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RECONSTRUCTION OF NORMS ON AD HOC JUDGES REGULATION OF CORRUPTION COURTS THAT ARE IDEAL IN REALIZING INDEPENDENCE OF JUDICIAL POWER

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ABSTRACT

The principle of independence of judicial power is an absolute right owned by judges in deciding cases; this principle is in the form of judges' independence in making decisions without intervention by any party outside the judicial system. This is referred to as institutional independence, but what is no less critical is personal autonomy, which is no less important, namely, tenure and career guarantees for judges. In Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption and the Decision of the Judicial Review of the Constitutional Court in the decision Number 85/PUU-XVIII/2020 still provides for the limitation of the period of service for ad hoc judges in corruption court. This creates career uncertainty and demotivation related to the lack of guarantees of independence and equality as a form of state appreciation to ad hoc judges for corruption in carrying out their duties. This research is legal research using a normative juridical approach; the data used are primary data and secondary data, which are analyzed using quantitative analysis. The results of the study are: First, in the provisions of Article 10 paragraph (5) of Law No. 46 of 2009 concerning the Court of Criminal Acts of Corruption and the Judicial Review Decision of the Constitutional Court in the decision Number 85/PUU-XVIII/2020 still formulating the periodization of office for ad hoc judges in court corruption, where the periodization of the term of office is contrary to the principle of independence of judicial power. Second, it must formulate a new norm as a guarantee for ad hoc judges in criminal courts that reflects the principle of independence of judicial power for ad hoc judges.

KEY WORDS

Judge, court, corruption, independence.

Courts and judges as law enforcers have a noble position and even have a vital role in realizing law enforcement and justice in society. Courts are described as "judges are representatives of the silent voice of the people, who are not represented and who are not heard" (Rahardjo, 2006). In carrying out their functions, judges always undergo inner turmoil in making choices that are not easy. Judges will always be in areas where there is inner turmoil and humanity who are faced with the rule of law in deciding cases, legal facts, prosecutors' arguments, defendants' arguments, and advocates, even more than that, judges must also listen to the voice of the community (Saleh, 1983).

To carry out this function, judges must have the principle of independence of independent judicial power. This principle is a feature of a democratic state based on constitutional rules. In its implementation, a democratic state will always prioritize the teachings of the rule of law and human rights, where the absolute thing is to guarantee independent judicial power. The independence of judicial power in its application is manifested in impartiality and fairness in examining, judging, and deciding a case. This principle emphasizes that judges in carrying out their functions and duties must be independent and only subject to applicable law (Lev, 1972).

In some democratic countries, where the basis of the state is based on the constitution and human rights, it will provide understanding and limits on the independence of independent judicial power, in this case not only freedom in terms of deciding cases but also the independence of the judiciary in terms of job security and tenure judge. In some countries, such as the Netherlands, the United States, Canada, and Germany, where the



regulation of work rights and the term of office of judges is guaranteed, personal independence of power is guaranteed with job guarantees and a long term of office. In these countries, judges have certified a lifetime term of office depending on their good behavior (Berger, 1970). This means that as long as the judge has a good attitude towards life (during good behavior), his term of office will be given for life.

Sandra Day O'Connor, a Supreme Court Justice in the United States, emphasized the need for job guarantees and tenure for judges to guarantee the independence of judicial power if judges are elected regularly. Within a certain time, judges will have a sense of being at stake in every decision which he publishes. Judges should be able to suppress such feelings or distance themselves from actions such as personal relationships; public trust in judicial power can, of course, be reduced to court institutions and judges. Therefore, judges need the certainty of tenure in terms of a long and unrestricted time of office. In addition to the above, it is also necessary to manage accountable court administration to guarantee the existence of independence and independent judicial power in carrying out the functions of the court in examining, adjudicating, and deciding a case.

Connecting the independence of the judiciary with job guarantees and the tenure of judges is an outline of the theory of equality before the law (equality before the law), that equality before the law means that everything is equal in direction and is carried out in the same way, everything similar must be equally provided the same service. This legal principle is intended to achieve equality before the law as the basis for impartiality in court practice, the most important of which is the independence of judicial power. The application of the principle of impartiality guarantees legal certainty or legal certainty in resolving legal issues about the independence of judicial power (Prodjohamidjojo, 2005).

Whereas about the guarantee of independent judicial power for judges, this also applies to ad hoc judges in corruption courts. The security of judicial power is intended to carry out its duties in carrying out the capabilities of judges in examining and deciding cases of criminal acts of corruption. Initially, the Corruption Court was a court established under the provisions of Article 35 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) and also based on the decision of the Constitutional Court Number 012-016-019/PUU-IV/2006 dated 19 December 2006, wherein the consideration of its decision the Constitutional Court was in line with Law Number 4 of 2004 concerning judicial power and stated that a separate law could only establish special courts. Therefore the arrangement of courts for criminal acts of corruption must be regulated in a separate law. The Court of Corruption is a special court located in the general court area and the only court that has the authority to adjudicate cases of corruption whose prosecution is carried out by public prosecutors (Sibarani, 2013).

But in practice, the legal provisions in Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption which states: "Ad hoc judges as referred to in paragraph (4) for a term of office of 5 (five) years and can be appointed return for 1 (one) term of office", with the provisions of this article, the term of office of ad hoc judges for corruption crimes is determined for five years and can be reappointed for 1 (one) term of office. And also in the Judicial Review Decision of the Constitutional Court in Decision Number 85/PUU-XVIII/2020.

The provisions of Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption and also the Decision of the Constitutional Court in decision Number 85/PUU-XVIII/2020 provides career uncertainty as an Adhoc judge in the court of corruption, the provisions of this Article also cause demotivation related to the lack of guarantees of independence and equality as a form of state appreciation to ad hoc judges for corruption in carrying out their duties.

METHODS OF RESEARCH

The research method used in this research is using normative juridical methods combined with library data sourced from primary, secondary, and tertiary data. The data collected were analyzed systematically, for the further analysis carried out using descriptive



analysis method, which is secondary data processing related to the problem in this study which will be compiled, explained, and interpreted to answer so that conclusions can be drawn regarding the formulation of ideal norms for the future the position of ad hoc judge in the court of corruption.

RESULTS AND DISCUSSION

Reconstruction of the Ideal Formula Relating to the Term of Office of Ad Hoc Judges in Corruption Courts in the Criminal Justice System. The main problem in the conflict of norms in the position of ad hoc judges in the court of corruption is as regulated in the provisions of Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Criminal Court and also the decision of the Constitutional Court Number 85/PUU-XVIII/2020 which states "Declaring Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2009 Number 155, Supplement to the State Gazette of the Republic of Indonesia Number 5074) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted, "ad hoc judges as referred to in paragraph (4) are appointed for a term of office of 5 (five) years and may be reappointed for 1 (one) term of office without re-selection as long as they are still in office meet the statutory requirements and can be appointed for the next 5 (five) year term with prior First, follow the re-selection process by the applicable laws and regulations. So Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2009 Number 155, Supplement to the State Gazette of the Republic of Indonesia Number 5074) which originally read "ad hoc judges as referred to in paragraph (4) is appointed for a term of office of 5 (five) years and may be reappointed for 1 (one) term of office", which reads in full, "Ad hoc judges as referred to in paragraph (4) are appointed for a term of office of 5 (five) years. And can be reappointed for 1 (one) term of office without re-selection as long as it still meets the requirements of the legislation, and can be reappointed for another 5 (five) year term by first following the re-selection process by the prevailing laws and regulations apply. This provision does not provide guarantees regarding the term of office of ad hoc judges in courts of corruption.

The decision of the Constitutional Court Number 85/PUU-XVIII/2020 presumably still provides a periodization limit and a term limit for judges in hoc criminal courts; the interpretation of the verdict of the constitutional court states that ad hoc judges can be elected for one time period of five years. And maybe re-elected for a second term of five years, and maybe reappointed for another five-year term by following the selection by the prevailing laws and regulations.

The meaning of the decision of the Constitutional Court Number 85/PUU-XVIII/2020, of course, does not guarantee legal certainty for the more ad hoc courts of corruption, while the thing that is a problem and does not provide legal certainty is the existence of a dictum ruling: First, follow the re-selection process by the applicable laws and regulations. The dictum of this decision does not provide guarantees of legal certainty for ad hoc judges in corruption courts; in this case, ad hoc judges for corruption crimes are equivalent to being limited in terms of office even though they must participate in re-selection. This condition, of course, does not provide legal certainty for ad hoc judges in corruption courts.

At the stage of participating in this re-selection, of course, there is no guarantee of legal certainty whether the ad hoc judge in the court of corruption who is currently in office will pass again or not forward. If they are not declared to have passed the selection, the ad hoc judge will be dismissed from his position as an ad hoc judge in the court of corruption. This condition of the course, does not guarantee legal certainty for ad hoc judges in the corruption court.

The dictum in the decision of the Constitutional Court Number 85/PUU-XVIII/2020 is an obstacle and also does not provide legal certainty for ad hoc judges in courts of corruption, the dictum of the Constitutional Court's decision Number 85/PUU-XVIII/2020 still contains a periodization of the term of office of judges. Suppose they are declared to have passed the



selection process by the applicable laws and regulations. In that case, the ad hoc judge in the corruption court will only serve his term as an ad hoc judge in the corruption court for only 15 years. Of course, this ruling does not provide legal certainty and still limits the term of office of ad hoc judges in courts of corruption with a tenure period.

Periodization of the term of office of ad hoc judges in corruption courts is contrary to the principle of judicial independence. In a broader interpretation, judicial power is not only related to the freedom of judges in refusing external intervention, especially parties who are not involved in a case, but who are not involved less critical is the focus of the judge's independence from the internal aspects of the judge. One form of the inner part of the freedom of judges that is no less important is related to guarantees for the welfare of judges and guarantees for the tenure of judges.

In this case, it is related to the independence aspect of the judge, which is closely related to the guarantee of welfare (income) and also the guarantee of the judge's tenure (career), where this internal aspect then significantly affects the independence of the judge in carrying out the authority of judicial power that comes from within himself. With the guarantee of welfare and guaranteed tenure for judges, the judge will resist all forms of intervention from outside parties. Judicial power, which is no less critical is related to the welfare of judges. According to Sadli Isra, the independence of judges is not only focused on one point, which is connected to independence in terms of deciding cases, but other than that, what is no less critical is related to the independence of judges, namely job and position guarantees. judge (Wadji, 2018).

For example, judges and prosecutors in the Netherlands are given guarantees of independent judicial power to carry out their work and career for a lifetime. Job guarantees and tenure for judges and prosecutors are made based on rules set by the King. The essence of the determination of this King is as a form of guarantee for the implementation of independent judicial power for judges who work are given the freedom to decide cases and are bound by written and unwritten legal rules (Hadjon, 1989).

About the independence in terms of job security and job security for judges, as exemplified in a country with a Commonwealth legal system, the principle of freedom of judicial power is given to judges as a guarantee for their profession. The guarantee of the independence of judicial power is given so that judges avoid conflicts of interest from outside parties who have no interest in the case, promises of independence of judicial power are guaranteed in the constitution. The constitution also guarantees the existence of an independent body called the Commonwealth Jurisdiction, whose task is to appoint judges, regulate the retirement age of judges, and recommend the office of judges as permanent (Smit, 2015).

About the retirement age and permanent position of judges, it is a recommendation for judges in their office to serve for a long term. This also applies to the tenure of judges at the appellate level and also at the Supreme Court level. The constitution also regulates the retirement period of judges, where the retirement period of judges may not conflict with the principle of independence of judicial power and the principle of retroactivity. Previously, the retirement age for judges in Commonwealth countries was 60 (sixty) years, but later it was revised to 70 (seventy) years. The revision of the long retirement age of judges is intended to eliminate the risk to judges after retirement and as a guarantee of protection and respect for the judge profession (Smit, 2015).

Based on the explanation above, the periodization of tenure for ad hoc judges in courts of corruption is a threat to the principle of independence of judicial power, especially for ad hoc judges in corruption courts. The judiciary in terms of guarantees of tenure and the position of judges.

Formulation of Ideal Norms as Guarantee of Independence of Independent Judicial Powers for Ad Hoc Judges in Corruption Courts. Based on the criteria mentioned above, the formulation and formation of legal regulations can be reconstructed regarding the position of ad hoc judges in courts of corruption in the criminal justice system. Then the regulation of norms relating to the tenure of ad hoc judges in courts of corruption is as follows: "The term of office of ad hoc judges is for 5 (five) years and can be reappointed up to retirement age by



the retirement age of career judges, which is 65 (sixty-five) years for ad hoc judges at the district court and 67 (sixty-seven) years for ad hoc judges at the Supreme Court of the Republic of Indonesia”.

The formulation of the ideal norm is a formulation of norms that was born based on the perspective of freedom of judicial power, which should create equality for ad hoc judges in courts of corruption, in reality, the position of ad hoc judges in courts of corruption must be equal in position with judges in special courts other.

The formulation of the ideal norms should prioritize the existence of equality with judges in the area of general courts and state administrative courts. The statutory provisions state that it is related to the guarantee of tenure, which is regulated in the public court area and the state administrative court area, namely saying that there is a limit for honoring dismissal at 67 years. The provisions are contained in:

1. Article 19 paragraph (1) of Law no. 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts which states:

The chairman, deputy chairman, and court judges are honorably dismissed from their positions because they have reached the age of 65 (sixty-five) years for the chairman, deputy chairman, and district court judges, and 67 (sixty-seven) years for the chairman, deputy chairman, and high court judges

2. Article 18 paragraph (1) and Article 38A of Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning the Religious Courts, which states:

The chairman, deputy chairman and judges of the courts are honorably dismissed from their positions, among others being 65 (sixty-five) years old for elders, vice-chairmen and judges of the Religious Courts, and 67 (sixty-seven) years for chairmen, deputy chairmen and judges at the religious high court.

3. Article 19 paragraph (1) and Article 38A of Law Number 50 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court which states:

The chairman, deputy chairman and judges of the courts are honorably dismissed from their positions, among others because they have reached the age of 65 (sixty-five) years for the chairman, deputy chairman, and judges of the state administrative court, and 67 (sixty-seven) years for the chairman. Deputy Chair, and judges of the state administrative high court.

Therefore, with the stipulation of the ideal norm for ad hoc judges in courts of criminal acts of corruption, it can become the norm determined by law about job guarantees and the term of office of ad hoc judges in courts of criminal acts of corruption that are fair and just, namely, where the tenure with job guarantees and the assignment of ad hoc judges in courts of corruption is the same as the provisions for honoring dismissal from the position of judges who reach the retirement age limit for judges in general courts and state administrative courts.

In addition to the provisions of the law as mentioned above, in reality, the position of ad hoc judges for criminal acts of corruption can be equated as well as ad hoc tax judges, ad hoc judges at the Industrial Relations Court (PHI) and also judges at the Constitutional Court. Whereas equality for ad hoc judges in the Corruption Court should refer to the Jurisprudence of the Constitutional Court as stated in Decision Number 6/PUU-XIV/2016 dated August 4, 2016, in its decision which abolished the periodization of tenure of ad hoc judges at the tax court and equating the retirement age of tax ad hoc judges with the retirement age of high judges at the State Administrative Court.

Also, in the decision of the Constitutional Court Number 49/PUU-XIV/2016 dated February 13, 2016, which in its judgment stated that it removed the period of office of ad hoc judges at the Industrial Relations Court which in its ruling said "the term of office of ad hoc judges is to a period of 5 (five) years and may be reappointed every 5 (five) years as proposed by the Chief Justice of the Supreme Court with prior approval from the proposing institution whose process is by the applicable law.

As well as referring to Law Number 24 of 2003 as amended by Law Number 8 of 2011



concerning the Constitutional Court regarding the term of office of judges of the Constitutional Court who in principle are also ad hoc judges which stated "constitutional judges who are in office at the time this law is promulgated are deemed to have met the requirements according to this law and end their term of office until the age of 70 (seventy) years as long as the entire duration of office does not exceed 15 (fifteen) years. The provisions mentioned above should be the basis for equality (equal) for ad hoc judges in courts of corruption. The above provisions serve as a reference in the paradigm of equality of treatment and non-discrimination for ad hoc judges, especially ad hoc judges in corruption courts.

By providing ideal article norms for ad hoc judges in courts of corruption, it will guarantee the principle of independence of judicial power as the main principle that has been regulated in the provisions of Article 24 paragraph (1) of the 1945 Constitution, which states, "Judicial power is an independent power to administer justice. to uphold law and justice". By providing an ideal article norm for ad hoc judges in courts of corruption, the courts' position for corruption is also in line with exercising judicial power internationally. Whereby the principles of independence of judicial power as stated in The United Nations Human Rights, Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Number 11 which stated: "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age retirement shall be adequately secured by law (judge tenure, independence, security, adequate remuneration, conditions of service, pension, and retirement age must be guaranteed by law or by law)."

Furthermore, Number 12 also states, "Judges, whether appointed or elected, shall have guaranteed tenure until mandatory retirement age or the expiry of their term of office, where such exists position until their retirement age or the end of their term of office). In addition, in The International Bar Association Minimum Standards of Judicial Independence (Adopted 1982) letter C regarding the Terms and Nature of Judicial Appointments number 22 states, "Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of grant.

Meanwhile, at number 30, it states, "A judge shall not be subject to removal unless because of a criminal act or through gross or repeated neglect or physical or mental incapacity they have shown themselves manifestly unfit to hold the position of the judge (a judge may not be dismissed except for reasons of committing a crime or for neglecting his duties repeatedly or because of his inability to be manifestly unfit to serve as a judge).

Providing ideal article norms for ad hoc judges in courts of corruption will strengthen the role and function of judicial power in enforcing law and justice, especially about the enforcement of corruption cases in Indonesia, whose existence is in a special court. Ad-Hoc judges in the courts of corruption crimes are judges appointed from outside career judges who meet the requirements of having expertise and experience, our professional, dedicated and have high integrity, live up to the ideals of a state of law and a welfare state with a core of justice, and understand and respect human rights and other requirements determined by laws and regulations, especially those relating to corruption. The existence of ad hoc judges is due to consideration of specific skills or abilities possessed and independence and integrity as ad hoc judges so that they can synergize with career judges in deciding various types of cases faced.

CONCLUSION

The principle of independence of judicial power is that judges in deciding cases must be independent from interventofand pressure from any party outside the judiciary. Still, the principle of freedom of judicial power that is no less important is the principle of personal independence. This principle is the guarantee of the welfare of judges and contracts for the tenure of judges, but then Article 10 paragraph (5) of Law Number 46 of 2009 concerning the



Corruption Court and Judicial Review Decisions of the Constitutional Court in Decision Number 85/PUU-XVIII/ 2020 still provides for a limited period of office for ad hoc judges in courts of corruption. This creates career uncertainty and demotivation related to the lack of guarantees of independence and equality as a form of state appreciation to ad hoc judges for corruption in carrying out their duties.

Concerning the formulation of the ideal norm as a guarantee of the independence of judicial power, especially for ad hoc judges in courts of corruption, the formulation of the perfect norm resulting from the reconstruction is "The term of office of ad hoc judges is 5 (five) years and can be reappointed up to the age of five. Retire according to the retirement age of career judges, namely 65 (sixty-five) years for ad hoc judges at the district court and 67 (sixty-seven) years for ad hoc judges at the Supreme Court of the Republic of Indonesia". The formulation of the ideal norm is a formulation of models that were born based on the perspective of freedom of judicial power, which should create equality for ad hoc judges in courts of corruption, as also applies to the retirement period of judges in the general court area and the administrative court area and as well as religious courts.

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