.

implementation of judicial power as stated above, the 1945 Constitution has also introduced a new institution related to the implementation of judicial power, namely the Judicial Commission. The Judicial Commission is independent and has the authority to propose the appointment of supreme court judges and has other authorities in order to maintain and uphold the honor, dignity and behavior of judges. Thus, in the system and mechanism of the implementation of judicial power of the Republic of Indonesia, the judicial power implementation system referred to here is the ordinary judicial system, which does not include the constitutional adjudication system which is organized by a separate institution called the Constitutional Court as regulated in Article 24C of the 1945 Constitution and Law Number 24 of 2003 concerning the Constitutional Court. The Supreme Court as the highest judicial institution can be assisted by the Judicial Commission as a supporting institution (auxiliary state commission) which functions to recruit supreme court judges and supervise the code of ethics of judges.

### 3.3. Regulation of the Position of Judges in Indonesia in the Concept of State Officials

Article 24 of the 1945 Constitution regulates the law enforcement and justice enforcement bodies, which are outlined in the implementing laws in accordance with Article 24 paragraph (2). The General Court environment is regulated in Law No. 2 of 1986, amended by Law No. 8 of 2004, and replaced by Law No. 49 of 2009 concerning Judicial Power. Law No. 49 of 2009 replaces Law No. 4 of 2004, is comprehensive, and fulfills the Constitutional Court decision No. 005/PUU/2006 which annulled Article 34 of Law No. 4 of 2004 as well as the provisions on judicial supervision in Law No. 22 of 2004 concerning the Judicial Commission.

According to Muchsin, Law No. 4 of 2004 reformed the systematic regulation of judicial power, supervision of judges, appointment/dismissal of judges, special courts, ad hoc judges, arbitration, legal aid, and guarantees of the security and welfare of judges. The court guarantees justice through the application of laws, with a tiered structure (first court, appeal, cassation). The judicial environment in Indonesia includes General Courts (*Pengadilan Negeri/PN*, *Pengadilan Tinggi/PT*), Religious Courts (*Pengadilan Agama*/PA, *Pengadilan Tinggi Agama*/PTA), State Administrative Courts (*Pengadilan Tata Usaha Negara/*PTUN, *Pengadilan Tinggi Tata Usaha Negara/*PTTUN), and Military Courts (*Pengadilan Militer/*PM, *Pengadilan Tinggi Militer/*PTM), with cassation culminating in the Supreme Court.[29]

Judges in Indonesia have the status of state officials, civil servants, or ad hoc judges. The status of state officials is difficult to implement due to costs, while the status of civil servants has the potential to reduce the independence of judges. Ad hoc judges have not been clearly regulated by law. According to Jimly Asshiddiqie, state officials are politically based, while civil servants are administratively based. Placing judges as civil servants is more appropriate to maintain independence, under the Supreme Court, which has the authority to appoint judges based on the needs of the case without executive approval. However, the Supreme Court is short of 12,847 judges because the appointment of civil servants depends on the Ministry of State Apparatus Empowerment and Bureaucratic Reform (*Kementerian*

[29] Yohanes Winarto., Mengkaji Kedudukan Hakim Ad Hoc dalam Menjalankan Kekuasaan Yudikatif di Indonesia, *Jurnal Pembangunan Hukum Indonesia*, Vol.6, no.3, 2024, page.475.

*Pendayagunaan Aparatur Negara dan Reformasi Birokrasi* /PAN-RB).

Judges in Indonesia are regulated in Article 1 paragraph (5) of Law No. 22 of 2004 concerning the Judicial Commission, including supreme court justices, judges in judicial bodies under the Supreme Court, and judges of the Constitutional Court. According to Bambang Waluyo, a judge is a judicial organ that understands the law, is tasked with enforcing law and justice, both based on written and unwritten law, in accordance with the principles of justice based on the Almighty God. Al. Wisnu Broto calls judges the concretization of law and justice, and is even considered God's representative on earth to uphold justice.[30]

Normatively, judges are enforcers of law and justice under the judicial authority, including the Supreme Court, the judicial bodies below it, and the Constitutional Court. In general, judges must have integrity, responsibility, and the ability to make fair decisions. Judges are tasked with upholding justice, punishing the wrong, and justifying the right, with responsibility to the seeker of justice and God, as reflected in the verdict "For the Sake of Justice Based on the Almighty God."

The duties of judges are regulated in Law No. 14 of 1970, amended by Law No. 35 of 1999, Law No. 4 of 2004 concerning Judicial Power, Law No. 8 of 1981, Law No. 22 of 2004, and other regulations. In trials, judges are bound by rules such as Article 158 of the Criminal Procedure Code which prohibits showing attitudes about the defendant's guilt, and Article 188 paragraph (3) of the Criminal Procedure Code which emphasizes wisdom in assessing evidence. Article 32 of Law No. 4 of 2004 requires judges to have integrity, honesty, justice, professionalism, and legal experience.

The code of ethics for judges includes the principles of judicial independence, impartiality, integrity, courtesy, equality, competence, and obedience, to ensure a fair trial. The position of judges is guaranteed in Article 24 of the 1945 Constitution, which affirms that judicial power is an independent power, carried out by the Supreme Court, the judicial bodies below it (general, religious, military, state administrative courts), and the Constitutional Court. Article 25 of the 1945 Constitution regulates the requirements for the appointment and dismissal of judges through law to guarantee independence.

Judicial ethics guidelines are important to maintain the dignity and behavior of judges, but are hampered by weak internal supervision and abuse of authority. Judges are required to understand the legal values of society, especially unwritten laws, by going into society to explore a sense of justice. In deciding a criminal case, the judge considers the good and evil nature of the defendant based on information from the environment, psychiatrists, or others, to provide an appropriate punishment.[31]

The independence of judges is guaranteed by Article 24 of the 1945 Constitution, free from government influence. The judicial environment includes General Courts (PN, PT), State Administrative Courts (PTUN, PTTUN, Law No. 5 of 1986, amended

[30] Dedy Syahputra and Zulman Subaidi., Kedudukan Dan Mekanisme Pengisian Hakim Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia, *REUSAM: Jurnal Ilmu Hukum*, Vol.9, no.1, 2021, page.121.

[31] Ogiandhafiz Juanda., The Ideal Law State Concept in Indonesia; The Reality and The Solution, *Journal of Law, Politic and Humanities*, Vol.3, no.2, 2023, page.262.

by Law No. 9 of 2004 and Law No. 51 of 2009), Religious Courts (PA, PTA, Law No. 7 of 1989, amended by Law No. 3 of 2006 and Law No. 50 of 2009), and Military Courts (PM, PMT, Law No. 31 of 1977). Special courts include the Juvenile Court (Law No. 11 of 2012), Commerce (Law No. 1 of 1998), Human Rights (Law No. 26 of 2000), Corruption (Law No. 46 of 2009), Industrial Relations (Law No. 2 of 2004), Fisheries (Law No. 31 of 2004, amended by Law No. 45 of 2009), Sharia Court (Law No. 50 of 2009), and Tax Court (Law No. 14 of 2002).

The dualism of judges' positions as state officials and civil servants is detrimental to independence. As civil servants, judges are subject to personnel regulations, with recruitment depending on the formation of the Ministry of PAN-RB, based on Law No. 43 of 1999, PP No. 78 of 2013, and PP No. 54 of 2003. This causes dependence on government policies and the state budget. It is proposed to end the dualism by making judges state officials, recruited specifically without going through the Ministry of PAN-RB, involving other state institutions with special procedures. However, until now there has been no positive legal regulation (ius constituendum) that regulates this, so new regulations are needed to regulate the recruitment, requirements, selection, organization, finances, and career development of judges as state officials.

The status of judges as civil servants is regulated in the State Civil Apparatus Law, PP No. 78 of 2013, and PP No. 54 of 2003. Civil servant judges are under the Ministry of PAN-RB for rank and career, and the Ministry of Finance for salary and facilities. Although independent in their decisions, the employee and financial status of judges depends on the government, making them vulnerable to intervention and inadequate welfare. Given the noble role of judges, the status of civil servants is more appropriate because it is based on administrative reasons, not politics, to resolve cases.[32]

Law No. 5 of 2014 concerning State Civil Apparatus replaces Law No. 43 of 1999, opening up opportunities for judges as state officials, increasing independence and professionalism. However, the limited state budget for 7,989 judges hampers implementation. As civil servants, the administration of judges is regulated by the executive, but the task of law enforcement is under the Supreme Court. Article 19 of Law No. 48 of 2009 refers to judges as state officials, except for ad hoc judges.

Ad hoc judges have contract status, without specific legal protection, even though their decisions represent the state. There are no specific regulations for ad hoc judges, so arrangements are needed to equalize their rights with other judges. Special courts such as the Human Rights Court, Corruption Court, Commercial Court, Fisheries Court, Industrial Relations Court, Tax Court, Children Court, Sharia Court, Shipping Court, Customary Court, and Traffic Court, are under the jurisdiction of general, religious, or state administrative courts. The establishment of special/ad hoc courts is often immature, causing inefficiency and unpreparedness of the apparatus, such as the suspension of the Fisheries Court through Perpu No. 2 of 2006. Article 122 of the State Civil Apparatus Law and Constitutional Court Decision No. 32/PUU-XII/2014 emphasize that ad hoc judges are not state officials, because the selection process is different. However, the

[32] Achmad Musyahid Idrus, Hisbullah Hisbullah, Sofyan Sofyan, and Mulham Jaki Asti., Constructive Ethics of Judges in Indonesia; Problems and Strategic Strengthening, *UNTAG Law Review*, Vol.6, no.2, 2022, page.75.

Constitutional Court calls this status an open legal policy, which can be changed by lawmakers.

The mechanism for filling judicial positions in Indonesia is regulated in various ways according to legislation, including the recruitment of supreme court judges, constitutional judges, general court judges, religious court judges, state administrative court judges, military court judges, and ad hoc court judges. The recruitment of supreme court judges (Law No. 5/2004) involves selection by the Judicial Commission, a DPR fit and proper test, and appointment by the President, with a minimum age requirement of 50 years for career judges (20 years of experience) or non-career judges (25 years of experience), and retirement at age 70. Constitutional judges (Law No. 24/2003) are proposed by the Supreme Court, DPR, and President (3 people each), must be at least 47 years old, retire at age 70, with a term of office of 5 years (can be extended once). Judges of general, religious and state administrative courts (Law No. 49/2009, 50/2009, 51/2009) are recruited through the Supreme Court selection, aged 25-40 years for the first level, 40 years for the appeal level, with a retirement age of 65 years (first level) and 67 years (appeal level). Religious judges must be Muslim and understand sharia. Military judges (Law No. 31/1997) come from military soldiers, with a minimum rank of Captain (first level), Lieutenant Colonel (high), Colonel (main), retiring at 58 years (officer) or 53 years (non-commissioned officer/private). Ad hoc judges in special courts such as Human Rights (Law No. 26/2000) and Corruption (Law No. 46/2009) have a minimum age requirement of 45 years (HAM) or 40 years (Corruption), with a term of office of 5 years (can be extended once), but the retirement age has not been regulated. Before Law No. 5/2014, recruitment follows the civil servant pattern, depending on the formation of the Ministry of PAN-RB. Post-2009, the Supreme Court conducted independent recruitment after the Constitutional Court Decision No. 43/PUU-XIII/2015, eliminating the involvement of the Judicial Commission, with the requirement that judges' education and experience be in accordance with their fields. The dualism of judges' status as civil servants and state officials affects administrative and budgetary arrangements.

On the other hand, the judicial power plays a central role as one of the pillars of the rule of law that upholds justice and the supremacy of law in the Indonesian legal system, as stipulated in Article 24 of the 1945 Constitution. This power is exercised by judges as state officials who have the function of implementing and, in certain contexts, creating legal norms (law-applying and law-creating), as stated by Hans Kelsen who called judges a true state organ because of their role in creating norms through court decisions. The recognition of judges as state officials in Indonesia's *ius constitutum* reflects an effort to ensure judicial independence, but is still colored by challenges due to the dualism of judges' status as civil servants and state officials.[33]

Constitutionally, Article 24 of the 1945 Constitution affirms that judicial power is an independent power, free from intervention by the executive, legislative, or other parties, to administer justice in order to uphold law and justice. This principle is

[33] Ousu Mendy and Ebrima Sarr., The Judiciary in Governance: Understanding the Juridical Nature and Function of the Constitutional Court of Indonesia, *Journal of Indonesian Constitutional Law*, Vol.2, no.1, 2025, page.21.

reinforced through Law No. 4 of 2004 concerning Judicial Power, which replaces Law No. 14 of 1970, and Law No. 35 of 1999, which emphasizes the separation of judicial functions from the executive. Judicial power is exercised by the Supreme Court (MA) and the judicial bodies below it, such as general, religious, state administrative, and military courts, as well as by the Constitutional Court (MK) for constitutional matters. Judges, as the main actors, have the responsibility to adjudicate based on written and unwritten law, with the principle that the court may not reject a case even if the law is unclear, as regulated in Article 16 of Law No. 4 of 2004.

From the perspective of *ius constitutum*, the position of judges as state officials is gradually recognized. Before the reform, only the Chief Justice was considered a state official, while other judges had civil servant status, subject to Law No. 8 of 1974 concerning Civil Service. This civil servant status places judges under executive supervision for organizational, administrative, and financial matters, which has the potential to weaken judicial independence. Post-reform, Law No. 43 of 1999 began to recognize Supreme Court judges and other judicial bodies as state officials, although the civil servant status remained attached, creating dualism. The establishment of the Constitutional Court through the Third Amendment to the 1945 Constitution and Law No. 24 of 2003 expressly stipulated that constitutional judges are state officials, as stated in Article 5. A significant step was taken through Law No. 5 of 2014 concerning State Civil Apparatus, which stipulates all judges, except ad hoc judges, as state officials (Article 122 letter e). However, ad hoc judges are still not recognized as state officials, even though their decisions have legal force as official state documents, creating an unfair status.

The process of recruiting judges reflects the journey towards judicial independence. Prior to Law No. 5 of 2014, the recruitment of judges followed the civil servant pattern, regulated by PP No. 98 of 2000, PP No. 11 of 2002, and PP No. 78 of 2013. Prospective judges must meet requirements such as age 18-35 years, education appropriate to the position, and readiness to be placed throughout Indonesia. This process relies on the formation set by the Ministry of PAN-RB, limiting the Supreme Court from adding judges even if there is a shortage. Prospective judges must pass the judge education; if they fail, they remain civil servants. This system, although flexible, is vulnerable to executive intervention due to its dependence on government policy.

Amendments to Law No. 49 of 2009, Law No. 50 of 2009, and Law No. 51 of 2009 removed the civil servant requirement for prospective judges, allowing for open recruitment. Initially, the Supreme Court and the Judicial Commission (KY) jointly conducted the selection, as stipulated in Articles 14A, 13A, and 14A of each law. However, the involvement of the KY was revoked through Constitutional Court Decision No. 43/PUU-XIII/2015, which stated that the provision was unconstitutional because it contradicted Articles 24, 24B, and 28D of the 1945 Constitution. This decision was based on the principle of lex superior derogate legi inferiori, which asserts that constitutional norms are superior to laws. As a result, the Supreme Court issued PerMA No. 6 of 2016, regulating independent recruitment with formations according to needs, followed by education for prospective judges, to strengthen judicial independence.

The development of judges is carried out by the Supreme Court internally through the Deputy Chairperson for Non-Judicial Affairs and the Judicial Commission externally to maintain integrity, as regulated in Articles 39 and 40 of Law No. 50 of 2009. Development includes technical, administrative, behavioral, transfer, promotion, and education and training supervision. However, further training is not yet regular due to the low interest of judges. Budiardjo,[34] emphasized the role of the state in creating systematic development of judges through regulations, to produce quality judges who support judicial independence.

In carrying out their duties, judges follow the principles of justice such as equality before the law, open trials, presumption of innocence, legality, independence of judges, and ne bis in idem, which are regulated in the 1945 Constitution and Law No. 4 of 2004. The system of proof based on the judge's logical belief allows the judge to examine the facts objectively, as stated by Sudikno Mertokusumo and Andi Hamzah. The judge's decision must be pronounced in an open trial to have legal force, ensuring transparency and justice.

Although the recognition of judges as state officials strengthens independence, the dual status of civil servants remains a challenge. Before 2009, judges were subject to civil servant regulations for administrative and financial matters, potentially giving rise to executive intervention. Law No. 14 of 1970 placed judges under the authority of the government for organization and finance, while the Supreme Court only supervised judicial technicalities. Reforms to the judicial law since 2009 have attempted to separate the judiciary from the executive, but dependence on the state budget still hinders full independence. Ad hoc judges, who are not recognized as state officials, add to the complexity, as their law-creating role is not given equal recognition..

Overall, the judicial power in Indonesia's *ius constitutum* affirms judicial independence through the recognition of judges as state officials, supported by post-1999 regulatory reforms. However, dualism of status, inconsistent regulation of ad hoc judges, and dependence on the executive indicate the need for further reforms. Strengthening the development of judges, improving recruitment, and total separation from executive influence are needed to realize a truly independent judicial power, as mandated by Article 24 of the 1945 Constitution, in order to uphold law and justice fairly and transparently.

## 4. Conclusion

The regulation of judicial power in the perspective of *ius constitutum* does not fully reflect the desire in Article 24 of the 1945 Constitution, namely an independent judicial power because there is still interference from the executive power in the judicial power both administratively, organizationally, and financially. Judges in Indonesia are divided into 3 (three) statuses, namely 1) Judges as state officials, 2) Judges as Civil Servants, and 3). Ad hoc judges (judges with contract status). The different statuses of judges make it difficult to create an independent judicial power free from intervention in enforcing law and justice. Judges with civil servant status always depend on the executive in managing rank and salary. The status of judges as State Officials to date is only held by Supreme Court Justices and Constitutional Court Justices. Ad hoc judges are judges with contract status who

[34] Miriam Budiardjo., *Dasar-dasar ilmu politik*. Jakarta, Gramedia pustaka utama, 2003, page.132.

come from professionals, legally ad hoc judges are judges who do not have specific legal regulations in the law. As a suggestion, to realize the power of the judiciary and independent judges (judicial independence), it would be appropriate to immediately end the multi-status of judges by making all judges have the status of State Officials with all the consequences attached to being a State Official.

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