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Independence of the Single Judge in Making Justice Decisions

Independencia del juez único en la toma de decisiones de justicia

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ABSTRACT

The objectivity of judges in deciding is a form of upholding human rights in the judiciary, one of the efforts to realize it is by using the judge's system in trials. Based on Article 11 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, Judges must be independent and have integrity in handling pretrial cases so that the decisions can create a sense of justice because a judge is bound to a professional code of ethics which requires judges to be honest, fair and have integrity.

Keywords: Independence of judges, law, Indonesia, justice decisions.

RESUMEN

La objetividad de los jueces al decidir es una forma de defender los derechos humanos en el poder judicial; uno de los esfuerzos por realizar la objetividad es utilizando el sistema de juicios. Con base en la Ley Número 48 de 2009 sobre el Poder Judicial, los jueces deben ser independientes y tener integridad en el manejo de los casos previos al juicio, de modo que las decisiones puedan generar un sentido de justicia, ya que el juez está sujeto al código de ética profesional que requiere que los jueces sean honestos, justo y con integridad.

Palabras clave: Independencia del juez, ley, Indonesia, decisiones de justicia.

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INTRODUCTION

Judicial authority (Rechtsprekende Bevoegdheid) includes resolving conflicts by stating a decision that binds the parties, related to public authorities; those are the power to declare law (judge), to run the government, and to form laws. In the state of law, the judge is a state official whose main task is to provide definitive solutions to conflicts or disputes between citizens and the government in an impartial, objective, just, and humane manner.

The conflict resolution process can be carried out impartially, so in carrying out the duties, the judge must have freedom from anyone interferences, including from the government, and that is called freedom of judicial power, and he must not have a certain relationship with parties that can create a conflict of interest, for example, blood relations or close family relationships. Besides that, the judge also has to be passive that he must wait until a dispute is presented to him to be solved and may not take his initiative to resolve a dispute. Because, if a judge acts actively on his initiative to determine that an event or situation is a dispute that he must resolve, then he will be prejudiced, and the settlement process will be blurred because it is influenced by his prejudice, and the decision won't be impartial, nor objective and unfair. That is why, in the language of Dutch law, the judge is called a sitting magistrate (Platon & Pech: 2018). Meanwhile, the prosecutor is called a standing magistrate (Koop & Hanretty: 2018, pp. 38-75;) because he has to actively look for "cases," finding crimes and prosecute them to court (bring the case to the judge), for the sake of law enforcement.

The process of dispute resolution through the judiciary can take place impartially and objectively, so the process must be carried out through procedures that can guarantee impartiality and objectivity and standardized in a set of legal principles called Procedural Law. In a law state, the rules of procedural law are formulated in writing in legislation, which must be strictly enforced. Deviation from procedural rules should be viewed as collusion against the law. Therefore, if there is a condition that forces irregularities to be made for the sake of justice, then this deviation must be accounted for explicitly disclosed in the consideration (Motivering) from the judge's decision concerned so that it can be rationally accepted and justified from various aspects (Voigt: 2017, pp. 511-530).

The judge will definitively determine who, according to the law, is right. The safe abstraction of legal principles and legal order disappears and makes room for the living experience from the realities of law: law, written materials, procedures, lawyers, judges, courtrooms. Maybe we can go that far, but for most of us, it will be more of an exception than we are used to. Those legal principles are not only found in in-laws. Law also arises from government practices or judges' decisions. Also, there are unwritten laws, for example, what is called customary law. The law is plural and complex in the same way that life itself has caused it.

A good judge can make the court truly the last bastion of justice, and then, besides mastering the applicable legal system, he must also have faith in God, good intelligence, wisdom, high morals, maturity, mental maturity, polite and patient. This ethical attitude must be reflected in daily behavior so that the judges will be able to maintain the dignity and authority of the judiciary. The appointment of judges should also require at least five years of experience as a legal professional (advocate, legal consultant, member of the Legal Aid Institute, in-house lawyer), and while carrying out the legal profession, he demonstrates the ethical attitude as stated in a letter of recommendation issued by a professional association to which he is a member. Efforts to improve the requirements for the appointment of judges are very important to uphold the rule of law, to continuously improve the positive legal system (Re & Solow-Niederman: 2019, p. 242).

Judges in making decisions are required to be objective and fair. The objectivity of judges in making decisions is a form of upholding human rights in the judiciary, one of the efforts to realize the objectivity of judges in the judiciary is by using the system of judges in trials. Based on Article 11 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, "the court examines, judge and decides cases with a panel of at least 3 (three) judges unless the law stipulates otherwise".

A single judge raises concern that the judge is not objective due to several things such as bribery or relationship; if the judge is single in examining a pretrial case and is partial to one of the parties, then the judge's decision will certainly benefit one party. Therefore in making decisions, pretrial judges should consist of three people so that there are a balance and mutual control. It is feared that the effectiveness of a single judge in deciding cases is not objective. the problem that the author puts forward is "How is the independence

of a single judge in pretrial to realize a fair decision?" (Bindler & Hjalmarsson: 2020, pp. 297-339)

LITERATURE REVIEW

The concentration of power can cause arbitrariness, and this is by the iron law of power, where every power tends to develop arbitrarily. As stated by Lord Acton, "Power tends to corrupt, and absolute power corrupts absolutely." In general, there are three theories about legal objectives, and those are ethical, utility, and mixed theories. The ethical theory states that the purpose of the law is to bring about justice. The content consequence of the law is determined by human ethical beliefs about what is fair and what is not.

According to Salim H.S. (Salim & Nurbani: 2013) that the theory of legal protection is a theory that studies and analyzes the form or purpose of protection provided by law to its subject. One form of legal protection that is relevant to this research is legal protection for suspects. The theory of independent judicial powers cannot be separated from the theory of powers separation and the theory of the rule of law. The relationship between the theory of powers separation and the independent judiciary is related to one of the goals to be achieved, and the theory of powers separation is the existence of freedom and the citizens.

METHODOLOGY

The independent judiciary is also related to the rule of law theory. It is related because the theory of independent judicial power is an important element in a law state. According to Suny (Suny: 1978), the theory of independent judicial power is a derivative and also the main element of the rule of law. More specifically, Suny (Suny: 1978) stated that one of the main elements of a rule of law theory is legal certainty. Derivative elements and elements of legal certainty are a. legality principle, b. The law must regulate the actions of the competent institution so that citizens know what to expect from the institution, c. the law may not apply retroactively, d. Human rights are guaranteed by law and, e., a court that is free from the influence of other powers. The basic idea of the concept of the power of the judiciary, according to Barda Nawawi Arief (Arief: 1998) in a broad sense, is: Freedom of Judicial Power is believed to be an effective means of achieving justice in the form of guaranteeing the protection of citizens from unlawful actions of repressive actions by the authorities (government or executive) (Barda Nawawi Arief: 2018).

Plato in "Politeia" said that justice is the order of those who control themselves. This notion of justice is inseparable from its premise that the origin of the state lies in the various needs and desires of human beings and the need to work together as a result. Between the nature of the state and human nature, it can be concluded into three characteristics: reason, courage, and need.

The philosophical meaning of the word "Just" or "Justice" in Indonesia can be found in the 2nd moral justice, "Just and civilized humanity." The word "just" implies that a decision and action are based on objective and non-subjective standards/norms and not arbitrary. According to Wiratno's (Wiratno: 1958) opinion, justice has a significant relationship with freedom (liberty), which can also be interpreted as "independence."

The approach uses normative juridical, and the research specification is a descriptive-analytical method by researching, describing, and providing a detailed description, and analyzing a single pretrial judge. Furthermore, to analyze the data, the writer used the qualitative normative analysis method.

RESULTS

The independence of judicial power, both in Article 24 of the 1945 Constitution and in Article 1 of Law no. 48 of 2009 concerning Judicial Power, is equated with the term "independent judicial power." Independent means being free from the influence of something, including from the government. However, even though the independence of judicial power is a consequence of the Trias Politica doctrine with the doctrine of separation

powers, which is also applied in Indonesia, it should also be understood that the greater the independence of a Trias Politica organs (legislative, executive, and judicative) does not mean a government system country is getting better.

Judges' income or recruitment, and career are determined by the executive director, making it easy for the executive to exert influence over a judge. Especially in Indonesia, where the culture of 'reciprocity' and respect for 'seniority' and 'superior' is seen as noble values that are still attached to every Indonesian. The independence of a single pretrial judge has always been a topic of discussion in various national and international meetings in the law field. This is because the notion of the Independence of Judicial Power aims at justice. To describe the definition of "Justice" and "Independence of a single pretrial judge" appropriately and to satisfy everyone is difficult. Apart from the formal institutional definition mentioned above, the independence of a judge can also be translated into the meaning of "Freedom of a judge in deciding a case." This definition is more accurately referred to as a material meaning or a substantial meaning. Both definitions cannot be separated from one another. The two of them are related to and support each other. An assessment of only one of them will result in an imperfect understanding (Gazi, 2019; Obicci, 2019; Rex, 2019).

The freedom of a judge is believed to be an effective means of achieving justice in the form of protection guarantees of citizens from unlawful actions of repressive actions by the authorities (government or executive). Therefore, in many constitutions of democratic countries, a real guarantee is given to the independence of judicial power in the form of guarantees for the position of a judge for a certain period, which will not be reduced during their duties (Umejiaku, 2020).

The independence of a judge is balanced by accountability. Both are like two sides of a coin. The two elements are present together, and it is impossible to stand alone because there is no freedom without accountability. The independence principle of a judge requires the judiciary, including the Supreme Court, apart from being an institution that is making checks and balances, it must be free from interference, pressure, or coercion, either directly or indirectly from the power of other institutions. Pressure and coercion can also come from colleagues or superiors, as well as other parties outside the judiciary.

DISCUSSION

Independence and accountability of judicial power is continuous. In some countries, the independence principle is put forward rather than accountability. Because, even though accountability is also discussed as part of the responsibility of the executive or legislative or other institutions, the accountability of the judicial power has different meanings and forms. A judge has accountability when he is examining a case honestly and impartially. Judges are accountable for how they determine their decisions. As long as a judge decides cases based on facts and executes the law freely and impartially, they must be relieved of all responsibility, even though their decision may be overturned by a higher court (Muntasyir: 2002).

A judge cannot be convicted for deciding a case that is different and contrary to a higher court decision. If a judge has committed a criminal offense or is found to have committed an improper act, they may be punished by dismissal or disciplinary punishment permitted by law. The accountability of the judicial power must be understood in this way. If a judge's decision on a case becomes the object of accountability, it means that the definition of accountability has been drawn as widely as possible and will seriously interfere with the independence of the judicial power (Asshiddiqie: 2019).

Accountability can be developed through transparency. This process includes the selection and appointment of a judge. The public may know what is going on behind the court doors. The more transparent this process is, the higher the accountability of the judicial power. If the selection and appointment process of judges is more open and transparent to participation, then the judicial power will acquire judges who are competent, independent, and impartial. This is important for the entire process, including the process of transfer, dismissal, and disciplinary assessment by the judiciary authority.

CONCLUSION

A single judge as to the only judge in the pretrial process based on Article 78 paragraph (2) of the Criminal Procedure Code has not been effective yet, because many pretrial decisions override the sense of justice. A single pretrial judge raises concerns that he cannot be objective in his decision due to several things such as bribery, relations, political, and others. Judges are required to be objective and fair in making decisions. Judges are independent and fair in deciding a case, so the decision can be accepted by all parties and does not cause controversy among the public, and can foster the trust of all people in the pretrial process. The independence of a single pretrial judge has not yet been fully realized. Many pretrial decisions have benefited from certain parties. Judges in handling cases must be independent and have integrity so that decisions can create a sense of justice because a judge is bound to a judge's professional code of ethics, which requires judges to be honest, fair, and have integrity. The objectivity of judges in deciding a decision is a form of upholding human rights in the judiciary, one of the efforts to realize the objectivity of judges in the judiciary is by using the system of judges in trials. It is based on Article 11 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

The Criminal Procedure Code concerning sole pretrial judges needs to be changed to not produce inappropriate or decisions that favor certain parties. Judges who are unable to act independently in carrying out their duties by the professional code of ethics of judges must be given strict sanctions, and the recruitment of judges must be those who have the quality, integrity, and competence to carry out their duties properly.

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