



## Political Effects on Justice in Indonesia: A Case Study of the Suharto Era, 1966–1998

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### **Abstract**

The influence of authoritarian government power in Indonesia on the exercise of independent judicial power occurs from the judicial process to the financial, organizational, and administrative arrangements of judicial power. All executive influence on the judiciary must be seen in order to hinder the exercise of independent judicial power. The influence of government power on judicial independence since the Guided Democracy era under President Sukarno until the era of the New Order Government under President Suharto. Both era of authoritarian government worked hard to place judicial power under executive power both through the regulation of the law and intervention in the judicial process.

**Keywords:** *Political; Justice; Indonesia*

### **I. Introduction**

The importance of discussing the influence of the muscular government at least starts from four reasons. First, the authority of the muscular government always seeks to be charismatic and various ways to influence the power of the judiciary both through the regulation of the law and the direct intervention of executive power in the judicial process.<sup>1</sup>

An authoritarian political format has influenced the judicial process so that a court ruling was born that did not reflect a fair, honest and impartial judge's ruling. Such court decisions have the effect of diminishing public confidence in the court. In authoritarian power, there is no implementation of the theory of separation of power which must be carried out within a framework of a balance of power (check and balance). The theory of separation of powers can only work optimally in a country with a democratic political system. The application of the theory of judicial power in a true check and balance framework can only occur in a democratic law state. Therefore, the concept of a democratic law state can only take place in a democratic political system.

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<sup>2</sup> In precise, Prof. Mr. Zainal Abidin, professor of the Faculty of Law at Hasanuddin University, gave an illustration of the Stalin Government which was very cruel in destroying independent judicial powers in the Soviet Union. Stalin applied penalties, both in exile to Siberia as well as imprisonment and the death penalty for political opponents without going through a judicial process. Read A. Zainal Abidin, "Rule of Law and Human Social Rights in the framework of Indonesia's National Development," LPHN Magazine, No. 10 (1970), 43.

The interference of executive power also encouraged the birth of a loyalties of judges to be stronger in the Government than in the Supreme Court. Loyalty to government power is shown in the phenomenon of the inability of judges to resist the pressure of the authorities in examining cases that offend the interests of the authorities. The intervention of the government has become stronger which has been demonstrated through examinations at the level of investigation and the judicial process of political criminal cases with defendants who are considered enemies of the government. Efforts to include the influence of government power in financial administration → branches of judicial power must be seen in the context of the government's co-optation strategy towards branches of power outside executive power and social institutions, which are characteristic of totalitarian government in the third world.

## ***II. Research Methodology***

This research was conducted using normative legal research methodology.<sup>2</sup> Normative legal research starts from the understanding that legal research is done by examining library materials or mere secondary data. This research was conducted by reviewing the sources of positive law and documents related to legal education. The source of positive law can be in the form of laws and regulations at every level related to the needs of this research. This legal research is carried out by revealing systemic, methodological, and consistent truths. This legal research also sees harmony between legal norms and reality.

In the normative legal research, library materials are basic data which in research science are classified as secondary data. This secondary data has a very broad scope, which includes government-issued documents, court decisions, laws and regulations, treaties and international agreements, and the opinions of prominent legal scholars.

## ***III. Discussion: Intervention of Authoritarian Power in Justice***

### ***III.1. Sukarno era, 1945-1965d.***

The authoritarian nature of the Sukarno government influenced judicial power, namely intervention on the exercise of an independent judicial power.<sup>3</sup> The history of independent Indonesia records the trials of the exercise of independent judicial authority when President Sukarno announced the Presidential Decree of July 5, 1959.<sup>4</sup> Sukarno then intervened in the exercise of independent judicial power through Law Number 19 of 1964 concerning the Basic Provisions of Judicial Power. Revolutionary political rhetoric has permeated Law Number 19 of 1964, which gave the president power to intervene in the judiciary in the event that national interests or the interests of the revolution were threatened.<sup>5</sup>

Through Law Number 19 of 1964 Sukarno had placed the administration of judicial power under the control of executive power during Guided Democracy, Law Number 19 of 1964 had placed judicial power under the influence of executive power, by giving power to the president to intervene in the

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<sup>2</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Cetakan Ketiga* [Normative Legal Research, Third Print]. Jakarta: Rajawali Pers, 1985, pp. 9-10.

<sup>3</sup> In an interview in Jakarta on July 20, 2001, former Chief Justice Busthanul Arifin revealed several ways that Sukarno intervened in the judicial authority.

<sup>4</sup>Through the Decree of July 5, 1959, Sukarno dissolved the Constituent Assembly and declared the 1945 Constitution to be valid again. Read Syed Farid Alatas, *Democracy and Authoritarianism in Indonesia and Malaysia* (London: MacMillan Press Ltd, 1997), 132.

<sup>5</sup>In an interview with Busthanul Arifin in Jakarta on July 20, 2001, former Supreme Court Judge Busthanul Arifin revealed several ways that Sukarno intervened in the judicial authority.

judiciary in terms of national interests or the interests of the revolution is threatened.<sup>6</sup> Sukarno made the law not only because he was furious to witness the refusal of a number of judges to be dictated, but a more basic reason was that he wanted the mobilization of full support from legal experts and advocates.<sup>7</sup>

The first trial of the independence of the judiciary occurred when Sukarno requested a fatwa from the Supreme Court to provide an answer to an opinion dispute between Prawoto Mangkusasmito, who at that time served as Chairperson of Masyumi Party, and Soekarno on Presidential Decree Number 200 Year 1960. The debate began when Prawoto explicitly stated that there was no "Masyumi leader"<sup>8</sup> involved in the PRRI rebellion in Sumatra. Prawoto based his opinion on the fact that M. Natsir, Sjafruddin Prawiranegara and Boerhanuddin Harahap no longer became Masyumi leaders when Presidential Decree Number 200 of 1960, issued on August 17, 1960.<sup>9</sup> They no longer became Masyumi leaders after the party held a Congress in 1959.<sup>10</sup> Because Meanwhile, Prawoto refused the dissolution of Masyumi, if the legal basis used was Presidential Decree Number 200 of 1960. Masyumi dissolved himself compulsorily on August 31, 1960 after receiving pressure from President Soekarno.<sup>11</sup>

The debate then led to the end of the Supreme Court fatwa, which was indeed requested by Sukarno. Chief Justice of the Supreme Court Wirjono Prodjodikoro issued a fatwa, which stated that party leaders could be prominent people in the party.<sup>12</sup> With the construction of the Supreme Court's legal opinion, Sukarno dissolved Masyumi in August 1960. Yusril Ihza Mahendra recorded a growing opinion at the time that the Chief Justice of the Supreme Court at that time was unable to escape the pressure of power in interpreting the law.<sup>13</sup>

Sukarno's intervention in judicial authority could not only be illustrated through serious matters through legislation, but according to Busthanul Arifin, also through matters that were anecdotic in nature.<sup>14</sup> In 1960, Sukarno ordered that judges no longer use toga during the session. For reasons less revolutionary, Soekarno ordered judges to use uniforms of the same rank as prosecutors' uniforms at this time.<sup>15</sup>

### III.2. Suharto Era, 1966-1998

The intervention of executive power towards the exercise of judicial power continued in the New Order era under President Suharto. President Suharto's administration impeded the exercise of independent judicial power through Law Number 14 of 1970 concerning the Principles of Judicial Power. Independent judicial power cannot be exercised in full because the administration, organization and financial arrangements of the judiciary are placed under the Department of Justice. The provision of

<sup>6</sup>Todung Mulya Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order, 1966-1990* (Jakarta: PT Gramedia Pustaka Utama, 1993), 97.

<sup>7</sup>Daniel S. Lev, *Hukum dan Politik di Indonesia: Kesenambungan dan Perubahan [Law and Politics in Indonesia: Sustainability and Change]* (Jakarta: LP3-ES, 1990), 392.

<sup>8</sup>*Ibid.*, 227.

<sup>9</sup>Silverio R.L. Aji Sampurno, *Latar Belakang Keluarnya Keppres Nomor 200 Tahun 1960 Sekitar Pembubaran Masyumi [Background to the issuance of Presidential Decree No. 200/1960 around the Dissolution of the Masyumi]* (Yogyakarta: Penerbitan Universitas Sanata Dharman, 1995), 4

Compare Sabar Sitanggang, et al. eds., *Catatan Kritis dan Perci kan Pemikiran Yusril Ihza Mahendra [Critical Notes and Sparks of Thought of Yusril Ihza Mahendra]* (Jakarta: Bulan Bintang, 2001), 227-228.

<sup>10</sup>*Ibid.*, 228.

<sup>11</sup>Silverio R.L. Aji Sampurno, *Latar Belakang Keluarnya Keppres Nomor 200 Tahun 1960 Sekitar Pembubaran Masyumi [Background to the issuance of Presidential Decree No. 200/1960 around the Dissolution of the Masyumi]*, *Op.Cit.*, 32.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>Interview with Busthanul Arifin on July 20, 2001. Busthanul Arifin is a former Chief Justice at the Supreme Court.

<sup>15</sup>*Ibid.*

Article 11 of Law Number 14 of 1970 has given rise to what is referred to as dualism in the exercise of judicial power, namely the technical side of the judiciary is under the Supreme Court and the administrative side is under the control of the Department of Justice. The presence of Law No. 14 of 1970 is nothing but the defeat of the reformers who at that time worked hard to prevent the recurrence of castration of judicial power in the Guided Democracy regime.<sup>16</sup>

Secondly, the intervention of executive power on the judicial process has brought courage to a number of judges to enforce independent judicial power in their decisions, especially in cases that offend the interests of the authorities. In fact, the threat of authoritarian government intervention interferes with the judges' decision which is far from a sense of justice in cases that offend the interests of the authorities.<sup>17</sup> If even if there is a court ruling that gives justice to justice seekers in the case, then the judge has the courage to let his career know in the future. Such a court decision can be said as a phenomenon of personal justice, not a picture of the functioning of the legal system in this country. The symptoms of personal justice clearly illustrate the occurrence of a judicial independence crisis under the authority of the President Suharto government, which results in the non-operation of the legal system where there should be synergies between legislative instruments, the work of law enforcement officials and the growth of a legal culture conducive to the operation of the legal system.<sup>18</sup>

In handling these cases honest, fair, and impartial judges have actually risked their future careers and the safety of themselves and their families, because they are dealing with authoritarian powers that have influence on the exercise of judicial powers. The judges are faced with a potential mutation of the assignment to an area that does not represent a career path promotion. In the period 1970 to 1998, the transfer of judges was within the jurisdiction of the Ministry of Justice as a political instrument of executive power. The mutation of the working area imposed on judges opposing the authorities is carried out without reason that can be understood in common sense or as part of the career development of the judge concerned. As a form of punishment, the work of honest and courageous judges is also limited to the examination of simple cases, which are technically legal for beginner judges to do. In the future, they will also no longer be given cases that offend the interests of the state in a court case.

In the era of Suharto, there were also judges who dared to oppose the intervention of government power in examining cases in court, where the state had an interest in the decision of the case. The cases varied from political crimes to civil cases in the period 1970 to 1998. Power interventions took place starting from the investigation process at the investigation level to the judge's verdict for criminal cases, and the process of making decisions and decisions themselves for civil cases. All cases examined are cases that have received widespread public attention. The consideration of the selection of such cases is based on the idea, that if a fair decision for the cases under review, the actual resistance to authoritarian power is a phenomenon of individual resistance, the fair decision is clearly not a product of an authoritarian political system, because the judicial process as an element of the legal system the democratic clearly will not be born of an authoritarian political system. The verdict was clearly an opposition to a political system that bound the free judicial authority.

The phenomenon of personal justice that exists as a result of the shadow of threats and interference from power outside the judicial authority over the implementation of the judicial function is a violation of the principle of independent judicial power. Whereas independent judicial power is a central theme for the implementation of the law state, where the 1945 Constitution emphasizes that Indonesia is a state based on law. The phenomenon of personal justice can also be said to be the antithesis of the

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<sup>16</sup>Daniel S. Lev, "Kata Pengantar", Kami Ilyas, *Catatan Hukum [Legal Notes]* (Jakarta: Yayasan Karyawan Forum, 1996), xv.

<sup>17</sup>In another part of this paper, the researcher discusses several cases which allude to the interests of the authorities or confront the interests of the authorities with the interests of the people in the trial court.

<sup>18</sup>Lawrence M. Friedman, *American Law, an Introduction* (New York, London: W.W. Norton, second edition, 1998) 19-22.

absence of guarantees of judicial authority since the Guided Democracy Government under President Sukarno (1959-1966) to the New Order Government under President Suharto.<sup>19</sup>

Third, efforts to fight for independent judicial power have never been stopped either through efforts to strengthen the independence of judicial power through amending the judicial power law or through a series of discussion and seminar activities. Daniel S. Lev noted the debate around the idea of releasing judges from the justice department as desired by the judges on the one hand, and the desire of the Minister of Justice Seno Adjie who represented the New Order Government not to release judges from the department he led.<sup>20</sup> Ikahi believes that financial arrangements and oversight by the justice department will create a means for the executive to infiltrate subtle coercion of judges.<sup>21</sup> Despite support from advocates outside the bureaucratic path, Ikahi failed to fight for the idea of the independence of the judiciary. Ikahi's wishes were even seen by the government as false demands, animosity and even betrayal.<sup>22</sup> In the view of adherents of this way of thinking, the independence of the judiciary can ultimately limit the executive power movement.

### *III.3. Resistance of Judge Organization*

In fact, before the participants of the Indonesian Association of Judges (Ikahi) in Yogyakarta in 1968, former President Suharto promised to restore the law state by ensuring the exercise of an independent judicial power. In front of the Ikahi National Conference in Medan in 1971, Suharto once again promised to restore the judicial authority that was free from interference from outside the judiciary. The desire to restore independent judicial authority has actually been the commitment of legal scholars at the beginning of the New Order Government.<sup>23</sup>

Historical journey then shows the occurrence of diverting the exercise of judicial power during the Suharto government, especially since entering the 1970s. Executive intervention began to be seen since that period as part of the political colors of the Suharto Government which was authoritarian. In his position as Head of Government, Suharto succeeded in influencing the exercise of judicial power through patterns of making legislation that benefited the executive. Suharto co-opted the Indonesian Judges Association (Ikahi) through a Special Operation (Opsus)<sup>24</sup> led by Let. Jen Ali Murtopo, so that this organization compromised the administration of judges under the Ministry of Justice as stipulated in Article 11 of Law Number 14 of 1970 concerning the Principles of Judicial Power, which was strongly opposed by the Supreme Court. The provisions of Article 11 will later be proven as a strategic means to prevent the independence of judges.

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<sup>19</sup>The period of Soeharto's rule ended when he resigned on May 21, 1998. Suharto resigned amid protests from thousands of students who occupied the DPR-RI Building and social unrest which struck several regions in Indonesia. B.J. Habibie replaced Suharto as the third President of the Republic of Indonesia. Read "Suharto Declares Quit," Voice of Renewal, 21 May 1998, 1. The process of Suharto's transfer of power to Habibie associated with the Indonesian economic crisis was widely commented by domestic and foreign writers, including, Pichard Mann, *Economic Crisis in Indonesia, the Full Story* (Singapore: Gate way Books, 1998); J.K. Tumakaka, *Peralihan Soekarno, Soeharto, Habibie* (Jakarta: Hasta Mitra, 1998); Imam Baehaqi, ed., *Soeharto Lengser, Perspektif Luar Negeri* (Yogyakarta: LkiS, 1998).

<sup>20</sup>Daniel S. Lev, *Op.Cit.*, hal. 397.

<sup>21</sup>*Ibid.*

<sup>22</sup>*Ibid.*, 399.

<sup>23</sup>S. Pompe, *The Indonesian Supreme Court: Fifty Years of Judicial Development, Op.Cit.*, 60.

<sup>24</sup>*Opsus* is an intelligence unit with a very broad scope of operations from 1965 to the late 1970s. Special *Opsus* was formed with the task of raising support in the community and state institutions for Suharto and bringing down Sukarno. Read Julie South wood dan Patrick Flanagan, *Indonesia, Law, Propaganda and Terror* (London: Zed Press, 1983), 81.

The authoritarian character of the Suharto government<sup>25</sup> was demonstrated through a centralized strategy of all political-bureaucratic strata with strong support from the military.<sup>26</sup> The judiciary was no exception as well as the target of centralizing the New Order power. Taming the world of justice by imposing dualism on judicial power including the strategy of centralizing power by the New Order. The judges, represented by Ikahi, gave stiff resistance to all efforts to castrate judicial power. The desire of legal reformers, especially from among the judges themselves, to bring an independent judicial power is a struggle that is not linear, not going straight with time.

S. Pompe noted the persistence of the Indonesian Judges Association to regain the independence of the judiciary, which was castrated during the Guided Democracy.<sup>27</sup> The judges struggled not only through the hearing in the DPR-GR, but also through legal seminar activities. Mass media coverage of all talks at the seminar and the resulting recommendations are a strategic step to convey the aspirations of the judges to the wider community.

The fifth Ikahi National Conference in Yogyakarta on 18-20 October 1968 became a very important event for the struggle to establish an independent judicial authority.<sup>28</sup> The meeting of the judges issued a decision, which among others, stated that:

".... The General Courts and State Administrative Courts which directly serve the interests of the people in general and are related to the protection of absolute human rights technically, organizationally, administratively and financially are placed directly under the authority of the Supreme Court, while the Religious and Military Courts as the judiciary specifically which only has jurisdiction over certain groups of people, technically it is under the Supreme Court, but it is organizational, administrative and financially under the authority of the Department concerned."<sup>29</sup>

Pompe noted the efforts of the Suharto Government to co-opt judicial power through the Special Opsus, including gripping power and influence in the Supreme Court.<sup>30</sup> The desire of the Suharto government to place judicial power under the influence of executive power is evident in the Draft Judicial Power Law, which was handed over by the government to the Mutual Assistance Council (DPR-GR) in August 1968.<sup>31</sup> The draft law did not facilitate the presence of power the judiciary which is free from the influence of institutions outside the judiciary, namely by placing the administration of justice under the control of the Department of Justice and denying constitutional review of legislative product laws.<sup>32</sup>

<sup>25</sup>The word "otoriter" comes from English, which is authoritarian. Websters New Collegiate Dictionary mengartikan *authoritarian* sebagai of relating to a concentration of power in a leader or an elite not constitutionally responsible to the people, Massachusetts: G & C Merriam Company, 1980, 75.

In his remarks to the U-U National Seminar in Semarang on 227 December 1968, Suharto said, Pancasila also did not depart from totalitarianism, which only concerned with ignorance, ignoring the human rights, personalities, and interests of each person. LPHN, Minutes of National Law Seminar II (Jakarta, 1968, unpublished).

<sup>26</sup>Nur Iman Subono. "Orde Baru sebagai Model Negara Organik-Statik dengan strategi korporatisasi, " ["*The New Order as a Static-Organizational Model with a corporate strategy*] *Majalah Bulanan Ilmu dan Budaya*, Tahun VU, No. 7/April (1985): 518. See also Bob S. Hadiwinata, *Strong State, Weak Society, and Democratization in New Order Indonesia: State as an Independent Variable* (Paper presented in International Conference of Indonesian Democracy, 1950s-1990s, Monash University, Melbourne, 17-20 December 1992).

<sup>27</sup>S. Pompe, *Op.Cit.*, 76-83.

<sup>28</sup>Luhut Pangaribuan dan Paul S. Baut, ed., *Loekman Wiradinata, Keindependenan Kekuasaan Kehakiman* (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1989), 70.

<sup>29</sup>*Ibid.*, 70-71.

<sup>30</sup>S. Pompe, *Op.Cit.*, 72.

<sup>31</sup>*Sekretariat Jenderal DPR-GR, Rancangan Undang-undang tentang Ketentuan-ketentuan Pokok Kekuasaan Kehakiman Tahun Sidang 1968-1969 [Draft Law on Basic Provisions of Judicial Power of the 1968-1969 Session Year]* (Jakarta, Sekretariat Jenderal DPR-GR, 1970).

<sup>32</sup>S. Pompe, *Op.Cit.*, 79.

The draft law has discouraged the initiators of independent judicial authority among the Supreme Court, even though the Supreme Court is said to be the highest judicial institution. Even though there were statements about further arrangements regarding the salary of judges, the disappointment of the Supreme Court delegation in the DPR-GR hearing could not be hidden. An MA delegation once expressed his disappointment, saying that:

"... this article and other separate paragraphs in its present form do not actually guarantee the separation of the judiciary from government interference ... But this then becomes a problem that is not easily solved."<sup>33</sup>

A very important stage of development in the history of judicial power in the New Order era was the National Law Seminar in 1968, where judges wanted to make this momentum to fight for an independent judicial power. The judges' desire to bring independent judicial power was clearly expressed in the remarks of Chairman Ikahi Asikin Kusumaatmadja. Asikin wants the Supreme Court as the holder of the highest judicial power, which is equal to the executive and legislative branches.<sup>34</sup> But that, according to Asikin, only remained as a myth if the autonomy and power of the judiciary were not actually manifested. Asikin's speech made clear the position of judges and their desires.

The judges again showed consistency of enthusiasm in the ideals of upholding judicial power that was free from influence and dependence on the executive when they held the Ikahi Working Conference from 14 to 15 February 1970. The Ikahi Working Conference succeeded in submitting several proposals to the Director General for Guiding Bodies The judiciary, among others, namely:

"In order to guarantee that the judiciary is free and impartial from extra-judicial factors, it will be endeavored that within 5 (five) years, the organization, administration and finance of the judiciary within the General Courts and State Administration, which will temporarily lead the Director General of General Courts be released and directly under the Supreme Court."<sup>35</sup>

Ikahi's struggle for the realization of an independent judicial power also received support from advocates, namely Peradin (Indonesian Advocates Association).<sup>36</sup>The judiciary supports all recommendations produced at Ikahi meetings. The court even suggested that the Supreme Court be given the right to examine the law materially.<sup>37</sup> The Peradin's proposal was never realized until the end of the Soeharto Government on May 21, 1998.

The ideas about the independence of the judicial power put forward by the judges in seminars which took place in 1968 have opened debate with the government, mainly for reasons not happy with the idea. Ikahi and the Government stand on opposite sides of each other regarding the autonomy and power of the judiciary.<sup>38</sup> The Law Seminar in Yogyakarta in 1968 was recorded as a tragic seminar, not only because it removed Asikin Kusumaatmadja from the position of Chair of Ikahi because of suspicion of his close relationship with Opsus, but more than that because Ikahi began to show an attitude to accept defeat.

Ikahi adopted a compromise step regarding the desire to fully regulate the judiciary under the Supreme Court.<sup>39</sup> As one of the seminar recommendations, Ikahi urged that the Supreme Court seek the

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<sup>33</sup>*Ibid.*

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*

<sup>36</sup>*Ibid.*

<sup>37</sup>*Ibid.*, 72.

<sup>38</sup>S. Pompe, *Op.Cit.*, 82.

<sup>39</sup>*Ibid.* 84.

See also Luhut Pangaribuan dan Paul S. Baut, *Loekman Wiradinata, Op.Cit.*, 71.

placement of a senior judge as Director General of Judicial Affairs in the Department of Justice.<sup>40</sup> The Director General is administratively still within the Department of Justice, with the task of organizing all the affairs and needs of the judiciary bodies. The placement of senior judges can bridge the aspirations of judges in the executive environment. Ikahi's proposal was responded by Minister of Justice Seno Adji then issued Minister of Justice Decree Number J.S. 4/1/21/1970 dated 27 January 1970 concerning the formation of the Director General for the Establishment of Judicial Bodies, led by a senior judge as Director General. Hadipurnomo became the first Director General of the Directorate General of Judicial Body Development.<sup>41</sup>

The proposal to place a senior judge in the position of Director General of Judicial Coaching is seen as Ikahi's compromise towards the Government, which ended a 27-month heated debate between Ikahi and the Government in completing the Draft Law on the Principal Rights of the Judiciary. The Soeharto government did not stop its efforts to place judicial power under the influence of executive power after the enactment of Law Number 14 of 1970 concerning the Principles of Judicial Power.<sup>42</sup> In the following description, it will be explained that the two laws that were adopted after Law Number 14 of 1970, namely Law Number 14 of 1985 concerning the Supreme Court and Law Number 2 of 1986 concerning General Judiciary, did not provide any room for the presence of judicial authority which is free from the influence of outside of judicial authority.

Law Number 14 of 1985 regulates the position, structure and power and the Procedural Law of the Supreme Court. This law places the Supreme Court as the highest court of all judicial environments which in carrying out its duties is independent of governmental influence and other influences (Article 2). In addition, there are still important provisions, namely the granting of state official status to the Chairperson, Deputy Chairperson, Deputy Chairperson and Supreme Court Judge of the Supreme Court because they are executors of judicial authority (Article 6). This provision contains weaknesses, because it only gives the Supreme Court the right to test materially against the statutory provisions under the law [Article 31 paragraph (1)]. The exercise of the material test right is passive, due to the testing of a statutory regulation under the law in the context of an examination at the cassation level [Article 31 paragraph (2)]. During President Soeharto's reign, the Supreme Court only once conducted a material test right, namely when Surya Paloh submitted a request to cancel the Minister of Information Regulation Number 1 of 1984.<sup>43</sup>

Law Number 2/1986 regulates the position of the organizational structure, powers, work procedures, and administration of the court in the General Courts which principles have been regulated in Law No. 14/1970. Article 2 of the Law says that the General Courts are one of the executors of judicial power for justice seekers in general. This law once again emphasizes the dualism of judicial power, while maintaining the organizational, administrative, and financial guidance of the court by the Ministry of Justice, while the Supreme Court takes care of the technical guidance of the judiciary. Even though there is a guarantee that the coaching will be done by the Supreme Court and the Department of Justice,<sup>44</sup> the promise is practically almost never carried out due to the strong influence of the intervention on the running of the judicial process.<sup>45</sup> Therefore, this Law impedes the implementation of judicial functions.

Barriers to the exercise of an independent judicial power can also be found in other parts of Law No. 2/1986. This law requires that a person must be a public servant to be appointed as a judge of the District Court and the High Court.<sup>46</sup> Therefore, because a judge is a civil servant, he must comply with

<sup>40</sup>Luhut Pangaribuan dan Paul S. Baut, *Loekamh Wiriadinata*, *Op.Cit.*, 71.

<sup>41</sup>S. Pompe, *Op.Cit.*, 85.

<sup>42</sup>Luhut Pangaribuan dan Paul S. Baut, *Loekman Wiriadinata*, *Op.Cit.*, 73.

<sup>43</sup>Submission of a judicial review application in 1994, related to the binding of Priority Daily in 1984.

<sup>44</sup>*Republik Indonesia*, Article 5 Law Number 2 Tahun 1986, State Gazette Number 20 of 1986.

<sup>45</sup>Interview with Purwoto Mangkusubroto in Jakarta, 10 May 1999.

<sup>46</sup>*Republik Indonesia*, Article 14 dan Article 15 Law Number 2 of 1986, State Gazette Number 20 of 1986.



the provisions of Law No. 8/1974 concerning the Personnel Principle. The law requires the mono of loyalty of the judge in the organization, which is to become a member of the Civil Servants Corps (Korpri). Because the judge is a member of the Korpri, he must support Golkar.<sup>47</sup> Loyalty to Golkar means also to the government. This can be easily seen from the position of the judge when he tried a political criminal case or a civil case with the government as a party in the case being examined.<sup>48</sup>

Fourth, the discussion about the independence of judicial power can also be released from the theoretical debate about independent judicial power itself. Barriers to the exercise of an independent judicial power, according to Todung Mulya Lubis,<sup>49</sup> have a foothold, namely the weak constitutional basis of the freedom and independence of the justice system. Article 24 and Article 25 of the 1945 Constitution, according to Lubis,<sup>50</sup> are too short and the explanations of the two articles do not describe the principles of freedom and judicial authority. This ambiguity makes possible the birth of another interpretation of what was meant by the makers of the 1945 Constitution. The other interpretation referred to by Lubis seems to be seen from the presence of Article 11 of Law Number 14 of 1970. namely Article 24 and Article 25 of the 1945 Constitution and their explanations do not explicitly regulate judicial authority.<sup>51</sup> Therefore, he proposed the importance of further elaboration of the two articles, which must not reduce and limit the power of the judiciary and affirm its position on an equal footing with the authority of the state government.<sup>52</sup>

In contrast to Lubis and Gandasubrata, former Justice Minister Ismail Saleh confirmed the interference or involvement of state government power in regulating judicial power, by proposing three reasons.<sup>53</sup> First, the interference is a consequence of the familial state<sup>54</sup> principle adopted in the 1945 Constitution. Secondly, the interference is justified because it is in accordance with the sound of Article 5 paragraph (1) of the 1945 Constitution which says that, the President holds the power to form laws with the approval of the DPR, and the explanation of the article said that besides the power of government, the President together with the DPR also exercised legislative power. Thus, according to Ismail Saleh, the government also regulates judicial power. And the third reason, with Article 5, the judicial power can be controlled so that it is not biased in carrying out its duties.

The author feels the need to give notes to the opinion of Ismail Saleh. Ismail Saleh has misinterpreted Article 5 of the 1945 Constitution, which is used as a justification for his opinion that the government can help regulate judicial power. Judicial power can be controlled. This view, in addition to being ambiguous, also contradicts the mandate of the 1945 Constitution which requires an independent judicial authority as stated in Article 24 and Article 25 and its explanation. Moh. Koesnoe and Purwoto also denied that the provisions of Article 5 paragraph (1) of the 1945 Constitution were used as an excuse to reduce and limit the independent judicial authority or to justify the intervention of government power

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<sup>47</sup>*Ibid.*

<sup>48</sup>S. Pompe, *Op.Cit.*, 80.

<sup>49</sup>T. Mulya Lubis, *Kebebasan dan Keindependenan Sistem Peradilan: Tak Bisa Bertepuk Sebelah Tangan [Freedom and Independence of the Justice System: Cannot Clap One Hand]*, (Paper presented at the Workshop on Finding a Jurisdiction Format, Independent, Clean and Professional in Indonesia, Jakarta, 11-12 January 1999), 1.

<sup>50</sup>S. Pompe, *The Indonesian Supreme Court: Fifty Years of Judicial Development*, *Op.Cit.*, 60.

<sup>51</sup>*Ibid.*

<sup>52</sup>*Ibid.*, 224.

Read Purwoto Gandasoebrata, "Kedudukan dan Fungsi Kekuasaan Kehakiman Menurut UUD 1945" [*Position and Function of Judicial Power According to the 1945 Constitution*] (Paper in Workshop on Position and Function of Justice According to the 1945 Constitution in Jakarta, March 18, 1996), 2.

<sup>53</sup>*Ibid.*

<sup>54</sup>The idea of a family state, or popularized with the term integralistic state, was often used by government officials during President Soeharto's rule (1967-1998) and a number of intellectuals had provided a fundamental explanation of the term. The idea of a family state is often opposed blindly with liberalism, especially to silence criticism of the Suharto government. Read Marsilam Simanjuntak, *Pandangan Negara Integralistik [Integralist State View]* (Jakarta: Pustaka Utama Grafiti Pers, 1994).

over judicial authority.<sup>55</sup> Ismail Saleh put forward this view by relying on the facts that government intervention is shown by regulating the recruitment of judges, administrative and judicial organizations including financial matters. These facts have fundamentally reduced the nature of the free judicial power.

Indeed, the desire to establish an independent judicial authority is in line with the spirit contained in Article 24 and Article 25 of the 1945 Constitution. The elucidation of Article 24 and Article 25 states that:

"Judicial power is an independent power, meaning that it is independent of the influence of the power of the Government. In connection with that, guarantees must be made in the Law concerning the position of judges."<sup>56</sup>

The provisions of the two articles of the 1945 Constitution prohibit other branches of state power to influence power in any form and manner. The statement must be interpreted that both the condition, the form and the structure including the implementers, namely the judges must be governed by the Constitution and Organic Law on the Supreme Court.<sup>57</sup> Internal arrangements within the Supreme Court are also needed to make clear the arrangements for judicial duties, the authority of judges in trials and the internal supervision of judges. The researcher recommends that the internal regulation is first regulated in the form of a code of ethics, then compiled in the Statutes and Domestic Rules of the judicial power bodies. However, according to the researcher, the code of ethics must be compiled in the form of a law so that its application can have a strong legal basis, including in the case of applying sanctions against violators. The autonomy of budgetary arrangements must also be in the hands of the Supreme Court, where the state must provide a budget that is independent of the budget of the state government agency.<sup>58</sup>

Still in connection with the issue of an independent judicial power, Subekti believes that the freedom of judges who become good judicial joints is not only in terms of the prohibition to influence the judicial power by other powers outside the judicial power, but the Supreme Court is also prohibited from interfering or influencing a court subordinates who are examining and deciding a case. The Supreme Court only has the power to terminate a case, if there is an appeal for appeal in the case.<sup>59</sup> The oversight function of the proceedings of the judiciary that can be exercised by the Supreme Court against subordinate Courts, among others, is in the case of reprimanding the settlement of cases that have been too long, ordering the implementation of decisions that have obtained permanent legal force that is too long overdue, an order to suspend the order of *uitvoerbaar bij voorraad* which conspicuously violates the requirements under the law.<sup>60</sup>

According to Lubis,<sup>61</sup> the demand for an independent judicial authority has a strong basis, which at least we can read in the minutes of making the 1945 Constitution. Lubis said both Sukarno, Hatta, Soepomo, and Yamin acknowledged the importance of an independent judicial power, even though there were some differences in perspective on the place and location of judicial authority. The ideals to present

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<sup>55</sup>R. Sri Soemantri, "Masalah Alat-alat Perlengkapan Negara," [Problems with State Equipment] Padmo Wahyono, *Masalah Ketatanegaraan Indonesia Dewasa Ini* (Jakarta: ELSAM, 1997), 89.

<sup>56</sup>Harun Alrasid, *Himpunan Peraturan Hukum Tata Negara*, edisi kedua [Association of State Constitutional Laws, second edition] (Jakarta: Universitas Indonesia Press, 1996), 18.

<sup>57</sup>LeIP dan KRHN, *Menuju Independensi Kekuasaan Kehakiman [Towards Independence of Judicial Power]* (Jakarta: LeIP, 1998), 14.

<sup>58</sup>*LeIP dan KRHN*, *Menuju Independensi Kekuasaan Kehakiman [Towards Independence of Judicial Power]*, *Op.Cit.*, vii-xiv.

<sup>59</sup>R. Subekti, *Pembinaan Hukum Nasional [National Law Development]* (Bandung: Penerbit Alumni, 1981), 38.

<sup>60</sup>*Ibid.*, hal. 39.

<sup>61</sup>T. Mulya Lubis, "Kekuasaan Kehakiman yang Merdeka, Mitos atau Realitas?" [Independent Judicial Power, Myths or Reality?], Kompas, 16 Oktober 1989.

an independent judicial power are in line with the explanation of the 1945 Constitution, namely that an independent Indonesian state is a state of law (*rechtstaat*), not a state of power (*machstaat*).<sup>62</sup>

Even though there are differences of opinion among legal scholars, they are of the same view that the presence of an independent judicial power is a necessity in a law state. In connection with the debate on the independence of judicial power, political science scholars have long advocated the separation between executive power, legislative power and judicial power. Montesquieu, one of the leading thinkers in the middle ages, advocated the application of the theory of separation of power (separation of power) as contained in the *Trias Politica*. Montesquieu said that executive power, judicial power and legislative power are separate both about the task and the equipment that runs that power.<sup>63</sup>

Montesquieu's theory of separation, according to Ismail Suny,<sup>64</sup> is not known in the 1945 Constitution, but the division of power. Miriam Budiardjo also believes that Indonesia adheres to *trias politica* in the sense of power sharing.<sup>65</sup> This was seen, according to Miriam, in the division of Chapters in the 1945 Constitution, namely Chapter III on the Power of State Government, Chapter VII on the House of Representatives, and the DC Chapter on Judicial Power. Legislative power is exercised by the President together with the House of Representatives. Executive power is exercised by the President assisted by ministers, while judicial power is exercised by the Supreme Court and other judicial bodies.

Still related to the distribution of power, according to Solly Lubis, the 1945 Constitution introduced two high-level institutions, namely the Supreme Advisory Council (article 16) and the Supreme Audit Agency (article 23).<sup>66</sup> The Supreme Advisory Council is a Government Advisory Board, which is obliged to provide answers to every question the President has and has the right to submit proposals and is obliged to submit considerations to the President. In accordance with its constitutional duties, the Supreme Audit Board (BPK) checks the financial responsibility of the State, which in carrying out its duties is independent of government influence and power but does not stand on the Government. The end of the implementation of BPK's duties culminates in an Annual Inspection Report submitted to the DPR. Submission of the BPK Annual Report to the DPR is intended as material for the DPR to carry out oversight of the Government. The BPK Annual Report material will be broken down into government departments and non-departmental institutions as material for hearings between the Commissions in the DPR and its working partners. Moreover, the submission of the BPK Annual Report is very helpful for the DPR to perform a check and balance function with the executive.

#### *III.4. Independence of Judicial Power*

The author also examines the application of the principle of judicial independence in the process of litigation in political criminal cases during the enactment of Law Number 14 of 1970. Judicial independence can at least be reflected in the implementation of the judicial function, which is one of the exercises of judicial power. Judicial power that is free from the influence of powers outside of the judiciary will further guarantee the implementation of judicial functions that provide legal certainty and justice. The deadline for the enactment of Law Number 14 of 1970 is based on the consideration that the law has provided a legal basis for the intervention of executive power in the exercise of judicial power,

<sup>62</sup>*Ibid.*

<sup>63</sup>Ismail Suny, *Pergeseran Kekuasaan Eksekutif*, cetakan keenam [Executive Power Shift, sixth print] (Jakarta: Aksara Baru, 1986), 15.

<sup>64</sup>*Ibid.*, 16.

<sup>65</sup>Miriam Budiardjo, *Dasar-dasar Untuk Politik*, cetakan kesembilan belas [Basics for Politics, nineteenth print] (Jakarta: Penerbit PT Gramedia Pustaka Utama, 1998), 157.

<sup>66</sup>M. Solly Lubis, *Pembahasan UUD 1945*, cetakan kelima [Discussion of the 1945 Constitution, fifth print] (Bandung: Penerbit Alumni, 1997), 112.

including in the case of judicial proceedings. Law Number 14 of 1970 was made during the President Suharto's administration, or as a historical categorization known as the New Order Government.

In connection with the study of the influence of the authoritarian regime on the functioning of the judiciary, there is a study that revealed that in an authoritarian government - characterized by a very repressive political system and a very tight political supervision system - the court will never be free from governmental authority, but politically is an extension of the government that provides political and ideological direction.<sup>67</sup> However, some scholars note that the court can carry out its functions freely in deciding cases that do not offend the interests of the regime.<sup>68</sup>

As a comparison, courts in Malaysia are relatively independent of executive power compared to courts in Indonesia,<sup>69</sup> but the influence of Prime Minister Mahathir Mohamad's government is most evident in the trials of former Deputy Prime Minister Anwar Ibrahim, who was tried on charges of corruption and sexual misconduct.<sup>70</sup> Political and legal experts and human rights activists in the country believe Anwar was tried for a high-level political conspiracy to remove him from the political stage. Mahathir accused Anwar of being a Western accomplice, for encouraging Malaysia to ask for IMF assistance as part of economic reform measures so that Malaysia could get out of the monetary crisis. Anwar himself has denied all accusations against him. The Malaysian High Court has sentenced Anwar to six years in prison.

Singapore courts are also known to be relatively good compared to courts in Indonesia. However, the Singapore court will take sides with the government when examining the case of an opposition figure. Case in point is Dr. Chee Soon Juan, a prominent opposition figure,<sup>71</sup> was released from prison on November 9, 2001 after serving a five-week sentence for organizing a peaceful demonstration on May 1, 2001 in front of the presidential palace. The protest was intended to urge the government to carry out democratic reforms and implement fair labor policies for workers. In the past three years, Dr. Chee has been jailed three times for his support for political reform in Singapore. The Singapore government has always silenced the opposition movement by arresting. The judicial process against political activists is not fair, where they are faced with charges of insulting the government. They are generally sentenced to prison and a fine at the same time.<sup>72</sup> Another case is the trial process against Chee Soon Juan, who is the Chairperson of the Singapore Democratic Party, on January 18, 2001. Chee was brought to court by Singapore Prime Minister of the Singapore High Court Goh Chok Tong for allegedly insulting Goh and Senior Minister Lee Kuan Yew during the election campaign period in November 2000. Chee has rejected the accusation. However, the court still sentenced him with a fine of 750,000 Singapore dollars.

### III.5. Judicial Cases

This paper also discusses the distortion of the function of the judiciary is placed on the phenomenon of corrupt judicial practices, which are not only understood in the context of accepting bribes or other material forms by judges, but are also understood as government intervention in the trial

<sup>67</sup>Carl J. Friedrich and K. Brzezinski, *Totalitarian Dictatorship and Autocracy* (Cambridge: Harvard University Press, 1956), 35. Read C. Neal Tate, "Authoritarianism and the Function of Courts: A Time Series Analysis of the Philippines Supreme Court, 1961-1987," *Law & Society Review* 4, Vol. 27 (1993).

<sup>68</sup>C. Neal Tate, *Op.Cit.*, 714.

<sup>69</sup>Wu Min Aun, *The Malaysian Legal System* (Petaling Jaya: Longman Malaysia, 1990), 57. Read also Syed Farid Alatas, *Democracy and Authoritarianism in Indonesia and Malaysia* (New York: St. Martin's Press, Inc.), 10.

<sup>70</sup>Anwar Ibrahim Trial," [http:// www.lawasia.asn.au/statement.htm](http://www.lawasia.asn.au/statement.htm), January 8, 1998. Berita tentang Anwar Ibrahim juga dapat dilihat pada, "Malaysian lawyers say justice system is corrupt," *AgenciesAFP, AP, Reuters*, March 09, 2001.

"Jailed Opposition Leader is Freed After 3rd Arrest on Anti-Free Speech Charges," *Lawyers Committee for Human Rights*, [http://www.Ichr.org/media/2002\\_alerts/1112a.htm](http://www.Ichr.org/media/2002_alerts/1112a.htm). Nov. 12, 2002.

<sup>71</sup>*Ibid.*

<sup>72</sup>"QC critic of judicial system barred from defending opposition leader," *South China Morning Post*, January 11, 2002.

process of a case. The public spotlight on the deplorable practice in the world of justice has been going on since 1970 and reached its peak in 1996.<sup>73</sup>

In the mid-1970s, Suharto used a pattern of repression to pressure judges to be loyal to the interests of the authorities, especially in examining and adjudicating political criminal cases. The trial of Syahrir and Hariman Siregar and other student activists who were charged with involvement in the January 15, 1974 incident can be said to be the starting point for strengthening the grip of influence on the implementation of the judicial function. Hariman Siregar was charged with being responsible for the outbreak of riots in Jakarta after mobilizing students and other members of the public to protest government policies in the Japanese investment sector in Indonesia. The judiciary of Syahrir and Hariman Siregar was actually only a camouflage of the political elite level conflict,<sup>74</sup> namely the dispute between the Commander of the Command for Control of Rehabilitation and Order (Kopkamtib) General Sumitro with Lieutenant General Ali Murtopo, Personal Assistant to President Soeharto at that time.<sup>75</sup>

The independence of judicial power is really at stake in the judicial process in which the interests of the state are involved, for example, in the case of Imran bin Muhammad Zein, the case of A.M. Fatwa, Mochtar Pakpahan case, lawsuit Chief Editor Tempo Gunawan Mohamad and the Kedung Ombo people's civil suit. Judges' loyalty seems to be confronted with the independence of the judiciary in these cases. Judges who try to be neutral in a trial that confronts the authorities as defendants or suspects will be punished. As an example, it can be mentioned is the transfer of Judge Benyamin Mangkudilaga from the Jakarta State Administrative Court to the North Sumatra High Administrative Court after he won the lawsuit of Gunawan Mohamad against the Minister of Information of the Republic of Indonesia who had revoked the Tempo Magazine Press Business License (SRJPP) in 1994 - with DeTik Tabloid and Editor magazine.<sup>76</sup>

By making Adi Andojo Sucipto, Young Chairperson of the Criminal Affairs of the Supreme Court (at that time) his source, the mass media revealed that there was collusion between justice seekers and the Chief Justice in the ownership dispute over the Gandhi Memorial School.<sup>77</sup> The disclosure of the practice of collusion in the Supreme Court and the way it was found to be improperly carried out had implications for the collapse of people's trust in our world of justice.

Judicial practice that has not satisfied the community has long been felt, which is contrary to the principle of cheap, quick and simple justice. Mochtar Kusumaatmadja proposed that there were at least six factors that lay behind people's dissatisfaction with the judicial process so far.<sup>78</sup> The first factor is the slow settlement of cases, which is caused by the process of distribution of cases in the court, the determination of judges assembly and the determination of the first session for examination of a single case or petition. The second factor is the impression that sometimes the judge does not try to decide the case seriously based on his legal knowledge, positive law, and beliefs. The third factor is that often cases of bribery or attempted bribery against judges cannot be proven, because the technique of giving bribes is carried out without evidence and without sufficient witnesses. The fourth factor is that the cases examined

<sup>73</sup>In a limited meeting at the ABNR Jakarta Legal Consultant Office, in the context of the World Bank Diagnostic Assessment of Legal Development in Indonesia research project on 17 February 1996, Mochtar Kusumaatmadja reiterated the difficulties of eradicating corruption and collusion in the judicial environment. Mochtar's efforts to eradicate corruption even reached the Supreme Court, but his steps were stopped by former President Suharto by shifting his position to Minister of Foreign Affairs during the next Soeharto cabinet. Corruption practices at the Supreme Court were proceeding neatly because the Supreme Court justices did not act alone, but through the intermediary of the court clerk or other administrative staff.

<sup>74</sup>Heru Cahyono, *Pangkopkamtib Jenderal Soemitro dan Peristiwa 15 Januari 1974*, *Op.Cit.*, 46-47. See also O.G. Roeder, *The Smiling General President Soeharto of Indonesia* (Jakarta- Gunung A-gung, 1970), 162.

<sup>75</sup>Regards of the closeness of President Soeharto with Ali Murtopo, *Read Michael R. J. Vatikiotis, Indonesian Politics under Suharto*, *Op.Cit.*, 30.

<sup>76</sup>Decision of the Jakarta State Administrative Court No. 094/G./1994/IJ/TUN.JKT.

<sup>77</sup>"PK Kasus Ram Masih Dipelajari" [A Review of the Ram Case Is Still Under Study], *Kompas*, 13 Juni 1996, 6.

<sup>78</sup>An internal memo written by Mochtar Kusumaatmadja for the needs of the World Bank-Bappenas research project 1996.1.

are sometimes beyond the knowledge of the judge concerned, due to the complexity of the problem and the laziness of the judge concerned to open a reference book about the case. Therefore, very few judges are able to examine modern economic transactions or multimedia cases. The fifth factor is lawyers who do not always professionally act for clients who entrust cases to them and carry out the duties of lawyers to help enforce law and justice. The sixth factor is that justice seekers themselves do not see seeing the court process as a way to seek justice according to law, but only as a means to win their case in any way. All these factors then reduce the performance of the court, public confidence in the court and the legal profession as a whole.<sup>79</sup>

Law enforcement services in the court are made worse by the absence of certainty when a case has been decided by a judge. If a case attracts public attention (*cause celebre*) it might be finished within one year or even up to the cassation level, then cases that escape public attention can take six to eight years to complete at the cassation level. This can occur because of the lack of transparency in the settlement of cases, in addition to the piling up of cases in the Supreme Court. In this uncertain situation, opportunities for collusion between justice seekers and court clerks are open in court. If justice seekers really want the case to be won, then the clerk of the clerk will look for judges who can give decisions in favor of those justice seekers.

Ironically, irregularities still occur even though there is no collusion between judges and justice seekers, namely the writing of decisions that are intentionally made wrongly by the court clerk. The purpose of the action is nothing but to make a decision in favor of the colluding party. This preliminary research also revealed that the practice of collusion, or other popular terms collusion, apparently not only involved the Supreme Court justices, but also the clerks of the Supreme Court in the practice not commendable in the highest judicial institutions.<sup>80</sup>

The case of the Gandhi Memorial School's lawsuit and the decision of the Supreme Court judge which indicated collusion and corruption illustrate the climax of all indications of dirty practices in our court, even up to the Supreme Court. Even though the evidence strengthened the alleged corruption committed by the defendant, Ram was acquitted by the panel of judges at the Supreme Court. The Rp 1.4 billion collusion issue then surfaced when the Justice Forum Magazine revealed Adi Andojo's letter to the Central Jakarta District Attorney's Office proposing that the prosecutor's Office submit a Judicial Review (PK) on the decision.<sup>81</sup>

A serious study will also find a number of cases of alleged corruption and collusion between litigants and judges in the Supreme Court. The indications of corruption and collusion can be traced through decisions made by judges as well as mass media news reviews and interviews with judges, prosecutors and lawyers as research sources, The emergence of corruption and collusion practices in the Supreme Court, among others, due to the lack of control over the practice law in the highest judicial institution. Ironically, the Supreme Court is actually controlled and intervened by the government in the case of cases involving the interests of the government, especially civil claims against the government. An example is the civil lawsuit against the government in the case of Kedung Ombo (Central Java).<sup>82</sup>

In the cassation hearing on July 20, 1993, the panel of judges led by Supreme Court Judge Asikin Kusumaatmadja granted the demands of Kedung Ombo residents by punishing the Central Java Regional Government to pay compensation of Rp 50,000 per square meter of land, for Rp. 30,000 per square meter

<sup>79</sup>Ali Budiardjo, Nugroho, Reksodiputro, eds., Reformasi Hukum di Indonesia, cetakan kedua [Legal Reform in Indonesia, second edition] (Jakarta: Juli 1999), 115-126.

<sup>80</sup>"Tersangka Pemalsu Putusan MA Diduga Terlibat Penyuapan" [Suspect of Supreme Court Decision Forgery Allegedly Involved in Bribery], *Kompas*, 1 Mei 1991, 6.

<sup>81</sup>"Adi Andojo: Saya Ada Bukti, Seluruh Surat Saya Simpan" [Adi Andojo: I have proof, I saved all the letters], *Kompas*, 22 April 1996,1.

<sup>82</sup>Case registration Number 117/Pdl/G/1 990/PN.SMG.

and material losses of Rp 2 billion to the plaintiffs who were demolished by their homes for the construction of the Kedung Ombo reservoir. Not long after President Suharto expressed objections to the ruling, the panel of judges led by the Chief Justice of the Supreme Court Purwoto Gandasubrata overturned the Asikin verdict. The panel of justices led by Purwoto decided to reject the demands of Kedung Ombo residents.<sup>83</sup>

The Kedung Ombo case not only has a legal dimension, but also holds a complicated political problem in the form of resistance from a number of landowners in the area, which is assisted by groups of students, intellectuals and clergy who care about the fate of the Kedung Ombo residents who were forcibly evicted by the army and government officials.<sup>84</sup> These groups of people then joined the Kedung Ombo Development Victims Solidarity Group (KSKPKO). They organized protests in Salatiga and Jakarta to sue for the payment of appropriate compensation for evicted residents. The protest movement was responded to by the government in a repressive manner, including by arresting KSKPKO activists and President Suharto's remarks to residents protesting at the Kedung Ombo project, saying the dissidents were former families of the Indonesian Communist Party (PKI).<sup>85</sup> Suharto's remarks must be seen as expressions of anger towards political dissent, which was considered to be incompatible with the current political manners. According to the political culture of the Suharto Government, the people always have to sacrifice for the sake of development projects. The necessity of the people to sacrifice is more a reflection of the concept of relativity of people's rights in the context of relations with the state. The people are citizens of a group of people and society is part of a larger group called the state. The denial of citizens' rights is a reflection of the concept of uniting citizens with the state, in which the state can ratify citizens' rights for the greater interest of society. Such concepts in the perspective of Indonesian political culture are better known as in the wrong sense the concept of integralist state.<sup>86</sup>

## Conclusion

The authoritarian style of government has had an insufficient influence on the non-functioning of the separation of powers between the judiciary and the executive and legislative powers. but also, the malfunctioning of checks and balances between the three branches of state power. Authoritarian government gives a strong influence on the legal system, so that the legal system becomes undemocratic.

The Sukarno government intervened in the exercise of judicial power both through political action and the making of laws and regulations. Sukarno gave a juridical basis for interference in the administration of justice through Law Number 19 Year Law Number 19 of 1964 concerning the Principal Provisions of Judicial Power. Revolutionary political rhetoric has permeated Law Number 19 of 1964, which gave the president power to intervene in the judiciary in the event that national interests or the interests of the revolution were threatened.

The influence of the power of President Soeharto's government was very strong in the implementation of the judicial function in the period 1970 to 1998. Starting in 1968 there had begun to be efforts to limit the independent judicial power, namely through the Draft Judicial Power Act in 1970. The birth of Law Number 14 Year 1970 on the Principles of Judicial Power, which gave legitimacy to the interference of executive power in regulating the administrative-financial affairs of the judiciary through the provisions of article 11 of the Law. Law Number 14 of 1970 was born through a number of debates in the DPR-GR building over the 1968 Draft Judicial Power Act. The interference of executive power over

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<sup>83</sup>Mahkamah Agung Decision Number 2263 K/Pdt/1991.

<sup>84</sup>Arief Budiman, "Kasus Kedung Ombo: Sebuah Catatan Akhir" [The Kedung Ombo Case: A Final Note], Stanley, *Sepvtar Kedung Ombo .Cit.*, 9-15.

<sup>85</sup>*Ibid.*

<sup>86</sup>Read Marsilam Simanjuntak, *Pandangan Negara Integralistik [Integralist State View]*, *Op. Cit.*

the administration of justice in the New Order also occurred in the Guided Democracy Government (1959-1966).

The influence of executive power on judicial power during President Soeharto's administration has given birth to court decisions that do not give justice to justice seekers, especially in cases that offend the interests of the authorities. Efforts to include the influence of government power in financial administration – branches of judicial power must be seen in the context of the government's co-optation strategy towards branches of power outside executive power and social institutions, which are characteristic of totalitarian government in the third world. Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power, through article 11, is an entry point for the intervention and involvement of executive power to regulate the financial administration of judicial power.

The process of influencing the judiciary was also carried out by the Soeharto Government by involving investigators who were not known in the Criminal Procedure Code, meaning military intelligence officers, in the stage of investigation and investigation of political criminal cases. Irregularities occurred starting from the investigation process, which was marked by the process of making Minutes of Examination by involving military intelligence officers to the selection of places of detention for political criminal suspects. All the suspects in the cases examined were detained in Military Detention Centers, not in the police as is the usual place of detention for civilians. The interrogation process also takes place using physical torture by the investigating apparatus to obtain confessions from the suspect or as coercion so that the suspect acknowledges the allegations imposed on him. The technique of obtaining recognition or affirmation of suspicion through torture in the context of making the Official Report on the Examination (BAP) is an unjustified method. Even though there was a disclosure of torture against the suspect in the context of making the BAP in the trial process, the panel of judges refused the request of the legal advisor so that the defendant's confession be withdrawn from the BAP.

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