



THE ROLE OF JUDGES IN MAINTAINING JUDICIAL INDEPENDENCE

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Abstract: The independence of judicial power is an absolute requirement for law enforcement and justice. The independence of judges is an essential principle in a democratic legal system. Judges should be free from political influence or pressure from any party and only decide cases based on relevant facts and laws. The question is, what is the role of judges in maintaining the independence of the judiciary, and what is the legal basis for guaranteeing judicial power to realize freedom and justice for the community in the judiciary in Indonesia? The role of judges in maintaining judicial independence is urgent in ensuring justice and truth in a case. Judges must have high integrity and not be pressured by any party, including the government or specific interest groups. Judicial independence also means that judges should be free to make decisions without interference from other parties. The legal basis for guaranteeing judicial power to realize freedom and justice is an essential principle in Indonesia's legal system. This principle emphasizes that the court must be free from political interference or pressure from any party to carry out its duties fairly and objectively.

Keywords: Role of Judges, Judicial Independence, Judicial Power, Law Enforcement.

I. INTRODUCTION

The independence of judges has been a long debate in the history of the Constitution since the birth of the idea or idea of a state of law. The need for freedom for judges was born from pragmatism in the face of progressive currents. As stipulated in the preamble to the constitution, the constitutional commitment to an accountable independent judiciary and the concept of the rule of law, democratic values and norms, and some structural and functional independence depend on the Prosecutor's Office. Several provisions in the constitution are in the form of an independent and accountable judiciary. However, new requirements have also been stipulated in this constitution. Some constitutional experts argue that these

decisions cannot be held responsible by the people and the nation.¹ Far from that, Independence imposes the necessary guarantees to avoid the risk of using a system of political control over court decisions. The independence of the courts must be guaranteed by legislative and executive powers².

The independence of judicial power is an absolute requirement for law enforcement and justice. The independence of judges is an essential principle in a democratic legal system. Judges should be free from political influence or pressure from any party and only decide cases based on relevant facts and laws. The principle of independence of judges is very important to maintain public trust in the justice system. If political interests or particular parties influence judges, their decisions will not be considered fair or objective. Therefore, the independence of judges must be carefully maintained. Judges must be protected from physical or other threats affecting their decisions. They should also be provided with sufficient training and resources to ensure they have the knowledge and skills to make informed decisions. In a democratic country, the independence of judges is one of the main foundations of a fair and effective judicial system. Without this, society would not trust the justice system, and trust in the rule of law would be lost.

The independence of judges is one of the main principles in the judicial system that ensures justice and legal certainty. This is related to the independence of judges in carrying out their duties as legal guardians and decision-makers in trials. According to the 1945 Constitution, judges must be free from political influence, business interests, and pressure from any party in their duties. The guarantee of judges' independence is also regulated in Law No. 48 of 2009 concerning Judicial Power, which stipulates that judges must not be bound by the interests or pressures of any party in carrying out their duties. However, the independence of judges in Indonesia is still faced with various challenges. Judges' reliance on financial institutions and bureaucracies can often influence decisions taken in court. In addition, corrupt practices and nepotism in the judicial environment can threaten the independence of judges. Another challenge is pressure from the executive and legislature, especially in cases related to politics or government policies. This sometimes forces the judge to make decisions not based on the nature of the case itself. In making criminal justice decisions, for example, it is necessary to realize humanistic law enforcement, which needs to be implemented with humanitarian policies and principles and Indonesia's ideals of Pancasila in every process of forming applicable criminal laws and regulations. These values include religion, humanity, and social³. To overcome this challenge, more active efforts are needed to enforce the independence of judges. In this regard, increased education and training for judges

¹ Gyawali, Sudarshan. (2022). *An Assessment Of Judicial Independence In Nepal*. Available at SSRN: <https://ssrn.com/abstract=4345793> or <http://dx.doi.org/10.2139/ssrn.4345793>

² Barbu, S.G. & Florescu, C.M.. (2023). *The Independences of Judges at the Confluence between the Primacy of the National Constitutional Law and the Primacy of the European Union Law*. SERIES VII - SOCIAL SCIENCES AND LAW. 259-264. 10.31926/but.ssl.2022.15.64.2.15.

³ Maroni, M. (2018). *Humanistic Criminal Law Enforcement To Achieve Spiritual Justice*. journal of legal, ethical and regulatory issues, 21(2).

can help improve their understanding of the importance of judge independence. In addition, simplifying the judicial process and enforcing discipline for judges who violate judicial orders or ethics can help increase respect for the independence of judges.

Correlating with Judicial Independence is a very important principle in the legal system. This principle guarantees that any party, including the government or any particular individual, does not influence the court's decision. Judicial independence also guarantees that judges can work independently and make decisions based on the facts and evidence. The principle of judicial independence is one of the main pillars of maintaining freedom and justice for the community. Without judicial independence, there will be no guarantee that everyone will get the same treatment before the law. However, support from all societal elements is needed to maintain judicial independence. The public must understand this principle's importance and support judges to work independently without pressure from any party. Judicial independence is a very important principle in the legal system. Maintaining judicial independence ensures everyone gets the same treatment before the law and creates a fair and equitable society. The question is, what is the role of judges in maintaining the independence of the judiciary, and what is the legal basis for guaranteeing judicial power to realize freedom and justice for the community in the judiciary in Indonesia?

II. DISCUSSION

The Role of Judges in Maintaining Judicial Independence

The role of Judges in maintaining the independence of the Judiciary is one of the most important. Judges are the primary protectors of justice and must remain independent from outside interference to protect this. Judges have an obligation to uphold the rule of law and ensure that it is applied fairly and equally. This requires them to maintain their impartiality and remain free from outside influences. They should be free to make decisions based only on the facts and evidence.

The role of judges in maintaining judicial independence is very important. Judicial independence can be interpreted as the freedom and autonomy of the judiciary to carry out its duties and functions without any intervention from other parties, including the government or other powers. Judges, as the executors of judicial functions, must have high integrity and not be influenced by particular political or economic interests. Judges must also be able to make decisions objectively and based on applicable law. In addition, judges must also be able to maintain the independence of the judiciary from outside interference. This can be done by resisting pressure or intimidation from certain parties. Maintaining judicial independence will create a fair and equitable legal system for all citizens. Therefore, judges are responsible for carrying out their duties well to realize complete judicial independence.

According to Shetreet S, & J. Deschnes, the independence of the judiciary (hereinafter referred to as independence) has long been seen as necessary in the judicial system, but the concept has not received significant attention in practice. However, the independence of judicial power as a concept has received full attention and has become the subject of study. The independence of judicial power is not only aimed at the institutional structure of the judiciary, but also at judicial judges in carrying out their functions in adjudicating and deciding a case before them. According to Jimly Asshiddiqie, the word independence, regardless of the influence of government power, contains a sense that is functional and, at the same time, institutional⁴.

The administration of judicial power is handed over to the judicial bodies stipulated by law, and the main task is to receive, examine, adjudicate, and resolve every case submitted. In line with this primary task, the court must not refuse to investigate and adjudicate a case filed by the judiciary on the pretext that the law does not exist or is unclear. This means the court must examine, adjudicate, and decide a case filed by justice seekers.

In Article 10, paragraph (1) of the Law. No. 48 of 2009 affirms that courts are prohibited from refusing to examine, adjudicate, and decide a case submitted on the pretext that the law does not exist or is unclear but is obliged to examine and adjudicate it. Implementing the duties and functions of judicial power carried out by judges from the judicial environment is expected to be able to enforce law and justice independently, independently, without any intervention from other power environments and the influence of different elements outside the interests of law and justice. Judges must always conduct excavations, follow social dynamics, and understand the values of law and the sense of justice in society. The imperative for the judge is emphasized in Article 5 of the Law. No. 48 of 2009, that:

- a) Judges and constitutional judges must explore, follow, and understand society's legal values and sense of justice.
- b) Judges and constitutional judges must have integrity and an irreproachable personality and be honest, fair, professional, and experienced in law.
- c) Judges and constitutional judges must abide by the Code of Ethics and Guidelines for Judges' Conduct.

In addition, to support the principle of judicial independence, it is also strengthened by finding a basic framework or theoretical basis for the birth of the freedom of judges to carry out their judicial functions in the state judicial environment as the executor of judicial power, it must be referred to the theory and/or concepts of division and separation of powers.

If referred to from its historical background, the theory of judicial power is a derivation or derivative of the theory of division or *separation of power* as taught by John Locke and Montesquieu. In his book "Two Treaties of Government," John Locke teaches that power in a country is distributed or divided into several different state

⁴ A. Ahsin Thohari. (2004). *Komisi Yudisial dan Reformasi Peradilan*. Jakarta: ELSAM, p.1.

organs. According to John Locke, to protect against the accumulation of power, only specific state organs are necessary to distribute power to several state organs to avoid the abuse of power that is only concentrated in one organ. John Locke divided power into the following divisions⁵:

- a) Legislative Power.
- b) Executive Power
- c) Federative Power.

The distribution of power to the three organs of state power, where the judicial power (*Judicative Power*) is included in the part of the executive power organs because the executive power as the power to implement the law also includes the power to adjudicate as the implementation of the law. That is, the judicial power, whose function is exercised by judges from various state judicial bodies as an executive organ in the field of independent judicial power, free from all infiltration, interference, and interference from other power environments, theoretically gets its justification and validity with the theory of the separation of power of *Trias Politica* from Montesquieu and Immanuel Kant⁶.

In addition to this theory, Article 24 of the 1945 Constitution, this article is based on *the Bangalore Principles Of Judicial Conduct*, which is related to the independence of judicial power as a condition for the state of law and is a fundamental guarantee for a fair judiciary. In the *Bangalore Principles Of Judicial Conduct*, this principle recognizes civilized countries, where 4 things are adhered to, namely *independence*, where independence is a requirement in the state of law and is a fundamental guarantee for citizens in the judiciary.

Then, there is *impartiality*, where civilized countries do not take sides in any way, not only institutionally but also in the judiciary. They must not take sides; they must side with the law and evidence. Then, in a civilized country, there must be integrity, where the judge must have integrity be essential and fundamental for judicial performance and prioritize the law, not on someone's orders. After that, there is *propriety* or politeness, where judges, in carrying out their duties, are required to have good manners. Without manners, the judge will never be trusted by the public. Then, there is *equality*, where the judicial power must apply equality, meaning that all people must be treated equally before the law; the last one is *competence and diligence*. It can be interpreted that the judge must be competent, understanding, and diligent in carrying out his duties. For Indonesia to be considered a civilized country, in selecting judges, it must first be investigated through their character and actions, whether they have integrity in themselves or not⁷

⁵ Bambang Sutiyo & Sri Hastuti Puspitasari. (2005). *Aspek-Aspek Perkembangan Kekuasaan Kehakiman di Indonesia*. Yogyakarta: UII Press, p. 18

⁶ Suherman, Andi. (2019). *Implementasi Independensi Hakim dalam Pelaksanaan Kekuasaan Kehakiman*. SIGn Jurnal Hukum. 1. 42-51. 10.37276/sjh.v1i1.29.

⁷ Daly, Tom & Jones, Brian & Hutomo, Cathlin. (2022). *Independensi Kekuasaan Kehakiman Berdasarkan Lembaga, Proses Peradilan, Dan Hakimnya*. <https://www.researchgate.net/publication/363831273>.

The role of public perception reflects the direct determination of whether or not an independent judge is not. Ideally, in the 'active objection' of the actual independence of the judges as indicated in their conduct and decisions: in the conduct of the judges in court (how they conduct the trial) and, in particular, in their judgment. These judgments must 'prove' the extent to which they are led only by law and, for this purpose, are 'immune' to inappropriate external (political and private) pressure and internal pressure (from judges and other management). This goal places high demands on the way judges are selected and promoted: the need for selection is based on merit (knowledge and experience), and not on other (such as political) considerations. However well this election is conducted, the reality is that the judgment still reflects the value. The extent to which judges are capable and willing to abstract from their beliefs and backgrounds is an empirical question but difficult to examine, let alone only set in the heat of a court case by a court user in a case close to objectivity⁸.

The judiciary attaches great importance to image, as with independence. Independence and impartiality are closely related and excessive. Here, it is assumed that the judge's independence in a case is a necessary condition but not sufficient for his impartiality in that case. It is questionable whether the parties can recognize whether an independent judge is independent. The parties will likely be able to identify whether a judge is impartial. Impartiality is then an indicator of imperfect independence.

The role of judges in maintaining judicial independence is urgent in ensuring justice and truth in a case. Judges must have high integrity and not be pressured by any party, including the government or specific interest groups. Judicial independence also means that judges should be free to make decisions without interference from other parties. This can be achieved by giving judges autonomy in making decisions and protecting them from threats or intimidation. In addition, judges must also ensure that the court process is carried out fairly and transparently. They must be able to listen to all arguments from both sides and consider the available evidence before making a decision. In carrying out their duties, judges must also follow a strict code of ethics and be responsible for every decision taken. Thus, judicial independence can be well maintained so that people can feel safe and trust in the existing legal system.

Legal Basis for Guaranteeing Judicial Power in the Context of Realizing Freedom and Justice for the Community in the Indonesian Judiciary

The independent judicial power in the sense of independence has been affirmed in Article 24, paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution of the Republic of Indonesia, as follows:

⁸ Van Dijk, F. and van Dijk, F., 2021. Respect for Judicial Independence. *Perceptions of the Independence of Judges in Europe: Congruence of Society and Judiciary*, p.65-75.

- a) The judicial power is an independent power that administers the judiciary to uphold law and justice.
- b) Judicial power is exercised by a Supreme Court and the judiciary under it in the general judicial environment, the religious judicial environment, the military judicial environment, the state administrative judicial environment, and by a Constitutional Court.
- c) Other bodies whose functions are related to judicial power are regulated in law.

The primary basis for the existence of judicial power is regulated in Article 24 Paragraph (2) of the 1945 Constitution, namely 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 by a Constitutional Court.

The Judicial Power in implementing its judicial power still follows the principles regulated in the HIR. One of the well-known principles is (*nemo iudex in causa sua*). The new Law on Judicial Power contains several forms of independent Judicial Power, including⁹ :

- a) Free from the interference of parties outside the judicial power. Judicial power to organize the judiciary to implement the State of law (Article 3 paragraph 2 of Law No. 48 of 2009, Article 11 paragraph 1 TAP VI/MPR/1973).
- b) Judicial power is a power that stands alone and is free from interference from outside parties.
- c) The State Judiciary. The implementation of judicial power is handed over to the State judicial bodies stipulated by law (Article 3 of Law No.4 of 2004). The principle of objectivity. The court's impartiality is contained in Article 4, paragraph 1 of Law No.48 of 2009. In examining the case and deciding, the judge should be objective and not take sides. For this principle, the tried party can file an objection accompanied by reasons against the judge adjudicating the case, called the right of recusatie (wraeking; Article 17 paragraph (1) of Law No. 48 of 2009).
- d) Judicial Environment. In general, it is known that the judiciary's division is into general and special courts. This is stated in Article 18 of Law No. 48 of 2009. Namely, 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 by a Constitutional Court.

The affirmation of the State's Basic Law is further developed in Law Number 48 of 2009 concerning Judicial Power and Law Number 14 of 1985 concerning the Supreme Court, which has been amended by law. No. 5 of 2004 concerning Amendments to the Law. No. 14 of 1985 in conjunction with Law No. 3 of 2009

⁹ Sudikno, *Hukum Acara Perdata Indonesia*, Yogyakarta, Cahaya Atma Pustaka, 2013, p.19

concerning the Second Amendment to the Law. No. 14 of 1985 concerning the Supreme Court. In Article 1 Point 1 of Law No. 48 of 2009 concerning Judicial Power, it is affirmed:

"The power of the judiciary is the power of an independent state to hold the judiciary to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the State of law of the Republic of Indonesia."

The Official Explanation Number I of Law No. 48 of 2009 contains a firmer clarification on the independence of judicial bodies in the administration of justice. The author's estimate is:

"The 1945 Constitution of the Republic of Indonesia emphasizes that Indonesia is a country of law. In line with these provisions, one of the important principles of the state of law is the guarantee of the implementation of independent judicial power, free from the influence of other powers to organize the judiciary to uphold law and justice."

It is also emphasized in Article 3, paragraphs (1) and (2) of the Law in line with the above rhythm of understanding. No. 48 of 2009, as follows:

- a) Judges and constitutional judges must maintain judicial independence in carrying out their duties and functions.
- b) Any interference in judicial affairs by other parties outside the judiciary's power is prohibited except in matters referred to in the 1945 Constitution of the Republic of Indonesia.

Article 10 of the Universal Declaration of Human Rights states, "Everyone is entitled in full Equality to a Fair a Public hearing by an independent and impartial tribunal, in the determination of his right and obligation and of any criminal charge against him," which means that every person has the right to equality that is fully heard in public and somewhat by an independent and impartial court in terms of determining rights, rights, and obligations and in any criminal charges shown against him. While in the "Beijing Statement of Principle of Independence the Lawsia region of the Judiciary" of August 28, 1997, stated, among other things:

- a) The judicial power is the highest value institution in every society;
- b) Judge's independence requires that the judge decide a case entirely based on understanding the law and is free from any direct or indirect influence. The judge has jurisdiction, directly or indirectly, over issues that require justice;
- c) Maintaining judicial independence is essential for achieving its objectives and carrying out its proper functions in a free and law-respecting society. The state must guarantee this independence through the constitution and laws¹⁰.

¹⁰ Lamijan, L. And Tohari, M., 2022. *Kemandirian Dan Kemerdekaan Kekuasaan Kehakiman Di Indonesia. JPeHI (Jurnal Penelitian Hukum Indonesia)*, 3(1), p.30-49

The independence of Judges and the independence of the Judicial Power as the embodiment of the concept of the State of Law as stipulated in Article 1, paragraph 3 of the Constitution of the Republic of Indonesia of 1945 (as amended) along with several related laws and regulations such as the Law on Judicial Power, the Supreme Court Law, the Law on the Judicial Commission and the provisions of the People's Consultative Assembly which are references in the implementation of the Independence of Judges. Personal independence, substantive independence, internal independence, and institutional independence.

The legal basis for guaranteeing judicial power to realize freedom and justice is an important principle in Indonesia's legal system. This principle emphasizes that the court must be free from political interference or pressure from any party to carry out its duties fairly and objectively. Article 24C of the 1945 Constitution states that judicial power is one of the branches of state power independent of carrying out judicial functions. In addition, Law Number 48 of 2009 concerning Judicial Power also regulates the independence of judges and the protection of judges who carry out their duties honestly and fairly. With this legal foundation, it is hoped that the court can function as a guardian of freedom and justice for all Indonesian people. Therefore, efforts are needed to strengthen the independence of the judiciary and provide protection for judges so that they can carry out their duties properly without fear of pressure from any party.

III. CONCLUSION

The role of judges in maintaining judicial independence is urgent in ensuring justice and truth in a case. Judges must have high integrity and not be pressured by any party, including the government or specific interest groups. Judicial independence also means that judges should be free to make decisions without interference from other parties. This can be achieved by giving judges autonomy in making decisions and protecting them from threats or intimidation. In addition, judges must also ensure that the court process is carried out fairly and transparently. They must be able to listen to all arguments from both sides and consider the available evidence before making a decision. In carrying out their duties, judges must also follow a strict code of ethics and be responsible for every decision taken. Thus, judicial independence can be well maintained so that people can feel safe and trust in the existing legal system.

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