

Law Enforcement in Indonesia: History, Progress and Public's Trust

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Abstract: *Issues related to the position and function of Judges or other Law enforcement officials for the Law Enforcement in Indonesia are found, especially those judges who defined as a key person and becoming a central role in law enforcement for Legal Cases. Initiated from that the study of history and developments on how the independence of the Judiciary and Judicial Power Institutions in Indonesia was carried out. Independence of Judicial Institutions and Judicial Power began in the "Old Order", "New Order" and "Post-Reform" era. In fact, the period of years of 1999-2006 has been found when the 1945 Constitution was implemented for the concept of independence of judicial power. This means that the concept of independency tends to organize judicial power into truly freedom, namely a concept of which completely independent of the influence of power. To affirm the extent of the independence of judicial power and the performance of judges as keys and important figures in judicial process, therefore one research was conducted to see how the public's trust on law enforcement in Indonesia. The study was conducted toward 100 (one hundred) respondents from various professional backgrounds, randomly taken and domiciled in 6 (six) major cities in Indonesia. It is concluded from the research that the public's opinion and public's trust toward the judicial process in Indonesia is still yet not positive. The public response shown tends to be "negative" from various matters related to the judicial process, judicial institutions, judicial costs and many others. The public's perspectives are certainly based on the empirical experience of the Indonesian people involving their own legal cases or even only understanding legal cases discussed in the media in Indonesia.*

Keywords: Law enforcement, Judges, Perspective of Justice, Indonesian cases

1. Introduction

This paper contains the result of research, studies, and critical and in-depth analysis of the problems related to the position and function of Judges in Law Enforcement in Indonesia; why law enforcement in Indonesia is difficult to achieve legal goals; how the implementation of law enforcement is carried out by our law enforcement officials, especially judges who play a key and central role in law enforcement. For this reason, it is important to review the independence of the Judicial Institution and Judicial Power and then examine the extent to which the public views on law enforcement in Indonesia takes place? How the Quality and Performance of Judges and other Law Enforcement officials are employed, especially in terms of moral quality. For the reason in which they will determine whether good and bad law enforcement occurred in Indonesia, so that those sitting in that position should be ones with the top qualified person with many high-qualities they own, allowing them to be professional for each stage of the judicial process they handled.

2. Theories

Independence of Judicial Institutions and Judicial Power in Indonesia: History and Development is the essence of the review of this paper. In reviewing independency of the Judiciary and Judicial Authority in Indonesia, it is necessary to explore the origins of Law Number 19 of 1964 regarding the Principles of Judicial Power: Non-Independent Judicial Power. The history of legal system in Indonesia has proven after the Presidential Decree of July 5, 1959 that the judicial power in Indonesia is not independent, due to it was once placed under executive power. This time guided Indonesian era to the emerging of Law Number 19 of 1964 concerning the Principles of Judicial Power and Law Number 13 of

1965 which showed an open intervention to the judicial authorities and violated the agreed upon constitution. The two laws expressly state that the court is influenced by the executive and legislative powers. Even worst, the President was given full power to intervene (infringement and interference) in the judicial process, in addition to the existence of prerogative rights such as clemency, rehabilitation, amnesty and abolition. Therefore, it was found that both laws concluded as unconstitutional.

In-depth study toward article in Law Number 19 of 1964 was then found that the law actually does not explicitly and clearly provide a definition or understanding of judicial power. Implicitly, the definition of judicial power can be found in the Explanation section of Article 1 of Law Number 19 of 1964. In this provision it is affirmed that the judiciary is the state court that is in charge of carrying out legal functions as protection in the Republic of Indonesia based on Pancasila, which is towards Indonesian socialist society.¹ This affirmation has shown that there are no District or District Courts, Customary Courts (inheemsche rechtsspraak) and the Self-Defense Court (zelfbestuursrechtsspraak).²

Article 3 of Law Number 19 of 1964 explicitly states that according to the law, the court judges is a tool of revolution based on Pancasila, towards Indonesian socialist society. This provision then emerged as the main force that the authority was the previous Government regime (called "Old Order" regime) which resulted more intervention of executive power towards the branch of the judicial power, since this law had perfected judicial authority which was a

¹Benny K. Harman, *Konfigurasi Politik dan Kekuasaan Kehakiman Di Indonesia* (Jakarta: Elsam, 1997) p.246.

²Wirjono Prodjodikoro, *Selama 40 Tahun Mengalami Tiga Zaman* (Jakarta: PT Ichtar Baru, no year) p.44.

tool subordinated to executive power. The evidence said that the President can intervene in the authority of the judiciary expeditiously. It is definitely shown and regulated in Article 19.³

Further impact of the executive power's intervention into the judicial power was clearly made the authority of judicial institutions becoming so limited, due to their duties are subject to the interference completely of the government to led and controlled (by the President). It cannot be denied that Law No. 19 of 1964 has shown how the President's intervention in judicial matters was justified by the law.

Law Number 19 of 1964 normally places the position of judicial power in the power group of state government. This is obviously seen that the law requires judicial authorities to serve their interests and carry out functions stipulated by government authority. Based on this fact, Judicial's function and its power is very limited to the obligation to carry out legal functions as outlined by government power, namely instruments or tools to protect the country (not law). Instruments or tools to achieve social justice has been determined in the Preamble of the 1945 Constitution. The Article 7 paragraph (1) of Law Number 19 of 1964 stated that Judicial power in Law Number 19 of 1964 is not an independent power because it is subject to government instructions. Under the legal provisions of which the situation of the country in danger, military commanders have almost unlimited power to take 'security' measures.

The legal political policy contained in Law Number 19 of 1964 is a real violation of the 1945 Constitution, because this law clearly provides a strong basis of legitimacy to the President to use revolutionary political interpretations in legal cases. This then shows that the President through Law Number 19 of 1964 can act as a judge as well. The President can politically decide all legal cases concerning his interests. The author argues, in this context we can ensure that "The law aims to maintain power".⁴In response to this, Law Number 19 of 1964, Moh. Mahfud M.D. said that executive intervention can only be carried out for the sake of respect for the revolution, the state and the nation or the interests of the people that are urgently required, but the criteria for these reasons are not yet specified, therefore it depends on the President's perspective and willingness. Regardless of the criteria, government interference with the judiciary for any reasons cannot be justified in a constitutional state. Quoting Seno Adji's opinion, Moh. Mahfud MD continued saying that the Law Number 19 of 1964 faced diametrically with the principle of the 1945 Constitution which requires free judicial powers. Moreover,

³1945 Constitution Number 19 Year or 1964 (UU No. 19 Tahun 1964) asserted: "For the sake of the interests of the revolution, the honor of the state and the nation or the urgent interests of the people, the President may participate in or intervene in court matters". The provisions of Article 19 are reinforced by the provisions of Article 20 paragraph (1) which states that judges are instruments of revolution. So the judicial power in the era of guided democracy is not an independent state power.

⁴Each regime made a law to maintain his power and for his benefit (according to Thrasymachus). See Samuel Enoch Stumpf, *Phylosophy: History & Problems* (London: McGraw Hill Inc., 1994) p. 33-34.

the elucidation of Article 19 of the law states that "Courts are not free from the influence of executive power and the power to make laws".⁵

Rejection of Legal Experts on all forms of Executive Intervention on Judicial Power

The history and progress on the judicial power independency have led legal scientists conducted their research and reporting on how the independency of judicial power exist in Indonesia. Daniel S. Lev has a very important position in exploring the progression of the rule of law and the independence of judicial power in Indonesia. He said that a big problem is inherent in legal studies in the new country because of the background of European and North American legal experience,⁶ although the influence of liberal legal values in Europe and North America has changed,⁷ which resulted in a difference between German *rechtsstaat* and the British rule of law. The concept of *rechtsstaat* in Germany is a good laboratory to examine the important ideas of the rule of law and the independence of judicial power, which is typical of the research done by Roberto Mangabeira Unger who stated in the book of Law in Modern Society.

The ideas of *rechtsstaat* at the outset, emerged in more assertive Germany in the mid-17th century.⁸ The concept was parallel with the collapse of the idea of the state of *Ständestaat*. In the idea of such a state, the King holds all the power of control. Sri Soemantri argues, that this method is absolutism, which concentrates almost all state power absolutely into the hands of the King.⁹ In this period the judicial power was controlled by the King, but the absolutism of the King's power was not lasting because with the emergence of the *rechtsstaat*-oriented middle class, they succeeded in encouraging the creation of liberal ideas.¹⁰ They believe that the concept of a liberal state must be supported by a form of power that separates executive, legislative and judicial functions.

Resistance to the absolute absolutism of the King's power in England was very clear after Dicey wrote the Law of the Constitution book¹¹ (1885). Dicey's reported that power must be limited. Dicey's perspective has a significant influence on the formation of the rule of law concept. He said, there was a great danger if the law was not placed in the supremacy of law, because the supremacy of law was a strong institution to obstruct the character of arbitrary power. Dicey further argued that the government must not have a free power to conduct. No one can be punished, unless it has been proven

⁵Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: LP3ES, 2006) p. 98-99.

⁶ See elaboration by Daniel S. Lev on *Hukum dan Politik Di Indonesia; Kesenambungan dan Perubahan*. (Jakarta: LP3ES, 1990) p. 377.

⁷*Ibid.* p. 382.

⁸Roberto Mangabeira Unger, *Law in Modern Society; Toward a Critism of Social Theory* (The Free Press, 1977) p. 183.

⁹Sri Soemantri on *Bunga Rampai Hukum Tata Negara Indonesia* (Bandung: Alumni, 1992) p. 13.

¹⁰Roberto Mangabeira Unger, p. 185.

¹¹ See Perspective of Dicey as cited by John Alder on "Constitutional and Administrative Law", (McMILLAN Professional Masters, 1989) p. 43.

to have committed a clear violation of the law, because this is what Dicey is in a position that considers everyone to be equal before the law¹² (*equality of law*) and the constitution (not written) must be able to guarantee the problem. Dicey's thought has shown that he also wants to strengthen parliamentary power, the main purpose of which is to disarm the absolute power that the King enjoyed initially. Since then, the concept of parliamentary supremacy and an unwritten constitution has become a democratic basis to limit the power of the King in England.

A clear difference was found when we examine the concept of German *rechtsstaat* and the rule of law of England. In Germany, the idea of *rechtsstaat* mainly emphasized that the importance of the separation of executive, legislative and judicative functions, which the King held in the *Ständestaat* period.¹³ The legislative and executive powers are relatively separate from the judicial power and written positive law becomes the main instrument limitation of the King's power. Not even so with the concept of rule of law that developed in England, because the ideas on the separation of powers and constitutions were written relatively not adopted in England. To be able to limit the King's power, the people must be given full sovereignty. Since then, parliament has been a representation of popular sovereignty and the laws made by the parliament have become the main instruments for limiting the power of the King. There is no doubt that the duty of the government in such a system to implement laws made by the parliament and the judiciary (judiciary) will adjudicate violations of the implementation of the law. This method can only be achieved when the function of the judiciary is completely independent from the influence of other power.

It should be borne in mind that the functioning of the *rechtsstaat* elements lead to the centralization of legislative and executive powers, hence, the power of the legislature and executive really has strong support to shape all legal products. Obviously, this period delivered the idea of legal order which was attributed to the idea of state sovereignty.¹⁴ Since then, there have been developments in real changes in the relations between the people and the state. The country grows into a strong organization of power and is armed with strong legal instruments. Daniel S. Lev's has observed this period as a constitutional and legal order period,¹⁵ although in its application it often contradicts the ideals of the actual constitutional-legal state. The main characteristic of this constitutional and legal order is the desire to strengthen the position of the principles of the rule of law. Great attention is needed to the issue that has led to important elements of the rule of law, such as guarantees

and protection of human rights, constitutional supremacy, and a free and impartial judiciary that have become the dominant tone to fight for the existence of a legal state in Indonesia.

The manifestation of the concept of a legal state with the functions of an independent judicial power, began to appear after Indonesia returned to the 1945 Constitution by using an instrument of decree formally so called the Presidential Decree of July 5, 1959.¹⁶ At that time the legal experts and all the people of Indonesia succeeded in encouraging the MPRS to issue Tap No. XIX/MPRS/1966. This decree requires a review of all laws and regulations that exists since the Presidential Decree of July 5, 1959 which is considered contrary to the 1945 Constitution. Sri Soemantri observes that based on Tap Number XIX/MPRS/1966 which must be reviewed related to the forms of legislation in which it has no legal basis in the 1945 Constitution; and the contents of laws and regulations that are not in accordance with or contrary to the contents of the 1945 Constitution.¹⁷ There is no doubt that one of the laws and regulations deemed contrary to the 1945 Constitution is Law Number 19 of 1964 concerning the Basic Provisions of Judicial Power, since based on this law, the President is allowed to have a greatest and broadest basis in order to influence the course of the judicial process, involving theseven to release the influence of other powers.

It is clear from the foregoing description that judicial power in Law Number 19 of 1964 is not an independent power because it is subject to government instructions. This condition led the Indonesian Judge Association (IKAHI) feel devastated. The Memorandum issued by IKAHI on November 7, 1968, which contains the following very strong statements, as follows: "*That IKAHI deeply regretted, after we (Indonesia) became independent of the era of legal fraud it was not overcome by strengthening the position of the last fortress to uphold the law, namely the Supreme Court by giving him all the authority needed, but by reducing the authority of the Supreme Court and providing a limitation of the task's progression are in fact only in the "rule of law" field, whereas the Supreme Court should be given a position as the main tool for carrying out the rule of law.*"¹⁸ We can see from the description of the IKAHI that constitutional efforts to secure the 1945 Constitution from all forms of fraud, as often happens in this period.

Improvement Efforts ont Judicial Power

The events in constitutional practice deviated from the 1945 Constitution continued until 1965. However, since 1966

¹²*Ibid*, p. 43.

¹³In fact, John Locke had discussed the absolute nature of the King's power in first treatise. Locke analogizes the absolute power of the King with the power possessed by a father in a patriarchal system. Locke believed that a father in a patriarchal system ruled not by law, but only based on his desires. The power of the King which is analogous to the power of the father, is always above the law which has unlimited jurisdiction. See **John Locke** on *Two Treatises of Government*. Edited by Mark Goldie Churchill College Cambridge (London: Everyman J.M. Dent., 1993) p. 9.

¹⁴**Roberto Mangabeira Unger**, *Law in Modern Society*, p. 38.

¹⁵**Daniel S. Lev**, *Hukum dan Politik*, p. 384.

¹⁶ The formulation of the President's Decree was assigned to a team of five members, namely Juanda, Mohamad Yamin, Abdul Haris Nasution, Roeslan Addul Gani dan Wirjono Prodjodikoro. See **Wirjono Prodjodikoro**, *Selama 40 Tahun Mengalami Tiga Zaman* (Jakarta: PT. Ichtar Baru, tanpa tahun) p. 43.

¹⁷ See Perspective of **Sri Soemantri** on *Ketetapan MPR (S) sebagai salah satu Sumber Hukum Tata Negara* (Remadja Karya CV, Cetakan Pertama, 1985) p. 37.

¹⁸ See 1945 Constitutions (Undang-Undang) on *Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman, Kekuasaan Kehakiman yang Bebas*, written by *Direktorat Jenderal Pembinaan Hukum Departemen Kehakiman*. (Taman Pedjambon No. 2 Djakarta, 1968) p. 180.

major changes have been initiated at the level of political infrastructure and the political superstructure. At the level of the political superstructure, changes occur among others in the position of President. This is what drives the MPRS is delivered to the MPRS Decree Number XIX/1966. This decree mandates that the Government and DPR-GR immediately conduct a legislative review of all laws and regulations that are allegedly violating the 1945 Constitution.

Law No. 14 of 1970 in regards to the Basic Provisions of Judicial Power was born after the incident of the 1965 PKI (Indonesian Communist Party) Movement. The 6 (six) Military Generals tragically killed at that time which caused the Indonesian State unstable in terms of security and continuity of the existing government. The tragedy marked as the end of the "Old Order" regime under the President Soekarno's leadership and the start of the "New Order" regime under Soeharto's leadership. As a consequence of this regime's transition is the desire to re-establish free judicial power as the most important pillar of the rule of law embodied in the 1945 Constitution. As discussed earlier, this effort was realized, among others, through TAP MPRS Number XIX/1966, in order to return to the purity of the implementation of the 1945 Constitution. Seno Adji mentioned on his arguments that the two alternatives of judicial review and legislative review were proposed, then TAP MPRS Number XIX/1966 prioritized legislative review. That is, assigning the Government and DPR-GR to immediately carry out a review of all legislative products in the form of Presidential Decrees, Presidential Regulations and Government Laws and Regulations in lieu of laws which have been produced by the "Old Order" regime under the leadership of President Soekarno.

The regulator who created the law immediately realized the mistake of construction of thought contained in Law Number 1964 and Law Number 13 of 1965. Therefore, in 1970 Law No. 14 of 1970 was stipulated concerning the Basic Provisions of Judicial Power. This law reiterates the importance of the Elucidation of Articles 24 and 25 of the 1945 Constitution, because in that explanation it instructs that the judicial power must be free from all forms of interference. The goal is to restore and recycle the character of the Indonesian Law¹⁹ which had long been denied by the Soekarno government. Article 1 of Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power confirms that: "Judicial Power is the power of an independent state to hold a judiciary in order to uphold the law and justice based on the Pancasila, for the sake of the implementation of the Law State of the Republic of Indonesia". This condition is to guarantee that the bodies that carry out judicial power are truly independent and free from governmental authority in accordance with the Elucidation of Articles 24 and 25 of the 1945 Constitution.²⁰ As a result, all elements of government

power are strictly prohibited from intervening in the implementation of judicial functions.

These principles are relatively listed in Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power, but due to the ongoing political upheaval in the "Old Order" period, the "New Order" regime places the perception of political stability as the main goal to be achieved. Not surprisingly, at that time the government exercised strict control of the political activities of the community, so that political conflicts that had previously occurred were relatively suppressed. This problem at least may illustrate the reason of which the New Order regime built a judicial structure which turned out to be also not free, while Law No. 14 of 1970 explicitly stated that the judicial power was free state power.²¹ As evidence as well as in the same time to emphasize this problem, we can see then its existence of Law Number 11/PNPS/1963. This law told us the anti-subversion crime which is often used to silence, arrest and imprison citizens who are critical of the ruling or government in power. Various legal cases were found improperly handled and solved, such as the judicial process against Syahrir took place at the Central Jakarta District Court. Another case is the legal event experienced by Bambang Isti Nugroho; The process of investigation and prosecution of Muchtar Pakpahan; and many more. The author strongly agrees with Mahfud MD, who states that the orthodox development strategy is positivist-instrumentalist, that law is a powerful tool for the implementation of state ideologies and programs. It is not to hesitate that in the "New Order" and the "Old Order" period the law became a means to realize the social vision of statepower holders.²² An authoritarian system of government greatly influences the strategy of law enforcement.²³

²¹ Cited statement from **Abdul Hakim G. Nusantara**: "In the new order regime judicial institutions are arranged in such a way that they are relatively under the influence of the executive. In addition, the new order government also maintains legal products from the days of guided democracy which can often be a source of abuse of power. Presidential Decree No. 11 In 1983, subsistence activities were adopted into Laws. Ironically, during the New Order, the Anti-Subsidies Law was used most often to silence, arrest and imprison citizens who were always critical of government attitudes and policies." See **Abdul Hakim G. Nusantara**, *Politik Hukum Indonesia* (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1988) p. 19.

²² Referring to the opinion of **Marryman** and **Abdul Hakim Garuda Nusantara**, Mahfud said that there are two kinds of legal development strategies which ultimately have implications for the character of legal products. First, orthodox legal development and responsive legal development. The first one - In the orthodox development strategy - the role of state institutions (government and parliament) is very dominant in determining the direction of legal development. The second one is responsive legal development strategy, a large role lies in the judiciary which is accompanied by broad participation of social groups or individuals in society. Both of these strategies have different implications for the legal product. See **Mohammad Mahfud MD**, *Politik Hukum Di Indonesia* (Jakarta: PT. Pustaka LP3ES, 2001) p.22-23.

²³ **Ismail Suny**, *Jaminan Konstitusional Kekuasaan Kehakiman*, Professor Speech on Academic Forum given by Professor Emeritus in Faculty of Law, Universitas Indonesia, Jakarta, 26 Agustus 2006, p. 4.

¹⁹ By **Seno Adji**: "Judicial power (which is free) can be placed in relation to the government (executive) and the legislature, so that functional freedom is related to the implementation of the duties of a judge (*in the exercise of the the function*)." See **Seno Adji**, *idem*, p. 155.

²⁰ See **Moh. Kusnardi dan Bintan R. Saragih**, *Susunan Pembagian Kekuasaan Menurut Sistem UUD 1945*, (Jakarta: PT. Gramedia, 1980) p. 141.

The author argues that the power of the judiciary in the "New Order" period was not much different from what had happened in the "Old Order" period. It is clear in both periods that the judiciary is part of executive interests. The judiciary is designed in such a way as to be able to secure preferences which are in the interests of the authorities and power. As a result, its genetic function cannot be carried out optimally, and instead serves to carry out, maintain and secure development programs as well as government interests, namely as instruments of political stability and drivers of economic growth.²⁴

The method of political appointee against the judges provided a big role to President Soeharto to elect and appoint them. The House of Representatives is relatively weak and have no authority to control the recruitment process of Supreme Court justices and Supreme Court leaders. Reviewing the provisions of Article 8 paragraph (2) of Law Number 14 of 1985, it is shown a large role to the President to appoint the Chairperson and Deputy Chairperson of the Supreme Court. In addition, the young chairman was also appointed by the President after receiving the proposal of the Chief Justice of the Supreme Court. This all proves that the President is *primus inter pares* in the process of placing in the post of Chief Justice. Law No. 14 of 1985 also limits the opportunities for the appointment of supreme judges from non-career elements. This regulation makes the recruitment process of supreme justices relatively not allowing to prospective judges from non-career elements, whereas the manifestation of the independency of judicial power requires a composition of judges capable of making them free from the effects of external pressure (personal independence). With the existence of career judges who are *de jure* civil servants, there is no doubt that they *are de facto* difficult to free themselves from the interests of the government bureaucracy.²⁵ This even worst putting more suspicion that the "New Order" regime was indeed inconsistent in delivering a justice system that was completely free from the pressure of executive and legislative politics.

The reform movement pioneered by students with the support of various elements of society occurred in May 1998, was one of the most important historical events of the Indonesian nation. The end of the "Orde Baru's power has given to strong pressure to immediately strengthen the function of judicial power that was free from the influence of executive and legislative powers. Under the leadership of President B.J Habibie, he published Presidential Decree Number 21 of 1999 for Integrated Work Team Implementation of Number X/MPR/1998 for Separation of

the Firm Judicative Function from the Executive.²⁶ The integrated work team has their task of assisting the President in carrying out the assessment of functions and identifying the consequences of the separation of executive, legislative and judicial functions. The team for Presidential Decree Number finally recommended to the President: (1) To guarantee independent Judicial Power, an independent judicial power is required under the Supreme Court; (2) Amendments to a number of laws and whole regulations that relate to the separation of judicial powers from the executive.

Starting from this period, the primary function of judicial power is relatively free from the influence of executive and legislative powers, but this issue is not new problems in the judicial power. The independence of judicial power which is so large turns out to cause quite a lot of problems. In the end, it became the basis thought for the author to conclude, that the system that wanted to be built in any way in national legal politics all passed to the quality of the human resources who carried it out. Therefore, besides using the grand theory of the rule of law, the division of power as the middle ring theory and the applied theory is the independent judicial power, the author was continuing to use Platonic theory as a supporting theory for every problem related to human resources which will be discussed deeply in another article.

Legal Reform and Efforts to Strengthen Judicial Independence

The strong idea to put the independence of judicial power in the 1945 Constitution is evident from the statements of members of the 2000 MPR Working Body Committee Ad Hoc. They believe that free judicial powers must be guaranteed by the 1945 Constitution as the constitution of the Republic of Indonesia in long period of time.

The creator of the 1945 Constitution immediately realized the importance of guaranteeing the legal independence of judicial power. They believe that judicial power is guaranteed in the constitution and it is relatively able to prevent political intervention over the implementation of the primary functions of judicial power that often occur in the "Old Order" and "New Order" periods. As a result, the creators of constitutions deemed it necessary to include the provisions of judicial power independency in Article 24 paragraph (1) of the 1945 Constitution, which read as follows: "Judicial power is an independent power to conduct justice to uphold law and justice"

Ismail Suny said:²⁷ As an effort made in order to achieve the ideals of an independent, sovereign and prosperous country through democratic means based on the rule of law, the 1945 Constitution guarantees the existence of independent judicial powers to uphold law and justice. It is Article 24 paragraph (2) of the 1945 Constitution which also states that the judicial power is held by the Supreme Court and the courts

²⁴ See Positioning Paper *Menuju Independensi Kekuasaan Kehakiman*, Published by Konsorsium Reformasi Hukum Nasional, Indonesian Center for Environmental Law (ICEL), Lembaga Kajian dan Advokasi untuk Independensi Peradilan (Leip), Jakarta, 1999, p. xi.

²⁵ Pasal 4 ayat (1) UUD 1945 said: "The President holds the authority of the government according to the Constitution". Therefore, executive power became very strong and the Presidential institution controlled all the interests of the government bureaucracy at the time.

²⁶ See Presidential Decree No. 21 Year of 1999 *Tim Kerja Terpadu Pelaksanaan Tap No X/MPR/1998 Pemisahan Yang Tegas Fungsi Yudikatif dari Eksekutif*.

²⁷ See Ismail Suny on *Jaminan Konstitusional Kekuasaan Kehakiman*, Professor Speech given by Professor Emeritus on Academic Forum for Faculty of Law, Universitas Indonesia, Jakarta, 26 Agustus 2006, p. 8.

under it and by a Constitutional Court. This led to the division of judicial power organizations into two branches of the judiciary, namely the General Justice which culminated in the Supreme Court, and another called the Constitutional Court. The presence of this institution aims to protect the 1945 Constitution from violations of laws that often occur in the "Old Order" and "New Order" periods, and this shows that the Constitutional Court is an "interpreter of the constitution". In this regard, Moh. Mahfud MD explained that the mosaic of judicial institutions, especially judicial authorities, were found better after the amendment to the 1945 Constitution which affirmed constitutional functions with the proliferation of institutions in the fields of judicial power.²⁸

The importance of this regulation is thus encouraging Bagir Manan to make an interpretation of the original intent against the provisions of Article 24 paragraph (1) of the 1945 Constitution and Article 1 of Law Number 4 of 2004 in terms of Judicial Power. According to him, there are several substances in the power of an independent judiciary. An independent judicial power is the power to hold a judicial or judicial function which includes the power to examine and decide a case or dispute, and the power to make a legal provision.²⁹ In brief and overall, the interpretation of the original intent of Article 24 paragraph (1) of the 1945 Constitution made by Bagir Manan continued to play an important role in the overall pattern of independence of judicial power in Indonesia. So far, the role is that the Blueprint for Renewal of the Supreme Court R.I clearly states that independent, impartial and competent judicial power is one of the main components of the rule of law.³⁰ Bagir Manan observed that the principle of the state based on law only works and able to be implemented if an independent judicial power is there. So it is clear that the democratic system requires independent judicial power as a neutral instrument to resolve every dispute between citizens and between citizens and authorities³¹ (government). Bagir Manan also especially emphasized that an independent judicial power would only develop in a democratic and egalitarian state (equality). Without democracy, the judicial authorities will be paralyzed and become mere instruments of power.³²

Now, little discussion is developed onto whom the Law Enforcement officials to be supervised for their working performances (e.g. Judge). One example is to supervise the behavior of independent judges it is indeed necessary for the musketter (supervisory institution) of judicial power. The presence of this supervisory institution is expected to immediately reduce judicial corruption activities. That is the

reason the members of the 2000 MPR Working Agency's Ad Hoc I Committee, viewed that the independent judicial power in its limited sense, must be accompanied by the existence of the Judicial Commission as an institution that maintains and upholds the honor of judges. This effort is intended because they play an active role in upholding the true principles of the rule of law, which includes: protection and guarantees of human rights, the rule of law and an impartial judiciary and equality before the law for everyone. Therefore, in the implementation of the judiciary and legislation, the Judges clearly cannot act partially and must provide maximum legal protection to anyone who needs justice. This provision shows the high constitutional degree of the dignity of judges, because they hold a central role in the judicial process,³³ and this brings a significant influence to the embodiment of the concept of a very important legal state throughout the decade of the Republic of Indonesia. Constitutional efforts indicate that the judge must obtain a free position and this position must also be overseen by a supervisory institution which then emerges as a Judicial Commission with its authority as stipulated in Law Number 22 of 2004 regarding the Judicial Commission, in Article 13. The most important reasons of the formation of the Judicial Commission in the 1945 Constitution is to maintain and uphold the honor, nobility and behavior of judges. This is an urgent and systemic effort to reform the power of the judiciary, especially the general justice which has not carried out its functions properly. Predictably, one factor is the low mentality and morality of judges due to the judges are free from effective supervision. In other words, the weak supervision of judges can encourage judges to commit acts that are against the law, corruption, manipulation of office misuse that is detrimental to the state and the people.³⁴

Finally, these years of 1999-2006 can be defined of which the 1945 Constitution actually delivered the concept of independence of judicial power which tended to organize judicial power into truly freedom from the power. It presents the concept of independence of judicial power which still had very important meaning up to this period. Many of these influences are due to the regime of the "Old Order" and the "New Order" clearly placing judicial power under the domination of executive and legislative powers, so that the idea of the independence of judicial power that is seen now is a concept of independence which is completely independent of the influence of the two branches of power.

From the discussion on how the current concept and implementation of the independence of judicial power raises the curiosity of which the current public's trust on law enforcement in Indonesia occurred? The research was conducted and the discussion as presented in the next section of this paper.

²⁸ **Mohammad Mahfud MD**, "Komisi Yudisial dalam Mosaik Ketateneagaraan Kita", dalam *Bunga Rampai Komisi Yudisial dan Reformasi Peradilan*, Penerbit Komisi Yudisial R.I, p. 3.

²⁹ **Bagir Manan**, *Kekuasaan Kehakiman Indonesia Dalam UU No. 4 Tahun 2004* (Jakarta: Fakultas Hukum UII Press, 2007) p. 30.

³⁰ Blue Print *Pembaharuan Mahkamah Agung R.I*. MARI. 2003. p. 1.

³¹ **Bagir Manan**, *Kekuasaan Kehakiman Indonesia*. Op. Cit. p. 31.

³² See Statement by **Bagir Manan** on *Kekuasaan Kehakiman Di Indonesia Dalam Era Reformasi*, Professor Public Speech Abdurrahman on Reunion and Dies Natalis *Sekolah Tinggi Ilmu Hukum Sultan Adam* (STIHTSA) p. 5.

³³ Academic Paper on *Rancangan Undang-Undang tentang Komisi Yudisial, Mahkamah Agung R.I*, 2004, p. 28.

³⁴ **John Pieris**, "The Movement and Real Steps of the Judicial Commission in Carrying Out the Mandate of the 1945 Constitution Post-Decision of the Constitutional Court", *The Interest of the Judicial Commission and Judicial Reformation*, Judicial Commission R.I, 2007, p. 225.

Law Enforcement Research and Development [The Law Enforcement Research and Development (LERD) founded by **Boy Nurdin** on February 21, 2008, inaugurated by Sri Soemantri and Yusril Ihza Mahendra at The Kartika Chandra Hotel, Jakarta]

Data Collection, Data Analysis and Findings

TaKing into account the performance of judges, justice, judicial process and other related elements, the research was conducted to see to what extent the current public’s trust on

law enforcement in Indonesia performed so far? It proceeds by asKing several questions to 100 (one hundred) respondents from various backgrounds randomly and domiciled in 6 (six) major cities in Indonesia, namely Jakarta, Bandung, Surabaya, Pekanbaru, Pontianak and Balikpapan. This was taken from a total 100 (one hundred) respondents, consisting of Academics, Legal Practitioners, Non-Legal Professionals, Figures/Activists/Religious Leaders as seen in table 1 below.

Table 1: Number of Respondent & Origins

Respondent by Professions	Respondent’s Origin (6 big cities in Indonesia)					
	Jakarta	Bandung	Surabaya	Pekanbaru	Pontianak	Balikpapan
Academician	10	5	4	2	2	2
People with Legal/Law Background	9	5	4	3	2	2
Professional (Non-Legal/Law Background)	8	6	5	2	2	2
Well-known Figure/Activist/Religious Leaders	7	6	5	3	2	2
Total Respondents (100)	34	22	18	10	8	8

The respondents were all asked for the 5 (five) questions for number 1 to 5. In addition to that, to the respondents concerned and interested in cases (including the parties and their proxies), then the researcher extended the questions to the 50 (fifty) respondents among them. They participated for another 5 (five) questions from question number 5 to 10.

Some instrument questions asked by researchers include 10 (ten) questions related to the respondents' perspectives on law enforcement in Indonesia. The questions consist of (Nurdin., B. 2008), as follows:

(1)Do respondents’ thought on the cases decided by Judges (as presented to the respondents) have shown the good/maximum performance of judges?; (2)What do respondents’ thought on the performance of the current Supreme Court institutions (as presented to the respondents) in relation tonumber of cases are still handled and the number cases were decided, whether or not the number of supreme judges has met or needs to be increased?; (3)Based on the data shown for corruption and terrorist cases tackled (as presented to the respondents), how the respondent's opinionon the justice progressing in Indonesia?; (4)What do

respondents’ thought on decision made for the Cassation Case, whether or not the Supreme Court is free from external intervention?; (5)What do respondents’ thought onthe Supreme Court in ruling their duties, whether they have been free of bribery?; (6)What respondents’ thought on the official costs required for judicial process, whether or not it is reasonable?; (7)In terms of overall costs (including informal costs) incurred for progressing judicial, do respondents think these costs reasonable or not?; (8)Do respondents agree that there are still other costs that must be incurred to win cases in the Court (including lobbies and giving related parties)?; (9)Do respondents agree if the age of retirement of a Chief Justice is 70 years old?; (10)Do respondents agree with the argument that the age limit of a 70-years-old supreme judge will improve the performance of the Supreme Court?

All questions and responses provided by the respondents are shown in the following percentage chart presentations.The research results related to the Public’s trust and community’s perspective are presented below.

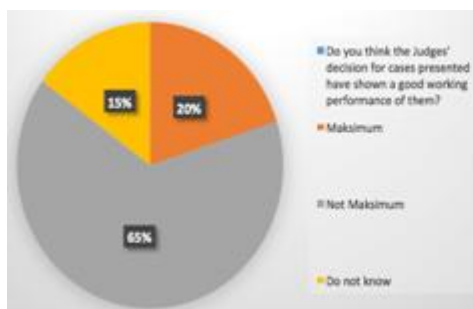


Figure 1: Question & Result Number 1

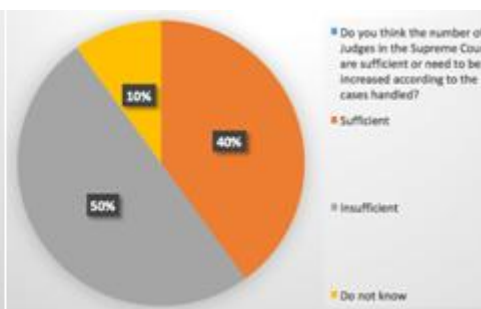


Figure 2: Question & Result Number 2

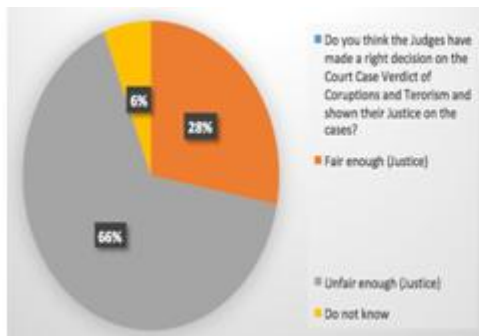


Figure 3: Question & Result Number 3

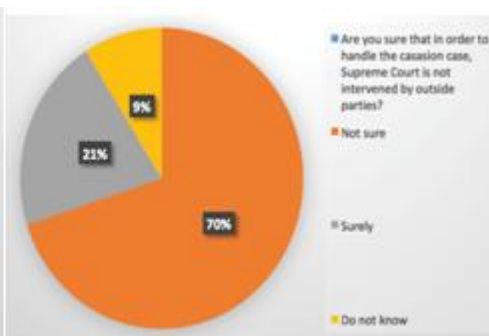


Figure 4: Question & Result Number 4

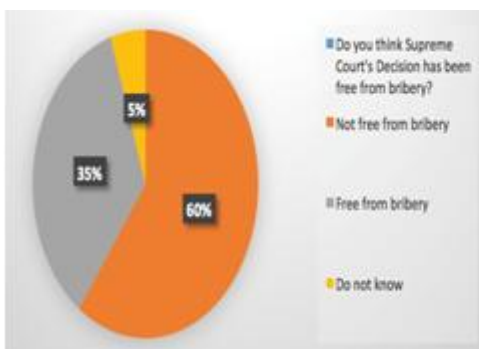


Figure 5: Question & Result Number 5

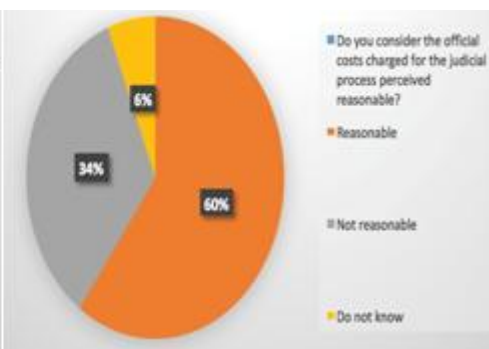


Figure 6: Question & Result Number 6

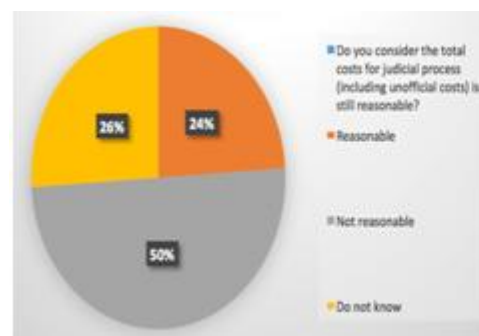


Figure 7: Question & Result Number 7

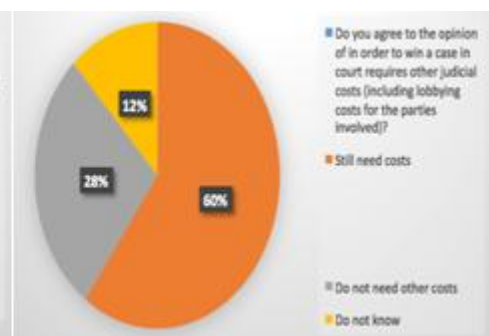


Figure 8: Question & Result Number 8

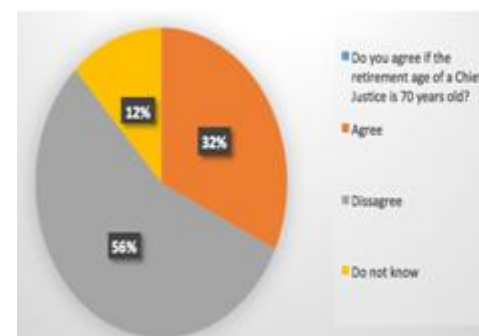


Figure 9: Question & Result Number 9

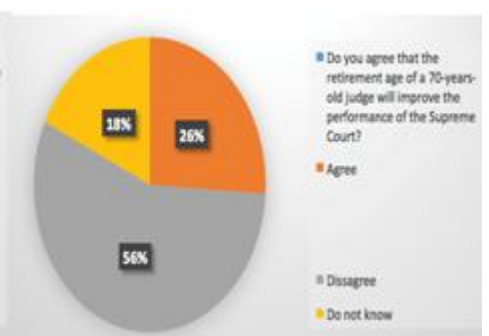


Figure 10: Question & Result Number 10

3. Conclusions and Closing

Research results concluded that the public's trust and community's perspectives of the judicial process in Indonesia is still not yet positive. From the 10 (ten) normative questions as well as 5 (five) submitted, therefore responses found the tendency to be "negative" were encountered from various matters related to the judicial process, judicial institutions and personal judges as the main figures of Law Enforcement. Detailed results of the research concluded several points, as follows: (1) Public opinion in

majority (65%) considers that the Judges performance in making decision in legal cases in Court have not yet good/maximum; (2) Public also said majorily (50%) that the number of judges in Supreme Court is insufficient and need to be increased in order to allow many more cases can be handled and finalized in time; (3) Public in majority (66%) thought that in terms of judges doing the cases of corruption and terrorism were unfair; (4)Public showed in majority (70%) not sure that the casation cases done by Supreme Court were not much intervened by the external parties; (5) Public also thought (60%) that the Supreme Court were not

free from bribery; (6) Official costs charged for judicial process perceived by the Public not reasonable (60%); (7) Unofficial costs charged for judicial process perceived by the Public not reasonable (50%); (8) Public's opinion in majority (60%) also disagreed with the issue to win the case in court requires other judicial costs (including lobbying costs for the parties involved); (9) Public mostly (56%) gave their disagreement on the issue of judges' retirement age (70 years old); and (10) Public also thought that the retirement of 70 years old age of judges will not improve the performance of Supreme Court (56%).

The perspectives given by the public or community are certainly based on the empirical experience of public or community in understanding various legal events and cases in Indonesia. It seems possible that these events have illustrated to the public/community how weak law enforcement is in Indonesia. It is to regret to see how other nations show the supremacy of the law in the life of the state. The authority and effectiveness of their government is actually built from a commitment to maintain the rule of law. The quality of law is largely determined by its moral quality. In the Roman Empire there is a saying "Quid leges sine moribus? What does the law mean, if it is not accompanied by morality?". Regardless of the above questions, that all is certainly depends on the state administrators. A sincere desire and strong determination from the organizers of the state starting from those sitting in the executive, legislature, even more so the judiciary. Those of all of to which need to be overcome.

One of the issues described above seems fundamental factors that make it difficult for law enforcement in Indonesia to achieve the objectives of the law itself. As long as the legal mafia (consisting of individual law enforcement officials themselves, case brokers, related parties who could be from conglomerates/businessmen, individual bureaucrats from other institutions or internally and others) are still free and continue to act, it is therefore the "black and dark fog" will permanently envelop our legal world and the goddess of justice will upset due to the law cannot be enforced properly to achieve the ideals of the law itself. In the end, the law cannot be made as commander in a country like Indonesia.

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