



Independence of Constitutional Court Judgment in Reaching Justice Law

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Abstract

The Constitutional Court is a state institution formed based on Article 24C of the 1945 Constitution of the Republic of Indonesia, which contains 6 paragraphs. The Constitutional Court has 4 (four) authorities regulated in paragraph (1) The Constitutional Court has the authority to adjudicate the first and last level of the decision which is final to test the law against the Basic Law, to decide on a dispute over the authority of a state institution whose authority is granted by the Basic Law, decide upon the dissolution of political parties, and decide on disputes over the results of general elections. The independence of constitutional judges is absolutely necessary in carrying out his duties as a judge, but in interpreting independence it is not freedom that is not controlled, but freedom that is responsible and holds firmly the constitutional judge's oath. Thus, the constitutional judge can present a sense of legal justice for the people seeking justice.

Keywords: Constitutional Court Judgment; Unity; Justice Law

Background Problems

The Constitutional Court is a state institution formed based on Article 24C of the 1945 Constitution of the Republic of Indonesia, which contains 6 paragraphs. The Constitutional Court has 4 (four) authorities regulated in paragraph (1) The Constitutional Court has the authority to adjudicate the first and last level of the decision which is final to test the law against the Basic Law, to decide on a dispute over the authority of a state institution whose authority is granted by the Basic Law, decide upon the dissolution of political parties, and decide on disputes over the results of general elections.

Besides having the four powers mentioned above, the Constitutional Court also has obligations stipulated in paragraph (2) of the Constitutional Court must provide a decision on the opinion of the House of Representatives regarding alleged violations by the President and / or Vice President according to the Constitution.

Constitutional Justices in carrying out their duties must be free from anyone's influence, the freedom of a judge in accordance with Article 24 paragraph (1) of the 1945 Constitution third amendment

(3) of 1999 which reads "Judicial power is an independent power to administer justice in order to uphold law and justice".

According to Khudzaifah Dimiyati¹ the independence of judicial power has 2 aspects, as follows:

1. In the narrow sense of the independence of judicial power means "institutional independence" or in other terms also called "structural independence" or "external independence" or "collective independence". Institutional independence views the judiciary as an institution or institutional structure, so that the notion of independence is the freedom of the judiciary from the influence of other institutions, especially the executive and legislative branches.
2. In the broad sense "independence of judicial power includes individual independence or internal independence" or "functional independence or normative independence". The notion of personal independence can also be seen from at least two angles, namely:
 - a. Personal independence, namely the independence of a judge of the influence of fellow judges or colleagues;
 - b. Substantive independence, i.e. the independence of judges from any authority, both when deciding a case and when carrying out their duties and positions as judges.

A judge in addition to having independence, must also have integrity and personality that is beyond reproach, honest, fair, professional and experienced in the field of law, in accordance with Article 32 of Act Number 4 of 2004 concerning Judicial Power. Judge independence does not mean that a judge can do whatever he wants, but must remain responsible and have checks and balances. According to Lord Acton, the British historian said that "people who have power tend to abuse that power, but people who have unlimited power will definitely abuse it unlimitedly (*Power tends to corrupt, absolute power corrupts absolutely*). What was said by Lord Acton occurred in the Constitutional Court with a hand arrest (ott) incident by the KPK against Akil Mochtar and Patrialis Akbar. The incident shows that the independence of the Constitutional Court judges must still have checks and balances to avoid abuse of authority.

The philosophical problem is, ontologically, the principle of independence and impartiality of judges is the principle right of judges, but the reality is that there is interference from both outside and inside that tries to influence the independence and impartiality of judges. Epistemologically, the fact that in the application of the judge's conscience is sometimes still influenced by the existing conditions (inconsistent). Axiologically, in the trial process carried out it was judged that the justice seeker community felt that the trial was unfair so that it gave birth to a court decision that was deemed unfair. The theoretical problem is that the principle of independence and impartiality of judges cannot be applied in accordance with the theory. While the juridical problem, that the principle of independence and impartiality of judges cannot be implemented consistently in accordance with Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 2 of the Constitutional Court Law Number 24 of 2003 concerning the Constitutional Court. Article 3 of the Judicial Power Act. Related to juridical problems, there is *vacuum of norm* in the absence of adequate control institutions as *checks and balances*.

¹ Khudzaifah Dimiyati, *Potret Profesionalisme Hakim Dalam Putusan* (Laporan Penelitian Putusan Pengadilan Negeri 2008 Komisi Yudisial, Jakarta, 2010, p. 28-29).

Formulation of the Problem

Based on the background description of the problem as described above, the problem is the "Independence of the Constitutional Court Judges in Achieving Legal Justice".

Discussion

Independence of Constitutional Court Justices

Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Judicial power is an independent power to administer justice in order to enforce law and justice", Article 2 of the Law of the Constitutional Court states that the Constitutional Court is one of the state institutions that exercise independent judicial authority to administer justice to uphold law and justice. Article 3 of the Judicial Power Law states that in carrying out its duties and functions, judges are required to maintain judicial independence.²

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The Declaration of the Constitutional Justice of the Republic of Indonesia concerning the Code of Ethics and Behavior of the Constitutional Justice of the Republic of Indonesia, in the first part outlines as follows:³

The independence of judges is a basic prerequisite for the realization of the image of the rule of law, and is a guarantee for the rule of law and justice. This principle is deeply embedded and must be reflected in the process of examination and decision making in each case, and is closely related to the independence of the court as an authoritative, dignified, and trusted judicial institution. The independence of judges and the court is manifested in the independence and independence of judges, both individually and as institutions of various influences originating from outside the judge in the form of interventions that directly or indirectly influence in the form of persuasion, pressure, coercion, threats, or countermeasures because of certain political or economic interests of the government or political power in power, certain groups or groups, with rewards or promises in the form of office benefits, economic benefits, or other forms.

The independence of judges, also called the independence of judges, is set out in the ethics of the profession of judges which reads: "Independent means being able to act alone without the help of other parties, free from anyone's interference and free from any influence. An independent attitude encourages the formation of strong judges' behavior, adheres to the principles and belief in the truth according to moral demands and applicable legal provisions."⁴

² Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, Sinar Grafika, Jakarta, Edisi kedua, 2015, p. 45.

³ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, *Ibid*, p. 46.

⁴ Agus Santoso, *Hukum, Moral, & Keadilan (Sebuah Kajian Filsafat Hukum)*, Prenadamedia Group, Jakarta, Cetakan ke 3, Januari 2015, p.102.

Independence of Judicial Power⁵ in Indonesia is the freedom or independence of judges to carry out their duties of conducting judicial proceedings impartially, solely based on facts and law, without borders, influence, inducements, pressures, or direct or indirect intervention, from any party and / or to any reason, for the sake of justice based on Pancasila.

Franken⁶, Dutch legal experts state that the independence of judicial power is divided into four forms, namely: 1. Constitutional independence (*constitusionele onafhankelijk-kheid*) that is independence associated with Trias Politica according to the teachings of Montesquieu, which is free from political influence; 2. Functional independence (*zakleijke of functionele onafhankelijk-kheid*), namely independence to interpret the law if the definition of the law is unclear; 3. Personal independence of judges (*persoonlijke of rechtspositionele onafhankelijk-kheid*) namely the independence of individual judges; 4. Real practical independence (*practicalche of feitelijk onafhankelijk-heid*) ie the judge may not take sides (*impartial*), a judge must not be affected by the news in making decisions.

The principle of Impartiality of Constitutional Court Justices

The principle of impartiality is impartiality, neutrality, without bias, without prejudice in examining, adjudicating and deciding cases. While the principle of impartiality in the Declaration of the Ethics Code and Behavior of Constitutional Justices the second part explains as follows:

“Impartiality is a principle inherent in the nature of the judge's function as a party expected to provide a solution to every case submitted to him. Impartiality includes a neutral attitude, accompanied by a deep appreciation of the importance of the balance of interests related to the case. This principle is inherent and must be reflected in the stages of the case inspection process up to the decision making stage, so that the court's decision can truly be accepted as a fair legal solution for all parties who litigate and by the wider community in general.”

The implementation of the principle of impartiality or impartiality is as follows:

1. Judges must carry out judicial duties without prejudice, bias, and not biased towards one party.
2. Judges must display behavior both inside and outside the court in order to maintain and enhance the trust of the public, the legal profession, and parties who are litigants against the impartiality of judges and the judiciary.
3. Judges must try to minimize things that can result in judges not meeting the requirements for examining cases and making decisions on cases.
4. Judges are prohibited from providing open comments on cases that will be, are being examined, or have been decided, either by the judge concerned or other judges, except in certain cases and are only intended to clarify the decision.
5. Judges except resulting in not meeting the quorum must withdraw from the examination of a case if the judge cannot or is deemed to be impartial because of the reasons below:

⁵ Khudzaifah Dimiyati, *Potret Profesionalisme Hakim Dalam Putusan*, Komisi Yudisial, Jakarta, 2008.

⁶ Franken, H, *Onafhankelijke en Verantwoordelijk*, Deventer: Gouda Quhnt, 1997, p. 41.

6. The judge clearly has prejudice against one party; and / or
7. The judge or his family members have a direct interest in the decision;

Conclusion

Based on the discussion above the following conclusions are made the independence of constitutional judges is absolutely necessary in carrying out his duties as a judge, but in interpreting independence it is not freedom that is not controlled, but freedom that is responsible and holds firmly the constitutional judge's oath. Thus the constitutional judge can present a sense of legal justice for the people seeking justice.

The author suggests that the submission of Constitutional Justices is no longer the three (3) institutions (President, Supreme Court and People's Representative Council) that have been occurring so far, but from legal experts who have high integrity, have an impeccable track record. The selection process is through an independent, high integrity Pansel (Selection Committee), and has expertise in the field of law and is directly responsible to the President. Thus will get the best constitutional judges among the best.

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