

Judges' Functions In The Court Process: Legal Perspective

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ABSTRACT

Law is something that regulates and binds everything it regulates. Law enforcement needs someone who can investigate, adjudicate, and decide in law enforcement efforts. A society that continues to develop causes the possibility that the law has not regulated something in its actions. For that matter, we need a judge . the author focus in this study is to see how the function of a judge from legal perspective. The author finds that based on the law, judges have the power to hear and decide a case in court under the existing written law. When there is a legal vacuum in the sense that there is no law governing a case, the judge can interpret the law so that the judge can still make decisions. However, judges still have to remember the legal principles and laws governing the interpretation.

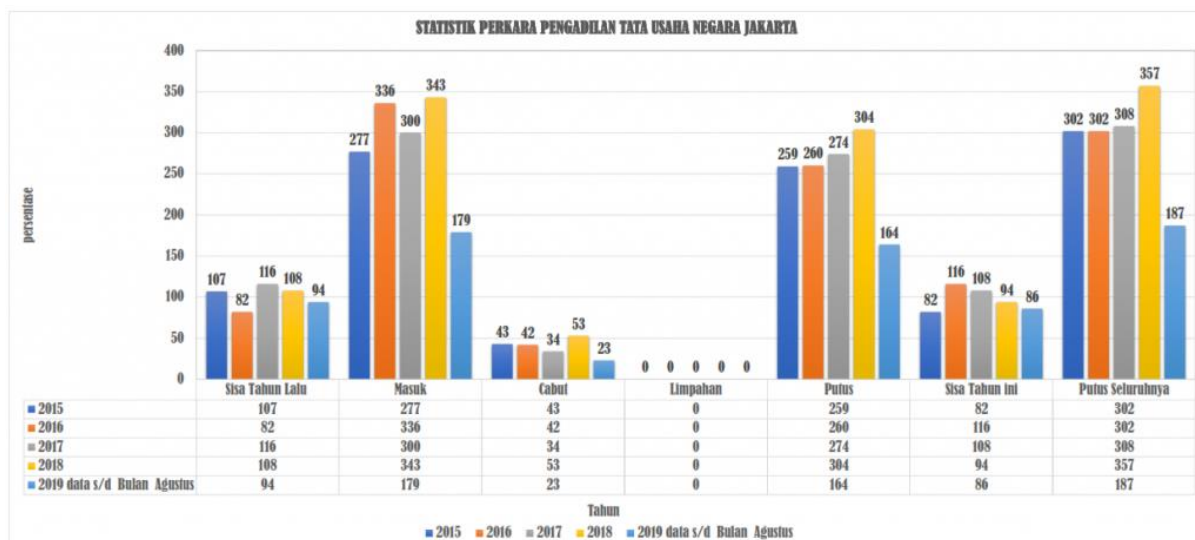
INTRODUCTION

The sovereignty of the Indonesian state is in the hands of its people, this is in accordance with what has been affirmed in the 1945 Constitution, which is also carried out regarding to the Basic Law (Maggalatung, 2014) . The provisions made based on the law are all related to carrying out the objectives of the Republic of Indonesia, carried out based on applicable regulations and laws that will continue to live and develop following the conditions of society (Indonesia & Nusantara, 1997) . This is in accordance with the beginning of the founding of the Republic of Indonesia which established the real and ideal foundations that have been stated in Pancasila and the 1945 Constitution.

Pancasila, which is the foundation for the Republic of Indonesia, is the main guide for the application of law in the country (Hanafi, 2013) . Pancasila states in the second precept that the Indonesian people aspire to "just and civilized humanity" and also mentions the desired justice in the fifth principle, "Social justice for all Indonesian people." So in the efforts made, legal units have been formed with their respective functions in maintaining and serving the interests and security of all Indonesian people (Danendra, 2013) . One of those legal institutions is the judiciary. Judges, whose primary purpose was to to examine, trial, and decide on a case will be protected and released by the state from various interventions from all parties and all forms of interference that may be given to ensure the judge's impartiality. Also to ensure that

judges will only stand with law and justice for the realization of the legal state of the Republic of Indonesia (Hakim, 2017) . Accordingly, in the process of examining a court, judges may only examine and decide on a case based on facts, existing law, and legal morals as considerations for their decision (Isnantiana, 2017) . The judge in his decision also needs to remember that he is a judge for the enforcement of justice, law certainty, the orderly society of the existing law (Swantoro, 2017) .

Within his power, a judge has an enormous role to ensure that the trial runs correctly and following the existing law. Therefore, it is very important that the judge has a neutral nature in a case, where the judge must not have any assumption before the trial begins and it is also not permissible for a judge to conduct the trial for the benefit of one party to fulfill a personal interest. The trial path have to align towards impartial justice, where all relevant facts have equal weight in the eyes of the law. To ensure this, the judge becomes influential. Law, which is always evolving and living, thanks to the presence of a society, requires a person who could decide a case, thus judges are present



Sourced from (2015-2019 Court Case Statistics | Jakarta State Administrative Court , 2019)

a study conducted by the Institute for Criminal Justice Reform (ICJR) found that in 2014 several cities in Indonesia have district courts that has rejected lawsuits for various reasons, with almost 85% of the lawsuits filed (Afandi, 2016) .Of course the obstacles that are considered very many cause a lot of rights that cannot be realized, causing obstacles in the law that has a body which means it exists (Widi, 2018) . So here is the justification for suspecting the effectiveness of the judiciary, which, with the available data, proves that many lawsuits have been terminated and discarded so that they cannot proceed. Observers willask whether all of the discarded lawsuits did not deserve to be legalized, or there was a lawsuit that should have been in court but can't be processed because the judge intends to get some benefit from the party he sides with or benefited from by terminating the lawsuit. (Abdurrachman et al., 2020) .

The judge, , has the power to decide a case before entering the court room (Setyanegara, 2013) . Before deciding on a judicial case, the judge must first decide whether a case is appropriate and can be proceeded into a court of law (Nurgiyantoro, 2005) . A lawsuit against a case is the basis in which a trial begin, so it has to be something relevant to the law and have a significant value in the eyes of the law (Iskandar, 2012) . Therefore, it is the judge who determines the lawsuit so that it can enter the law, so that the time owned by the legal court is not wasted. The lawsuits that may be submitted are lawsuits that are true and supported by various facts and strong evidence (Winarto et al., 2017) . So here the judge is expected to make the just and wise decision because if the judge is not wise and right in making decisions he could prevent justice from taking its form and place according to necessity (Samsi, 2019) . Even the judge can take any action that benefits one party by terminating the lawsuit from entering the court (Putra, 2015) .

Of course, being a judge is not easy, because you don't just have to think carefully so that justice can be served and you need to ensure that the decision is not biased towards any party. Judges. who are also human beings, must be confident in their decisions, because these decisions will have a huge effect on a person's life in court (ADITAMA, 2008) . In general, if placed as a determinant of the life of someone he just met, it will make the person whose decision is asked to get tremendous pressure. That person will think about his decision, whether it was right or not, or if the decision he made was wrong. All these questions will haunt a person for the rest of his life, because he may feel guilty if he puts someone who does not have or commits a crime that violates the law (Rifai, SH, 2020) . The pressure exerted by the mind must be borne by people who have good qualifications (Butarbutar, 2011) . That being said, being a judge can be pressure that some people really don't want to and is a very difficult job. It is difficult because not only he will be seen for his decisions within the community that hold him accountable, but also the responsibilities that he will have to take later because of his decisions before the Creator (Argama, 2006) .

The role of the judge has a lot of influence not only in his life, the party in the lawsuit, but also affects the community indirectly. The results of a trial will serve as an example and provision for the next trial. So the decision that is influenced by the judge only affects the lawsuit, but indirectly it will affect “the image of the law”. Any injustice in the process of judiciary could affect people to lose their faith for the law or question the ability of the law to bring justice to the community regardless their position. Because of the law, there is a judge, while the judge influences the law. So the author feels the need for a study that explains the function of judges in the perspective of the law itself. This study uses the literature review method which uses law as the main data in making this study and uses secondary data in the form of other relevant data.

RESULT AND DISCUSSION

Law on Judiciary in Indonesia

The basic law of all applicable laws in Indonesia is the 1945 Constitution. All applicable laws in Indonesia cannot violate the 1945 Constitution, because these laws make Indonesia a state of law. In the 1945 Constitution, the law governing the judiciary can also be found (Siallagan, 2016) . Article 24 of the 1945 Constitution explains the judiciary states that the power of the judiciary is exercised by the supreme court and other judicial bodies according to law. The second paragraph also states that the composition and powers of these bodies are regulated by law. Seeing that the law that regulates how the judiciary can follow up on a judicial case (Angkouw , 2014) . In this article there may be slight clarification of the functions and powers of the judiciary, the functions of the judiciary may be modified in such a way without seeing the spirit of the judiciary itself in order to provide justice and enforce the law.

For this reason, amendments to these regulations are needed not only to clarify the purpose of a judiciary but also to prevent the abuse of judicial power for political gain which will later change the law (Hady, 2016) . This will lead to many possibilities of abuse of power in order to maintain the political dominance of a government, opened the door to a dictator or a government that is not only disobey the law, but could make laws in such a way for their purposes. This will lead to a government that doesn't care about the will and justice of the people. This is proven because the government feels the need for amendments to this law so that the judiciary can have the freedom to carry out its duties. Freedom from all forms of pressure, be it direct physical pressure in the form of threats or psychologically. The freedom in question is also free from all offers of benefits that will be received if the judge sided with one party only.

The amendments led to several changes to Article 24 of the 1945 Constitution as follows.

<p>Article 24 of the 1945 Constitution</p>	<ul style="list-style-type: none"> (1) Judicial power is an independent power to administer justice to enforce law and justice. (2) Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court. (3) Other bodies whose functions are related to judicial power are regulated by law.
<p>Article 24 A of the 1945 Constitution</p>	<ul style="list-style-type: none"> (1) The Supreme Court has the authority to adjudicate at the level of cassation, examine statutory regulations under the law against the law, and has other powers granted by law. (2) Supreme Court Justices must have integrity and personality that is impeccable, fair, professional, and experienced in the field of law. (3) Candidates for Supreme Court Justices are proposed by the Judicial Commission to the House of Representatives for

	<p>approval and subsequently appointed as Supreme Court justices by the President.</p> <p>(4) The chairman and deputy chairman of the Supreme Court are elected from and by the Supreme Court justices.</p> <p>(5) The composition, position, membership and procedural law of the Supreme Court and the judicial bodies under it are regulated by law.</p>
<p>Article 24B of the 1945 Constitution</p>	<p>(1) The Judicial Commission is independent and has the authority to propose the appointment of Supreme Court justices and has other powers in the context of maintaining and upholding the honor, dignity, and behavior of judges.</p> <p>(2) Members of the Judicial Commission must have knowledge and experience in the field of law and have integrity and a personality that is beyond reproach.</p> <p>(3) Judicial members are appointed and dismissed by the President with the approval of the House of Representatives.</p> <p>(4) The composition, position and membership of the Judicial Commission are regulated by law.</p>
<p>Article 24C of the 1945 Constitution</p>	<p>(1) The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine laws against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide on disputes regarding the results of the general election.</p> <p>(2) The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.</p> <p>(3) The Constitutional Court has nine members of constitutional judges appointed by the President, who are nominated by three people each by the Supreme Court, three by the House of Representatives, and three by the President.</p> <p>(4) The Chair and Deputy Chairperson of the Constitutional Court are elected from and by the constitutional judges.</p> <p>(5) Constitutional judges must have integrity and personality that is not reprehensible, fair, statesman who controls the constitution and state administration, and does not concurrently serve as state officials.</p> <p>(6) The appointment and dismissal of constitutional judges, procedural law and other provisions concerning the</p>

	Constitutional Court are regulated by law.
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The details made in the amendment is an evidence from the narrative that the law is something that lives and develops in society (Ishak, 2016) . These have provide details of each judicial authority which is designed in such a way as to form a fair trial, which is not reprehensible, impartial, and does not overlap the authority of each judiciary. The law also prevents the existence of a dual position in which there can be partiality to the position, because judges not only need to enforce the law against the people (Winarta, 2009) . Judges also need to enforce the law against the Indonesian government, as well as all the ranks and work units they have.

The amendment to the judiciary is not only meant to detail the existing articles but has the aim of establishing the rule of law and human rights. Changes that contains good purpose are still considered lacking because one example of this deficiency is the legal mafia that is still emerging. The legal mafia, which means that there are people who regulate a decision taken by the court as a representative of the law, is something that is not strange and still cannot be eliminated (Yanto, 2010) . The practice of buying and selling decisions is still said to be a lot, the rise of judges who do not pay attention to integrity, legal values, morality, and many other factors will cause the constitutional violation of the community. This also certainly hinders the realization of the values of Pancasila, in particular the second and fifth precepts (Kristian, 2018)

The changes were made to the appointment of constitutional judges which position is very strategic and important in law enforcement (Firdaus et al., 2020) . The importance of this role also causes concern about whether the judge has good behavior to maintain the dignity of the constitutional court. Of course, there is a Judicial Commission (KY) that will oversee the code of ethics and behavior of constitutional judges, but there is no external oversight to regulate it. The judicial commission which is tasked with maintaining and upholding the honor, behavior of judges, and the dignity of the strategic judicial system does not yet have rules for the work so the law should regulate it and changes are still needed or at least additional laws that will regulate it (Suparto, 2020) .

The need for ongoing studies in safeguarding the development of the law so that it remains relevant and in accordance with the common interest is something that must continue to be done as long as there are developments in society. Therefore, the law that regulates the authority possessed by judges is also no exception, because judges must decide a case that may just be encountered in society thanks to the development of technology, facilities, trends, and much more. These developments must not only be followed by humans but also must be followed by the laws governing human development and humans themselves.

Judge as Legal Interpreter

The article in the 1945 Constitution article 1 paragraph 3 states that Indonesia is a state of law, causing everything to be based on applicable law (Usman, 2015) . Then it will also apply to the judge in making his decision. Judges must use the written law in examining, judging, and

deciding something in the court. If it turns out that the existing law is deemed insufficient or not written in the law, then the judge still needs to decide with the existing law, but here the judge must make his interpretation of the law. The interpretation carried out must still maintain the spirit and values contained in legal norms, where making decisions is something that is not easy (Khalid, 2014) .

Legal interpretation or legal interpretation itself is an approach that is carried out on legal discovery if the regulations already exist but still do not provide a clear application to an incident (Christianto, 2011) . A judge who does not find the relevant regulations governing a case means he finds a legal vacuum in the case. The judge cannot refuse to put the lawsuit in court, but he needs to take up his role as a judge and fill the vacancy of the judge in law enforcement efforts.

In the judicial process, judges who must carry out legal interpretations are expected and required to pay attention to certain principles and principles. In this case, the judge must know the principles of justice and the law that applies in the court. The laws governing legal interpretation, in this case, are the 1945 Constitution of the Republic of Indonesia and Law No. 48 issued in 2009 which explains the powers of judges.

The interpretation of the law is also a function of the judiciary to make changes to the constitution. Judges use legal interpretations of the constitution in the sense that judges can add to the shortcomings of the applicable law, reduce laws that are deemed unnecessary or too ambiguous, or judges can also improve existing laws. This will assist to the meaning of law and ensure that the existing law is interpreted safely without disturbing the spirit of justice and morality. This adds to the importance of the judge's position, because of the very wide interpretation of the law that can be done. Where it can be a double-edged sword in the law, judges can use it to settle a case in accordance with existing law but it is not clear in its regulation, but it can also be a sword that cuts the law itself. Judges can use interpretation to misinterpret to create leniency in the law and carry out legitimacy for violating the law (Ali, 2016) .

CONCLUSION

Judges are a very important role in the judicial process. Judge is one of the agents in law enforcement. The importance of judges in law shouldn't be questioned anymore, because judges do not only function to investigate, hear, and decide on a lawsuit against the law. The judge also has a function in changing the law in the sense that he has an active role in efforts to change, add, and reduce the law itself. Therefore, it is very important for a judge to have high integrity in carrying out his duties in court. Every lawsuit made by the community before it can enter the court has previously been decided by the judge about its appropriateness to proceed to the court.

Judges also have a function as interpreters of the law, where judges can interpret the law in a case where its application is not clear. Even when there is a legal vacuum, the judge still has

the power to make decisions. The breadth of the judge's power makes this position very strong and significant in the judiciary, because the judge may twist or interpret the law in such a way that benefits one party or often known as the practice of buying and selling court decisions. However, in his interpretation, the judge, to avoid this, needs to remember his responsibility to society and God Almighty. The interpretation of the law also needs to remember that the existing interpretation law in this case is the 1945 Constitution of the Republic of Indonesia, Law Number 48 which was issued in 2009 and regulates the power of the judiciary.

it has been illustrated the importance of judges in the judiciary which causes the judicial process to run smoothly, in accordance with the law, and fair. Yet, at the same time, this can also lead to the wrong delivery of justice. Consequently, it is necessary to conduct a good selection of judges so that only the people who have integrity, morality, and good founding values could fulfill positions in law. That's because all smart people can make laws, but good law also requires individuals with good qualities in terms of spirituality. That being said, a law would live and serve its primary function to its people: to bring justice for everyone. Law should be able to help the realization of the fifth verse of Pancasila, to bring the social justice for all Indonesian. Because, as William Scott Downey has famously put it "Law without justice is a wound without a cure".

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