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Reactualizing Indonesia's Legal System: A Comprehensive Critique and Proposals for Reform

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Abstract

This text provides a comprehensive critique of the legal system and law enforcement in Indonesia, addressing challenges and proposing solutions. It discusses issues such as formalism, case backlog, and the need for innovation in judicial decision-making. The analysis emphasizes the importance of reactualizing the legal system, integrating local laws into the national framework, and implementing institutional reforms for law enforcement agencies. Additionally, the text advocates for empowering society through increased access to government functioning and legal awareness. The role of bureaucracy in development and challenges posed by political and constitutional phenomena are explored. The article outlines four key problems requiring attention: legal system reactualization, institutional restructuring, community empowerment, and bureaucratic empowerment. Ultimately, the analysis calls for a paradigm shift in legal philosophy and proposes improvements across various facets of Indonesia's legal system and law enforcement.

Keywords: Legal system, Law enforcement, Judicial decision-making

1. Introduction

The prerequisites for a rule of law are an important aspect in maintaining the sustainability of a country's legal system. One of the key elements in these prerequisites is the existence of a free and independent judiciary, which is free from the influence of other powers. Apart from that, recognition and protection of human rights (HAM) and legality in the legal sense are also inseparable foundations. Corruption is a criminal act that is very detrimental to state finances and the nation's economy. Corruption crimes have also violated people's social and economic rights. Therefore, eradicating corruption has become an important agenda in various countries, including Indonesia (Santoso, 2014).

One of the main pillars in eradicating corruption is law enforcement by judicial institutions. An authoritative court decision is very important to provide a deterrent effect and prevent the recurrence of criminal acts of corruption. Appropriate and fair judge decisions will increase public confidence in the justice system (Butt, 2017). The principle of judge's freedom (independence of judiciary) is an important principle that is the foundation for judges' decisions so that they have authority and justice. This principle provides a guarantee that judges can provide decisions freely and objectively based on the facts of the trial and their beliefs, without pressure from any party (Asshiddiqie, 2006).

Several previous studies have examined the application of the principle of judge's independence in ordinary cases. However, there are not many studies that analyze the influence of this principle on judges' decisions, especially in corruption cases. In fact, corruption cases often receive high public attention and pressure so they are prone to affecting the independence of judges (Butt, 2017).

Therefore, this research will analyze the influence of the application of the principle of judge's freedom on the authority of judges' decisions in deciding corruption cases. The research was carried out through studying decisions in several courts in Indonesia as well as interviews with judges. The research is expected to provide recommendations for optimizing the independence of judges so that decisions are of higher quality and authority in eradicating corruption.

In Indonesia, the 1945 Constitution of the Republic of Indonesia has become the constitutional basis for state life. The document emphasizes the independence of judicial power and the freedom of judges as principles in the Indonesian legal system. However, in practice, reality shows that these principles are not always fully implemented.

History shows that repressive legal conditions can result in distortions of judges' freedom. The influence of political power, especially the executive, and other factors, including the personal interests of judges, can be interrelated and affect the independence of the judiciary. This creates an imbalance in law enforcement and can harm the principles of the rule of law.

The importance of an independent judiciary is increasingly visible through the controversy over judges' decisions, especially in phenomenal cases. The public often responds emotionally to these decisions, considering that law enforcement has reached its nadir and lost its authority. In this context, the establishment of ad hoc institutions such as the Corruption Eradication Commission (KPK) and ad hoc judges for Corruption Crimes shows that public trust in judicial institutions is declining. In fact, as a state of law, the law should be upheld as a tool to achieve justice, prosperity and civility, in accordance with the nation's vision and mission as expressed in Pancasila and regulated clearly in the Constitution.

Unfortunately, after 73 years, Indonesia is still faced with high levels of corruption, both in the perception of the international and national communities. This fact shows that although there is a constitutional framework and good principles, its implementation does not fully reflect the prerequisites for an ideal rule of law. Therefore, the real challenge lies in improving the justice system, transparent law enforcement, and rebuilding public trust in judicial institutions.

2. Research Methodology

In the writing of this paper, the author adopts the viewpoint of Burhan Bungin, who asserts that there are two processes for acquiring truth or knowledge. Firstly, the process is called "critical-rational thinking," and secondly, it involves scientific research. Critical-rational thinking is a method of seeking truth through a scientific approach. This critical-rational thinking, as the origin of ideas about the scientific research process, involves analytical thinking.

In utilizing rational thinking to discover truth or knowledge, there are two paths: analytical thinking and synthesis. In this paper, the author employs analytical thinking, specifically a deductive thinking pattern. This is because individuals construct thought patterns by starting from general aspects of knowledge, theories, laws, principles, and then formulating propositions.

3. Research Results and Discussion

3.1. Concept of the Principle of Judicial Independence

In a legal state, the judicial power (judiciary) is a crucial judicial body that significantly influences the substance and strength of positive legal norms, including criminal law (corruption). This body is where the concretization of positive law is carried out by judges in their decisions in court. In other words, no matter how well-crafted the criminal (corruption) laws in a country are, in the effort to combat crimes, these regulations are meaningless if there is no judicial power exercised by judges who have the authority to give content and strength to these criminal (corruption) legal norms. It becomes apparent that the court/judge, as the executor of judicial power, is the foundation for all layers of justice-seeking members of society (justice seekers) to obtain justice and resolve issues related to their rights and obligations according to the law.

The realization of justice is carried out by an independent judicial power and free courts/judges to uphold the law and justice. The issue of judicial independence is inseparable from independent judicial power, and indeed, this is a universal concept. The most important universal provision is The Universal Declaration of Human Rights, Article 10, which states: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations or any criminal charge against him" (Sivasubramaniam, 2013). This reflects the universal aspiration for a fair and impartial legal process. In connection with this, Article 8 emphasizes the right to an effective remedy by competent national tribunals for acts violating fundamental rights granted by the constitution or law.

"Judicial power is an independent power to organize the judiciary to uphold the law and justice." Paragraph (2) states: "Judicial power is exercised by a Supreme Court and subordinate courts within the general court jurisdiction, religious court jurisdiction, military court jurisdiction, state administrative court jurisdiction, and by a Constitutional Court." The difference from the previous Article 24 is that the mention of independent judicial power is now included in the formulation, not just in the explanation. Additionally, it details the courts under the Supreme Court, including the new addition, the Constitutional Court.

The position of independent judges is regulated by the Republic of Indonesia Law No. 14 of 1970 concerning judicial power, which has been amended by Republic of Indonesia Law No. 35 of 1999, further amended by Republic of Indonesia Law No. 4 of 2004, and lastly amended by Republic of Indonesia Law No. 48 of 2009. The initial provisions of this law were corrections to the practices of the judiciary during the Old Order era. The most recent changes were prompted by societal demands for the establishment of corruption criminal courts that align with the constitution and the emergence of new institutions, such as ad hoc judges for corruption criminal cases and the role of the judicial commission. During the Old Order era, with Republic of Indonesia Law No. 19 of 1964, presidential interference in the judiciary was regulated. The Chief Justice of the Supreme Court was appointed as a minister

(presidential assistant). Thus, judicial independence according to the 1945 Constitution was abolished by a lower-level law.

With Republic of Indonesia Law No. 14 of 1970, the guarantee of judicial freedom was once again only formal. It was deemed formal because, in the practice of the judiciary during the New Order era, there were numerous deviations from the freedom or independence of judges in making decisions. It was widely known that during the New Order era, judges often hesitated to make objective verdicts in line with the law and justice due to intervention or fear of conflicting with the government. At that time, judges had two superiors or parent organizations: the Supreme Court as a judicial institution and the government as an executive institution.

The Supreme Court served as the superior or mentor to judges in terms of judicial substance and technique, while the government, specifically the Ministry of Justice for general judges and administrative judges, the Ministry of Religion for religious judges, and the Ministry of Defense/Armed Forces Headquarters for military judges, was the superior or mentor in administrative, personnel, and financial matters.

Conditions that often prevent judges from making fair decisions in matters related to the government have led to a change in legal policy. Since 1999, through Republic of Indonesia Law No. 35 of 1999, a one-stop policy has separated the supervision of judges from the executive branch. This move aims to place all aspects of judges' supervision under the Supreme Court, both administratively and financially, to ensure judges can make decisions without fear of government interference.

In this regard, it is essential to distinguish between the terms "independent" and "free" (hereinafter, the term "free" will be used interchangeably with "independent"). Independence implies being under one's own authority, not under the authority of a department or another organization. On the other hand, being free or independent means deciding cases "free from the influence of the executive or any other state power, and freedom from coercion, directives, or recommendations coming from extrajudicial parties, except in cases permitted by law."

The autonomy of judges in terms of handling administration, finance, and building development poses a dilemma. If the Ministry of Justice handles the appointment, promotion, and transfer of judges, it can influence their freedom. Conversely, if judges handle their finances, building development, and equipment purchases, they might be considered part of the executive branch, accountable to national institutions.

Iskandar Kamil provides an opinion on justice related to the duties of judges as follows: "The duty of judges is to execute the independent Judicial Power to organize justice to uphold the law and justice, which fundamentally involves adjudicating (Iskandar, 2013). The term adjudicating is a simple formulation, but it contains a very fundamental, extensive, and noble meaning, which is to review and establish something fairly or deliver justice. The delivery of justice must be done freely and independently. To realize the function and duty of judges, the administration of justice must be technically professional, non-political, and non-partisan. Justice is carried out according to professional standards based on applicable laws, without political considerations and influences from interested parties."

From the explanations and perspectives mentioned above, the enforcement of law and justice forms the philosophy underlying the freedom of judges. Given that this philosophy is the basis for upholding law and justice, judges need to be granted freedom from the influence of extrajudicial powers in exercising their judicial powers. However, this freedom must be recognized as a legal right granted by the law, not a natural right. Therefore, the Chief Justice of the Supreme Court stated that the freedom of judges is limited to: a. Freedom from interference from other state powers. b. Freedom from coercion by anyone. c. Freedom from directives or recommendations coming from extrajudicial parties.

The issue of judicial freedom needs to be linked to how judges follow jurisprudence. The freedom of judges in finding the law does not mean they create the law. According to Wirjono Prodjodikuro, judges only formulate the law. Despite similarities to the legislative process, the judge's work is not the same as lawmaking. Although Ter Haar stated that the content of new customary law is officially considered to exist if there are several decisions from authorities, especially judges, Ter Haar's statement does not imply that with judges' decisions and other authorities, customary law is created; it merely formulates it.

To find the law, judges can refer to jurisprudence and the opinions of renowned legal experts (doctrine). Regarding jurisprudence, van Apeldoorn shares Wirjono Prodjodikuro's perspective mentioned above. Conceptually, judicial freedom does not emerge in the 1945 Constitution of the Republic of Indonesia (including amendments), nor in the Judiciary Law. However, judicial freedom, even though not explicitly stated in the 1945 Constitution or the Judiciary Law, is accepted as the ethical foundation or ethical demand for the administration of judicial power, whether conducted by the Supreme Court, High Courts, or District Courts (Marzuki, 2011).

The format of judicial freedom is reflected in several provisions of the Judiciary Law, including Article 16, Article 25 paragraph (1), and Article 28 paragraph (1). These provisions not only provide space for judicial freedom but also contain limitations. Judicial freedom receives limitations, both "in a negative sense" and "in a positive sense." Limitations in a negative sense mean regulations that keep judges from distorting attitudes that show lack of freedom, closed-mindedness, injustice, and even lack of professionalism. Moreover, they provide a broader and therefore freer space for judges to examine, adjudicate, and decide cases. Limitations in a positive sense mean judges are restrained by the law.

Legislation, from the Judiciary Law to the Criminal Procedure Code (KUHAP), has imposed limitations on judicial freedom, but in practice, there is potential for corruption criminal trials to exceed positive limitations. Such freedom is

termed "anomalous freedom." The movement from normative freedom to anomalous freedom is known as "judicial freedom," and anomalous freedom refers to freedom that cannot be explained within.

3.2. Influence of the Principle of Judicial Freedom on the Authority of Judges' Decisions in Corruption Cases

Every judge who is a member of a panel of judges has the freedom to express an opinion on the case under examination, guaranteed by the law. In deciding a case, the panel of judges must conduct deliberations to reach a consensus. These deliberations are held to consider the facts revealed during the trial based on a minimum of 2 (two) pieces of evidence for the criminal charges against a defendant. Consideration of these facts must be included in the panel of judges' decision. However, if there is a difference of opinion among panel members, the decision is made based on the majority vote (voting). Dissenting opinions from panel members must be included in the decision and become an integral part of it.

Regarding the verdict, based on Article 191 and Article 193 of the Criminal Procedure Code (KUHAP), there are three possible judge's decisions:

a. The defendant is declared guilty and sentenced, indicating that the defendant's actions charged by the public prosecutor have been proven convincingly.
b. The defendant is declared free from the charges, indicating that the defendant has not been proven convincingly to have committed the alleged criminal act.
c. The defendant is declared exempt from all legal claims, indicating that the defendant's actions have been proven but do not constitute a criminal act, or there are mitigating circumstances.

If one of the three types of decisions mentioned above is read out, it only gains legal force that is binding and valid if read in an open trial accessible to the public. As a form of public transparency, the decision must be displayed on the court's internet network (website). The announcement and publication of the decision on the internet site apply to all corruption criminal court decisions in all jurisdictions and levels of the court. Decisions read without the presence of the defendant have legal validity as long as there have been three lawful summonses. Decisions read without the defendant's presence, besides being announced on the internet network site, must also be announced on the court's bulletin board and local government offices. Reading decisions without the defendant's presence is done to avoid the defendant's default and to expedite the trial process in line with the principle of speedy justice.

Muladi, in his perspective, emphasizes that the dimension of law enforcement that should be highlighted is professionalism, prioritizing skills through intensive training, social responsibility, and adherence to ethics. It should be noted that the legal enforcement profession, in terms of ability, not only encompasses physical skills but also requires a significant intellectual component (Jubaidi, 2023). A professional attitude will distance oneself from substandard legal practices, contrary to obligations. The characteristics of law enforcement needed are law enforcers who possess moral maturity, capable of nurturing moral and ethical values in law and its enforcement.

Inconsistent law enforcement, from the first-instance court (district court) to the highest court (Supreme Court), and even among judges themselves, applying laws that are open to interpretation under the guise of the "principle of judicial freedom," and an orientation towards formal and material errors in the "indictment" created by the Public Prosecutor, combined with collusion with legal advisors for corruptors, make "cooking" the indictment a vulgar phenomenon for judges using the principle of judicial freedom to decide cases in favor of corruptors while neglecting their integrity as dignified judges.

Criticism of injustice, incompetence, untruth, and implementation in the application of the law needs serious attention. Challenges such as formality, absence of cases, and lack of innovation in decision making need to be overcome to improve the quality of law enforcement. Reactualization of the Legal System: The article raises the problem of the reactualization of a legal system that is neutral and originates from local law (custom and religion) into the national legal system, as well as the institutional structuring of the legal apparatus which is not yet comprehensive. This is related to challenges in understanding and applying laws originating from customary law, religion and international agreements.

a. The Role of the Community in Law Enforcement: The article highlights the importance of community empowerment in the form of increasing community access to government performance and increasing legal awareness. This is considered as part of the legal culture that can support the law enforcement process.
b. The Role of Bureaucracy in Development: The article discusses the need for bureaucratic empowerment or bureaucratic engineering in the context of the role of law in development. This suggests that changes in bureaucracy can also contribute to increasing the effectiveness of law enforcement.
c. Political and Constitutional Phenomena: The article touches on political and constitutional phenomena, including the Republic of Indonesia MPR Decree which ordered the eradication of KKN. This reflects efforts to clean up government and increase integrity in law enforcement.
d. Problems that must be resolved: The article states four basic problems that need to be resolved in dealing with political and constitutional phenomena, such as the re-actualization of the legal system, institutional structuring of legal apparatus, community empowerment, and bureaucratic empowerment.

Overall, the article presents an in-depth analysis of various challenges and problems in law enforcement in Indonesia, as well as providing thoughts on paradigm shifts in legal philosophy and potential improvements in various aspects of the legal system and law enforcement.

4. Conclusion

In conclusion, the provided text delves into a comprehensive analysis of the challenges surrounding the legal system and law enforcement in Indonesia. It criticizes the shortcomings of the judiciary system, highlighting issues such as formalism, case backlog, and the lack of innovation in decision-making. The text emphasizes the need for serious attention to address injustices, inefficiencies, inaccuracies, and uncertainties in legal application. Several key themes emerge, including the call for a reactualization of the legal system, incorporating elements from local laws (adat and agama) into the national legal framework, and comprehensive institutional reforms for law enforcement agencies. The importance of empowering society through increased access to government functioning and legal awareness is underscored, promoting a legal culture that supports the law enforcement process.

Furthermore, the text touches on the role of bureaucracy in development and the challenges posed by political and constitutional phenomena, such as the directive from TAP MPR RI for eradicating corruption and enhancing governance integrity. The article outlines four fundamental problems that demand resolution: the reactualization of the legal system, the restructuring of legal institutions, community empowerment, and bureaucratic empowerment. In essence, the analysis suggests a need for a paradigm shift in legal philosophy and outlines potential improvements across various facets of the legal system and law enforcement in Indonesia.

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