

The Ideal Concept of the Position Judges as State Officials in the Ius Constituendum in Indonesia

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Abstract: Problems regarding the position of judges that continue to continue will affect their duties in upholding law and justice. Provisions regarding the position of judges in several statutory provisions are also considered to have multiple interpretations and are inconsistent. To find out more fully, this paper will first analyze and criticize the concept of judges in the Draft Law on the Office of Judges, then provide the ideal concept of the position of judges as state officials in the ius constituendum in Indonesia. This study uses normative legal research with a statutory and conceptual approach. The results of the study are tThere are several crucial issues in the Draft Law on the Position of Judges, which among others are related to 1) The Government's Rejection of the Status of all Judges as State Officials; 2) Periodization of the position of Supreme Court Justices; 3) Sharing of Judges Recruitment Authority with the Judicial Commission; and 4) Reduction of Judge's Retirement Age. Then to realize the ideal position of judges in the future in the ius constituendum, changes need to be made through changes in concepts ranging from; 1) the concept of judges as State Officials; 2) Supreme Court Institutional Structure; 3) Mechanism of Promotion, Demotion, Mutation, Reword and Punishment of Judges; 4) Strengthening the Retirement Age of Judges in Indonesia; 5) Court of Appeals and Classification of Cases Entering the Supreme Court; 6) The concept of the Judicial Commission in Maintaining Judges' Dignity; 7) Regulation of Ad Hoc Judges and Special Courts in Indonesia; and 8) Recruitment and Education of Candidates for Judges.

Keywords: judge; state official; ideal concept; ius constituendum

I. Introduction

Amendments to the 1945 Constitution, hereinafter referred to as the 1945 Constitution, have brought major changes to the constitutional system in Indonesia. These changes do not only concern the legislative and executive powers, but also the judicial or judicial powers (Nahrowi, Masyrofah Masyrofah, 2020). This change can be seen from the addition of state institutions that exercise judicial power, namely the establishment of the Constitutional Court based on the provisions of Article 24 paragraph (2) of the 1945 Constitution.

The provisions of Article 24 of the 1945 Constitution philosophically give a message to state administrators and government administrators to place judicial power in the government structure as a neutral power. Judicial power must be kept away from influence or interference from any party, including state institutions or the government itself. Judges are also a symbol of the independence of judicial power (Qamar, 2015). Therefore, the strengthening of the independence of judicial power through the constitution is quite reasonable, because within the judiciary the rights of the people are at stake when legal cases occur. Courts are the last bastion for people seeking justice in fighting for their legal rights (Ibnu Sina Chandranegara, Syaiful Bakhri, 2019).

The emphasis on the independence of judicial power in the rule of law was also emphasized by Charles Louis De Scondat Montesquieu, who said that: "in a state of law, judicial power is highly emphasized, because within judicial power lies the guarantee of individual independence and guarantees of human rights. (Thohari, 1993)" The same opinion was also voiced by the International Commission of Jurists at the congress in Bangkok in 1965, which viewed that: "the existence of an independent and impartial tribunal is a requirement that must be met in a rule of law (Congress of the International Commission of Jurists in Bangkok, n.d.). Therefore, it is not an exaggeration if the principle of an independent judiciary is a pillar of the rule of law.

The principle of impartiality (independence) of judicial power aims to realize fair law enforcement in society. The principle of impartiality of the judiciary is expected to provide what justice seekers want, without discriminating against the status and position of citizens (Sunny, 1982). The principle of impartiality of the judicial power is not only defined as a power that is free from the influence of executive and legislative powers, but also free from interference in carrying out its duties, including the press and institutions outside the judiciary (Sumantri, 1995). Judicial power must be completely neutral in carrying out its duties and functions as law enforcement and justice.

The position of judge is the embodiment or embodiment of the trias politica concept as the result of the work of John Lock and Montesquieu, namely the concept of power sharing consisting of legislative, executive, and judicial powers (Niemann, 2016). The legislature is an institution that makes laws, but is not only limited to making laws, but is also a representative of the people or parliament. including the Civil Servant Corps, as well as the military, the Judiciary has the function of enforcing the law, resolving disputes, the right to examine statutory regulations, including examining laws against the 1945 Constitution and the Pancasila foundation, as well as the right of material examiners.

Regarding the independence of judges in upholding law and justice, the position of judges as Civil Servants is a separate problem in the context of realizing a truly independent judicial power. Because the position of the Judge as a Civil Servant causes the Judge to be under the control of two consciences, as a Civil Servant, the Judge is subject to the highest leadership of the Civil Servant with all the accompanying statutory regulations. Meanwhile, in their capacity as law enforcement and justice, judges are under independent judicial power (see Article 24 of the 1945 Constitution). Therefore, with such a position, it would be very difficult for Judges to escape from the influence of the executive, considering the affairs of the judge's stomach, in terms of salary.

Efforts to improve professionalism and restore public confidence in judges are continuously being carried out, especially in realizing the neutrality of the judiciary. The effort was initiated by adding a new state institution, namely the Judicial Commission in the amendment to Article 24 of the 1945 Constitution, and this institution will help uphold the dignity of judges as actors of judicial power (Febriansyah Ramadhan, 2021). The Judicial Commission is intended to further strengthen the process of recruitment and supervision of judges in carrying out their professional duties, so that the judicial institution involves the Judicial Commission in selecting and appointing judges.

To increase independence, professionalism, and public trust in judicial institutions, especially judges as actors in law and justice enforcement, special arrangements should be made, placing judges as executor of judicial power in a truly neutral and impartial position. This special arrangement is intended so that the position of judges as actors of judicial power

is truly independent, professional, objective, open, and accountable law and justice enforcement actors who have high credibility as the foundation of hope for justice-seeking communities.

The position of Judges as State Officials, as regulated in Law Number 48 of 2009 concerning Judicial Powers, however in its implementation this arrangement does not necessarily follow the consistency of clear systems and rules, so that the position of judges as State Officials becomes blurred. The unclear system and rules relating to the position of judges as State Officials can be seen from the system of recruitment, coaching, promotion and rank, performance appraisal, salary and welfare, up to the pension system that still follows the provisions that apply to Civil Servants (Tajudin, 2019).

The inconsistent support of the system and regulations related to efforts to make independent judges is clearly seen in the selection of judges as State Officials. As it is known that, to occupy certain state positions, selection is made by other state institutions, and normatively for the position of Judges should be carried out by the Judicial Commission together with the Supreme Court (Suharto, 2018). This mechanism is in accordance with the custom that State Officials are selected through a selection process involving other state institutions, including in this case related to the selection of judges involving other State Institutions, namely the Judicial Commission. However, the authority of the Judicial Commission as an institution partnering with the Supreme Court in the selection of prospective judges has become unclear, and this ambiguity has become even more evident with the issuance of Constitutional Court Decision No. 43. PUU-XII/2015. In the decision of the Constitutional Court, it was stated that: "normative provisions involving the a quo Judicial Commission are declared unconstitutional".

The selection process for prospective judges involving the Judicial Commission has actually been regulated in Law Number 48 of 2009 concerning General Courts, related to the recruitment of judges for general courts, and the recruitment of judges for religious courts based on Law Number 50 of 2009 concerning Religious Courts, as well as the recruitment of judicial judges. state administration based on Law Number 51 of 2009 concerning the State Administrative Court. However, the involvement of the Judicial Commission in the selection mechanism for prospective judges was annulled or even reduced by the Constitutional Court with the issuance of the Constitutional Court's decision no. 43/PUU-XII/2015.

The position of judges as State Officials was reaffirmed with the enactment of Law Number 5 of 2014 concerning State Civil Apparatus, hereinafter referred to as Law on State Civil Apparatus, which came into force on January 15, 2014. The enactment of this Law on State Civil Apparatus also revokes the enactment of Law Number 43 of 1999 concerning Amendments to Laws Number 8 of 1974 concerning the Basics of Personnel. In the provisions of Article 121 of the Law on State Civil Apparatus, it stipulates that: "State Civil Apparatus Employees can become state officials", while the provisions of Article 122 letter e, stipulates that: "State officials as referred to in the provisions of Article 121 include the Chair, Deputy Chair, Deputy Chairpersons and Supreme Court Justices at the Supreme Court, as well as Chairpersons, Deputy Chairpersons, and Judges in all judicial bodies except ad hoc judges.

The provisions of Article 122 letter f, stipulates that: "State officials as referred to in the provisions of Article 121 include the Chairperson, Deputy Chairperson and Members of the Constitutional Court". Meanwhile, the second part of the explanation of the provisions of the article does not provide an explanation, except only mentioning in a short sentence that is

quite clear. The absence of an explanation for the two Articles implies that the provisions are textually considered clear and understandable. So, based on the two provisions of the Article, all Judges who are in all judicial circles under the Supreme Court and Judges under the Constitutional Court are State Officials.

In connection with the provisions of Article 122 letter f of the Law on State Civil Apparatus, if all this time, judges based on the Law on Judicial Power are Civil Servants and are subject to the regulations of Civil Servants, then after the enactment of the Law on State Civil Apparatus, Judges can immediately change status as a state official. Actually, the word "can" in the perspective of legal theory is not absolute, because it is not imperative, so the word "can become a state official" does not necessarily become a state official (Chandranegara, 2019).

The sociological problem that arises is when there is a change in the status of judges from Civil Servants to State Officials, which is not followed and takes into account all the consequences. Considering that judges are generally career judges, although there are also non-career judges, meanwhile, state officials are temporary positions, in the sense that they are limited by a certain term of office, such as ad hoc judges, members of the DPR, Ministers, and other state officials who other. In connection with the determination of the status of Judges as State Officials, what needs to be considered is especially related to career development and other administrative matters, which have been treated like Civil Servants in general.

So far, the affirmation of the position of Judges as State Officials in the context of carrying out independent judicial powers, has turned out to be insufficient if only regulated in the Law on Judicial Power, and partially these arrangements have been inserted in various laws in the judicial sector. The results of this evaluation are one of the basic considerations for initiating the drafting of the Bill of Positions of Judges, which will later regulate the position of judges as State Officials in a system of regulating judicial institutions that is more comprehensive, clearer and more assertive in relation to their position, authority, duties, and career development. and other financial matters.

Judges are state officials who exercise judicial power and need to maintain integrity, independence, and professionalism, as well as ensure their safety and welfare in order to meet the community's need for law and justice. This implies that the change of judges from Civil Servants to State Officials is really an effort by the government to be more independent of the position of judges as administrators of judicial power to improve the performance of judges so that they can carry out their duties and obligations in order to fulfill the sense of community justice.

In addition, the change in the status of Judges to Civil Servants is also based on the reason that so far the regulations regarding judges are not harmonious, are still scattered, and are partial in various laws and regulations, and there is still a legal vacuum, so it is necessary to formulate provisions that regulate the the position of judge in a law. The change of judges from Civil Servants to State Officials is considered urgent to be carried out in order to create certainty for the arrangement of Judges.

It should also be stated that so far there have been at least 4 (four) kinds of laws relating to the regulation of judges, namely: first, Law Number 28 of 1999 concerning the Implementation of a Clean and Free State from Corruption, Collusion and Nepotism; second, Law Number 48 of 2009 concerning Judicial Powers; and third, Law Number 5 of 2014 concerning the State Civil Apparatus, hereinafter referred to as the State Civil Apparatus Law,

the fourth Law Number 22 of 2004 which was amended by Law Number 18 of 2011 concerning the Judicial Commission. The large number of legal products related to the position of Judges, suggests that there is a pluralism in the regulation of Judges' positions as actors in law and justice enforcement, both in terms of position, duties and authorities, as well as career development, administrative affairs and financial affairs.

Sociologically, such an arrangement certainly raises its own problems related to the independence of judges as perpetrators of law enforcement and justice. The change in the position of judges is a hope for certainty of the position, and status of judges as actors of law and justice enforcement, which so far there has been overlapping arrangements of positions, authorities, functions, and so on, which until now "can be said" do not have a norm clear or vague, is in the judicial field, or is in the executive field. Because when viewed from the selection and development pattern, as well as administrative and organizational affairs, as well as finances are under executive power. However, when viewed from the perspective of carrying out their duties and obligations as law enforcement and justice actors.

It is these facts that underlie or become the reason for conducting this research, analyzing and criticizing the concept of judges in the Draft Law on the Office of Judges and then providing the ideal concept of the position of judges as state officials in a *ius constituendum* in Indonesia. This research is expected to provide clarity regarding the position of judges as actors of judicial power in Indonesia in upholding law and justice, so that judges are professional in carrying out their duties and functions in upholding law and justice.

II. Research Method

The research method used in this research is normative legal research, This research is a law that focuses on positive law, namely laws and regulations relating to the main issues raised in this dissertation. Normative legal research is also given an understanding as a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Marzuki, 2009).

The approach used is legislation approach and conceptual approach. The approach to the legislation in question is to examine and analyze all positive legal provisions relating to the legal position of judges, for example starting from Law Number 48 Year 2009 concerning Judicial Power, Law Number 30 Year 2014 Government Administration, Law Number 5 of 2014 concerning State Civil Apparatus, until Draft Law on the Position of Judges. All of these provisions will be analyzed using theories that have been collected through the conceptual approach taken.

III. Discussion

3.1 Analysis and Criticism of the Concept of Judges in the Draft Law on the Position of Judges

In Draft Law on the Position of Judges (RUU on the Position of Judges) is an initiative bill from the House of Representatives, namely Commission III which contains 7 chapters and 57 articles consisting of 389 Problem Inventory Lists (DIM) divided into 205 DIM which declares permanent, 45 DIM related to editorial, 109 DIM related to the substance of the Judge Position Bill, 27 DIM related to substance new from the Bill on the Position of Judges, and 3 DIM whose contents request an explanation from the DPR. The Draft Law on the Position of Judges contains norms that support efforts to strengthen judicial independence in all aspects, both personal, functional and institutional in a comprehensive manner so that

justice services to the community can be carried out properly. This includes matters relating to security guarantees, professional protection, welfare improvement, and the fulfillment of facilities and infrastructure that support the implementation of judges' judicial duties in an excellent manner.

Observing the draft of the Draft Law on the Position of Judges and the DIM submitted by the Government, there are several crucial issues in the Bill on the Position of Judges, among others, are related to 1) The Government's Rejection of the Status of all Judges as State Officials; 2) Periodization of the position of Supreme Court Justices; 3) Sharing of Judges Recruitment Authority with the Judicial Commission; and 4) Decreasing the Retirement Age of Judges. It will be described in more detail in the following section.

3.2 The Ideal Concept of the Position of Judges as State Officials in the *Ius Constituendum* in Indonesia

Ius constituendum is a law that is aspired to by judges in order to achieve the ideal arrangement for the position of a noble judge. Based on the meaning of the judge's symbol, judges are a profession that is based on the value of faith and piety to God Almighty, so judges in Indonesia are people who are devout in religion so that judges in their behavior always maintain their actions because they feel supervised by God Almighty (Rachman, 2019). After the value of faith and piety, the judge must prioritize the values of justice wherever he is so that the judge becomes a role model and his decisions are not trusted by the public. The attitude of the judge who is always wise in his duties and in life will make the judge an authoritative judge so that the judge's welfare is guaranteed by the state in his duty. Having virtuous values and always being protected from disgraceful behavior is something that must be owned by judges in order to produce fair decisions without negative influences from any party. Finally, the judge must be an honest human in attitude and honest in speech so that the judge becomes a noble human being (Sumanto, 2010).

a. Judges as State Officials

The granting of the status of "state official" to the position of judges is based on the idea that judges are personnel who exercise power in the judicial field and not in the executive field so that the status attached to judges is not civil servants. The status of judges as civil servants is very likely to interfere with the freedom of judges because of structural, psychological, and character problems of the corps and bureaucracy that carry or demand certain ties. The independence of judges in a state of law is absolute. This is in accordance with the principle of "The International Commission of Jurist" which is an independent and impartial trial.

Another thing is that the laws governing scattered judges' positions tend to be disharmony. For example, the disharmony arrangement can be seen in Article 25 paragraph (1) of Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts which states that the protocol position of court judges is regulated by laws and regulations, which further regulated in detail in Government Regulation Number 94 of 2012 concerning Financial Rights and Facilities of Judges Under the Supreme Court. While in the construction of the Protocol Law, even though the judge has been appointed as a state official and has the right to get protocol rights which aim to pay respect to state officials.

b. Supreme Court Institutional Structure

Organizationally, the positions of judges and administrative employees of judicial institutions such as Registrars and administrative or Administrative (TU) employees are of different status because Registrars and TUs are part of civil servants while judges are positions

that have a judicial task, namely deciding cases. Based on Government Regulation Number 36 of 2011 concerning Positions that cannot be held concurrently by Supreme Court Justices and judges, Article 2 describes positions that cannot be held concurrently by Supreme Court Justices and judges.

PP 36 of 2011 was finally tested materially in the Supreme Court by Djuyanto, SH and on April 28, 2014 PP 36 of 2011 was canceled through Supreme Court Decision Number 11P/HUM/2014 of 2014 since then the judge began to hold concurrent positions again as an official in the Secretary of the Supreme Court either as Directorate General of BADILUM, Directorate General of BADILAG, Directorate General of BADILMIL TUN, WAS Agency, Research and Development of Education and Training and KUMDIL, ADM Affairs Agency. Meanwhile, the positions at the Registrar of the Supreme Court are currently held by judges, namely the Junior Registrar of Cases, the Secretary, and the ASKOR.

c. Mechanism of Promotion, Demotion, Mutation, Reword and Judge's Punishment

The mechanism for transferring judges at the first level and judges at the appellate level with a regular rotation system so that all judges have experienced serving in eastern Indonesia, central Indonesia and western Indonesia, either in the city or in the district. Meanwhile, the mechanism for promotion, demotion, and transfer of judges is carried out transparently by prioritizing prudential principles. Promotions due to rewards for outstanding judges whose evaluations are balanced both from internal leadership and from the assessment of the general public can even be proposed from the KY itself by being proposed to occupy the position of Head of the Court of Appeal or Head of the First Level Court in a transparent and open manner. Periodic promotion is a periodical system in raising judges' positions as a form of appreciation for serving the Supreme Court and its implementation by prioritizing the principles of transparency and prudence. The judge's demotion is a form of panimen to judges as a form of disciplinary punishment for not being able to maintain the dignity of the judge's position in the form of light, moderate, to severe sanctions in the form of dismissal from the position as judge.

d. Judge Retirement Age in Indonesia

Based on Indonesian law that the age limit for judges in Indonesia is 65 years for district court judges, 67 years for appellate court judges and 70 years for Supreme Court Justices and Constitutional Court judges, this retirement age policy is still relevant if we refer to the retirement age. judges in international countries. Apart from the retirement period specified in the law, the retirement period for ad hoc judges is not regulated, only that ad hoc judges are appointed for a term of 5 years and can be re-elected for one term.

Meanwhile, the concept of retirement age for judges proposed by the government is actually backwards, if we look at international countries such as the Netherlands, America, Australia, the retirement age for judges is life, while we look at Russia, the Philippines, Japan, Canada, England and Malaysia where the judges retire. 70 years. Most recently, Malaysia plans to extend the retirement period of its judges to 75 years, while Singapore is discussing increasing the retirement age of its judges from 65 years to 70 years because it refers to the productive age of its people and the retirement age of judges from neighboring countries.

e. Strengthening Courts of Appeals and Classification of Cases Entering the Supreme Court

In Article 24 paragraph (2) of the 1945 Constitution states that the judiciary in Indonesia is carried out by the Supreme Court as the court of the last level of all courts in Indonesia, the Constitutional Court as a judicial institution at the first and final level in certain

cases as stipulated in Article 24 paragraph (2) of the 1945 Constitution. 24C of the 1945 Constitution, and judicial institutions consisting of general courts, religious courts, military courts, state administrative courts, each of which has a court of first instance and a court of appeal.

The appellate court is a judicial institution that hears appeals submitted by litigants because they are not satisfied with the first level judicial institution. The appellate court is a retrial court that only exists in provincial capitals throughout Indonesia. Judges sitting at the appellate court are judges who have been the chairman or deputy chairman of the courts of the first instance, so that judges at the appellate court are more senior than the first instance courts. Appeals courts consist of general courts, religious courts, military courts, state administrative courts, and special courts.

The judiciary at the first level is a judicial institution that is the gateway to all cases in court, both criminal cases, civil cases, military cases, religious cases, as well as special cases that have been determined by law. Judges serving in the courts of first instance are young judges who have just graduated who are between the ages of 25 and 40 if they are not appointed as high court judges.

f. The Concept of the Judicial Commission in Protecting Judges' Dignity

KY as an independent state institution has the authority to propose the appointment of Supreme Court justices as well as to maintain and uphold the honor, dignity and behavior of judges, this is as regulated in Article 24B of the 1945 Constitution. Since the establishment of KY in 2005 until now, the benefits of KY have not been significantly felt, especially in upholding the honor, nobility of dignity, and the behavior of judges because the supervision carried out by KY will always be returned to the Supreme Court and many recommendations of KY cannot be implemented due to lack of coordination between KY MA so that the duties and functions currently held by KY do not really bring about major changes in judicial power.

Looking at the current condition of KY in supervising judges in Indonesia, which is less than optimal and the tendency of KY to overlap by doing things that are not their duties, which ultimately interferes with the independence of judges because KY does not have a check and balance system with the Supreme Court. In the future, KY as a supervisory agency for judges and so that KY has a control system so that it is directed in carrying out its duties, KY must be integrated with the MA and KY are led directly by the Chair of the MA while members of KY are filled by legal academics, legal practitioners, and community leaders according to the structure The National Police Commission is under the Minister of Political, Legal and Security Affairs (Menkopolhukam), therefore there must be an amendment to the 1945 Constitution related to Article 24B paragraph (1) by placing KY as an institution that is integrated with the MA.

g. Arrangement of Ad Hoc Judges and Special Courts in Indonesia

Ad hoc judges are judges who are appointed for special courts, the basis for the formation of ad hoc judges is regulated almost evenly in laws related to the judiciary, namely the General Court Law, Religious Court Law, Corruption Crime Act, Law on the Human Rights Court, Law on Juvenile Justice, and many other laws that regulate special courts. In each of the above-mentioned laws, there are different requirements regarding the background to become a judge, this is natural because ad hoc judges are appointed because they have their own expertise. The strange thing is that the three age requirements and other conditions are regulated by changes including facilities so that it seems that ad hoc judges as contract judges

are appointed for only 5 years and do not have to have a legal background but have a background of expertise.

Until now, dozens of special courts have been appointed and approximately hundreds of ad hoc judges have been appointed but the legal umbrella for special courts and ad hoc judges is not yet available, therefore, in our opinion, the regulation of special courts and ad hoc judges is a form of strengthening the system. judicial power in Indonesia and every judge will receive the same treatment as an official given the task by the 1945 Constitution to uphold law and justice.

In the future, ad hoc judges must have laws and regulations that specifically regulate it so that ad hoc judges throughout Indonesia will be orderly so that they are easy to control and provide guarantees for the quality of the decisions they produce that fulfill the community's sense of justice. The condition of ad hoc judges who come from professionals and so easily intervened in carrying out their duties, therefore, in the future ad hoc judges must always be evaluated annually regarding their effectiveness and performance in order to maintain the dignity of the judiciary.

h. Recruitment and Education of Candidates for Judges

The current filling of judge positions in international countries is filling in the positions of judges by being appointed directly by the executive and legislature, filling in the positions of judges by election, and finally filling in the positions of judges by process recruitment. The filling of judge positions adopted by Indonesia is filling in the positions of judges through a process recruitment judge.

System recruitment Judges that apply in Indonesia are generally divided into 3 (three) models, namely recruitment judge at the court of first instance process recruitment carried out jointly between the Supreme Court Justice and the Judicial Commission as regulated in Article 14A paragraph (2) and paragraph (3) of Law Number 49 of 2009 concerning general justice. Following up on Article 14A, the Supreme Court and the Judicial Commission have made joint regulations, namely Numbers: 01/PB/MA/IX/2012 and 01/PB/P.KY/09/2012 concerning Selection for Appointing Judges, however this joint regulation is no longer valid. again, once the Constitutional Court issued Decision Number 43/PUU-XIII/2015 which stated that the recruitment process for the courts of first instance does not need to involve the Judicial Commission, thus the process recruitment Judges in the first instance court are conducted by the Supreme Court independently without involving the Judicial Commission.

While recruitment to the courts of first instance and appeals is carried out by the Supreme Court, for the process recruitment Supreme Court judges have the authority to be held by the Judicial Commission with the approval of the DPR RI, namely Commission III, while for judges of the Constitutional Court the authority is recruitment carried out by 3 (three) state institutions, namely the DPR RI authorized to appoint 3 judges to be assigned to the Constitutional Court, the Executive in this case the President has the authority to appoint 3 Judges of the Constitutional Court, and three judges proposed from the Supreme Court.

IV. Conclusion

The Draft Law on the Office of Judges as an initial milestone in the reform of the position of judges is still experiencing many problems conceptually and procedurally. The Draft Law on the Position of Judges contains norms that support efforts to strengthen judicial independence in all aspects, both personal, functional and institutional in a comprehensive

manner so that justice services to the community can be carried out properly. This includes matters relating to security guarantees, professional protection, improvement of welfare, and the fulfillment of facilities and infrastructure that support the implementation of judges' judicial duties in an excellent manner. There are several crucial issues in the Draft Law on the Position of Judges, which among others are related to 1) The Government's Rejection of the Status of all Judges as State Officials; 2) Periodization of the position of Supreme Court Justices; 3) Sharing of Judges Recruitment Authority with the Judicial Commission; and 4) Decreasing the Retirement Age of Judges.

The regulation of judicial power in the perspective of *ius constituendum* is judicial power as a state institution which is equivalent to the executive and judicial institutions, the position of judges being an independent position free from intervention by other institutions so that all judges must have the status of state officials. Recruitment of judge candidates are carried out independently by the Supreme Court by prioritizing the prudential principle and the principle of transparency. The retirement age for judges for Supreme Court Justices and Constitutional Justices is 70 years, judges on appeal is 67 years, and for first instance judges is 65 years. In the future, all judges must be under the auspices of the Supreme Court, and the Judicial Commission as a supervisor for all judges in Indonesia is part of the Supreme Court.

References

- Asshiddiqie, J. (2009). *Komentar Atas Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Sinar Grafika.
- Chandranegara, I. S. (2019). Defining Judicial Independence and Accountability Post Political Transition. *Constitutional Review*, 5(2), 295. <https://doi.org/10.31078/consrev525>
- Congress of the International Commission of Jurists in Bangkok. (n.d.). *The Dynamic Aspects Of The Rule Of Law in the Modern Age (Dynamic Aspects of the Rule of Law in the Modern Age)*. February 1965.
- Febriansyah Ramadhan, I. D. R. (2021). Study of Constitutional Court Decisions Cancelling All Norms In The Law. *Legality: Jurnal Ilmiah Hukum*, 29(2), 232. <https://doi.org/10.22219/ljih.v29i2.15434>
- Ibnu Sina Chandranegara, Syaiful Bakhri, M. A. (2019). Judicial Reform and Democratic Consolidation in Indonesia. *Jurnal Cita Hukum*, 7(3), 303. <https://doi.org/10.15408/jch.v7i3.12228>
- Ilham Dwi Rafiqi, Alfath Anggara, A. M. A. P. (2021). Judicial Activism Sebagai Peluang Progresivitas Hakim dalam Peradilan Tata Usaha Negara. In *Dinamika Hukum: Dalam Rangka Mengabadikan 70 Tahun Perjuangan dan Pengabdian Guru, Sahabat, dan Bapak Kami*, Prof. Sudarsono, S.H., M.S (p. 231). Inteligencia Media.
- Jimly Asshiddiqie. (2014). *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika.
- Marzuki, P. M. (2009). *Penelitian Hukum (ke-5)*. Kencana Prenada Media Group.
- Nahrowi, Masyrofah Masyrofah, N. H. (2020). The Dynamics of The Democratic Process in Legal Politics in Indonesia And Egypt. *Jurnal Cita Hukum*, 8(3), 630. <https://doi.org/10.15408/jch.v8i3.17071>
- Niemann, Y. T. N. G. R. (2016). Independence of Judicial Power as a Foundation of Human Rights Judicial Function in Indonesia. *International Journal of Social Science and Humanity*, 6(3), 239.
- Qamar, N. (2015). Independence of Judges in The Implementation Powers of Justice. *Jurnal Dinamika Hukum*, 15(1), 53. <https://doi.org/http://dx.doi.org/10.20884/1.jdh.2015.15.1.362>

- Rachman, I. N. (2019). Constitutional Court, Judicial Independence, and Efforts to Achieve Qualified Justice. *Hasanuddin Law Review*, 5(1), 121. <https://doi.org/http://dx.doi.org/10.20956/halrev.v5i1.1471>
- Suharto, A. F. P. and R. B. (2018). The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia. *Jurnal Daulat Hukum*, 1(4), 895. <https://doi.org/http://dx.doi.org/10.30659/jdh.v1i4.3931>
- Sumanto, D. (2010). Responsibilities and Professionalism of Judge. *Jurnal Al-Ulum*, 10(2), 401.
- Sumantri, S. (1995). Kemandirian Kekuasaan Kehakiman Sebagai Prasyarat Negara Hukum Indonesia. Makalah Seminar 50 Tahun Kemandirian Kekuasaan Kehakiman Di Indonesia, 13.
- Sunny, I. (1982). Mencari Keadilan: Sebuah Otobiografi. Ghalia Indonesia.
- Tajudin, I. (2019). Regulation and Implementation of Indonesian Judicial Independence. *Opción*, 35(28), 34. <https://doi.org/https://produccioncientificaluz.org/index.php/opcion/article/view/29469>
- Thohari, A. A. (1993). Komisi Yudisial dan Reformasi Peradilan. Gramedia Pustaka Utama.
- Zudan Arif Fakrulloh. (2005). Penegakan Hukum Sebagai Peluang Menciptakan Keadilan. *Jurnal Jurisprudence*, 2(1), 13. <http://hdl.handle.net/11617/1034>