Independence And Accountability, Supreme Court In The Implementation: The Power Of Judgment In Indonesia

La Ode Husen¹, Said Sampara², Sufrirman Rahman³, Sarifuddin Umar⁴
¹, ², ³, Profesor, Law of Faculty, Muslim University Of Indonesia, ⁴Student Doctoral Program Postgraduate University Muslim Of Indonesia

Abstract: The aim is this research is to analyze, explain and discover the nature of independence and accountability of the Supreme Court in the administration of judicial power, and Analyze, explain and find supervision on the independence and accountability of the Supreme Court in the administration of judicial power.

The results showed that the independence and accountability of the Supreme Court in the administration of power, its protection is not guaranteed in the 1945 Constitution. Therefore, more detailed provisions are needed in order to strengthen the guarantee for the implementation of an independent and accountable judiciary.

Keyword: Independence, Accountability, The Power Of Judgment

Introduction

The Supreme Court as one of the State fittings, which exercises judicial authority, is regulated in Article 24 of the 1945 Constitution of the Republic of Indonesia, which affirms that “(1) Judicial power is an independent power to administer justice to uphold law and justice; (2) Judicial power shall be exercised by a Supreme Court and the lower courts within the general judiciary, the religious court environment, the military court environment, the administrative court of the State, and by a Constitutional Court; (3) Other bodies whose functions relate to the judicial authorities shall be regulated in law”.

Provisions in Article 24 of the 1945 Constitution jo Law no. 48 Year 2009, can be an indication that judicial power is a separate power with other powers, or in other words Indonesia gets the influence of Trias Politica doctrine, although not embraced. According to Montesquieu that power in a State is separated into three branches of power (the separation of powers), namely the power of legislative power, the executive power, and the judicial power. Judicial power, is one of the powers in an independent State, separate from the power of the other State.

The judicative power in carrying out its duties is free from the interference and influence of other powers, including the government as the holder of executive power. Judicial power, is the independent power of the executive power. In addition, the ideal of creating free and independent judicial power is a universal ideal as defined in the Basic Principles on the Independence of the Judiciary, This resolution, affirming that free, independent and independent judiciary, is a judicial process free from any restrictions, disproportionate influences, incitements, pressures, threats or direct interference, Or indirectly from any social angle or for any reason.

Judicial power in Indonesia organized by the Supreme Court of the Republic of Indonesia, does not only carry out judicial or judicial functions, but also performs non-judicial functions, namely the functions of oversight, administrative functions, and the function of legislation. In reality it shows that the people as the seekers of justice still expect much from the legal apparatus, especially the judiciary. Nevertheless that our current legal climate, still in critical but not desperate, the function of the Supreme Court as a judicial institution is also inseparable from the situation.

Even empirically, a number of weaknesses are often addressed to the judiciary, such as the rise of judicial corruption, low integrity and limited capacity of judges, the number of cases to be handled, the handling of non-transparent matters, the existence of awkward or controversial decisions, And not in accordance with the sense of justice becomes the factor of the decline of public confidence in the judicial institution. This fact is, of course, strongly related to the independence and accountability of the Supreme Court in administering the judicial powers.

Formulation of the problem

What is the essence of independence and accountability of the Supreme Court in organizing the judicial power and how does oversight of the...
This study is a normative legal research using secondary data obtained from library material formed from some legal materials, such as: primary, secondary and tertiary legal materials.

**Research methods**

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**Discussion**

**Independence of the Supreme Court**

Judicial power is an independent power to administer justice to uphold law and justice. The elaboration of the judicial powers is regulated further in Article 1 Sub-Article 1 of Law no. 48 of 2009 on Judicial Power, that, judicial power is the power of an independent State, to administer justice to uphold law and justice pursuant to Pancasila and the 1945 Constitution of the State of the Republic of Indonesia.

The Supreme Court as the organizer of judicial power not only exercises judicial or judicial functions, but also performs non-judicial functions, namely the functions of oversight, administrative functions, and the functions of legislation. Thus according to positive law, in judicial power is covered the functions of the judiciary and other functions that are not the function of the judiciary.\(^1\)

Independence in the administration of the judiciary is a principle that must be explicitly articulated in accordance with the constitution, in order to ensure a guarantee of the exercise of independent judicial powers. In this connection, the International Commission of Jurists Geneva Switzerland confirmed that, *The existence of independent and impartial tribunal is at the heart of a judicial system that guarantees human rights in full conformity with international human rights law. The constitution, law and policies of a country must ensure that the justice system is truly independent from other branches of the State.*\(^6\)

Independence of judicial power is part of the principle of a democratic constitutional state. The principle is necessary to protect judicial power from intervention, persuasion, seduction, coercion or the influence of institutions, peers, superiors or other parties, so that judges in deciding cases only lean and for justice based on law, sense of justice and conscience. Independence does not mean that there should be no other party, other than the judicial institution authorized and involved to deal with something related to judges and courts. In other words, the only judges may be able to recruit only judges, or who supervise just judges, in the context of the realization of the system of chex and balance and accountability, the involvement of other parties or institutions to deal with certain matters, with respect to the authority of the judiciary is clear Necessary, but must remain within the corridor of the independence of judicial power.

The independence of the judiciary in Indonesia can easily be realized, if it is not part of absolute power, and the court respects the principle of equality before of law. The existence of independence or freedom of judicial power is determined in the separation of state power in accordance with the principle of The Rule Of Law.

There are three judicial powers held by the judiciary that must be maintained independently ie:

1. The authority of the judiciary in all States is the exercise of judicial functions, where the judiciary only works if there is a violation of law or the right of a citizen, without any other authority to intervene;
2. The function of the judiciary only takes place if there are specific cases of violation of the law, the judge is even said to be still in the corridor of the implementation of its duties. If he decides in a case to refuse to apply the generally accepted principle. However, if the judge refuses to comply with the generally accepted principles, where he is not in a condition of examining a case, he may be punished for the offense;
3. The authority of the judiciary only works if necessary in the case of a dispute set out in law. In essence the implementation of the functions of the judiciary always culminate in the birth of a verdict. Therefore, if a decision culminates in a crime or a crime, the perpetrator must be punished. Likewise, if a judge decides a violation, then he or she may decide the penalty for the perpetrator.

Therefore, in Article 5 paragraph (1) of Law Number 4 Year 2004 jo Law Number 48 Year 2009 regarding Judicial Power, provides confirmation that the implementation of the judiciary in Indonesia requires the existence of an independent Judge. The existence of the judge's independence is evidenced by the disregarding rights set forth in the law. The judge in the case may not give the impression that one of the litigants has a special position, affecting the judge. Judges in performing their judicial duties are prohibited from showing favoritism or dislike, prejudice, prejudice or harassment of a race, sex, religion, national origin, physical or age differences or socioeconomic status or on the basis of a close relationship with a justice seeker, - parties involved in the judicial process either through word or action. However, the judges in carrying out their
duties and functions are already bound by the provisions of law, code of ethics and behavior, but factually still cause a sense of dissatisfaction society. Consequently the court decision is considered an unfair and impartial decision to one party.

In reality it does not rule out the independence and independence of judges to be a problem, when judges are influenced by worries and anxieties to disagree, or not support the interests of the government, or perhaps even justify the actions of the government. The Commissioner of the Judicial Commission (Interview) argues that judicial authority is independent, unaffected by anyone and of any power, but in fact the judge actually misuses its independence for collusion. Now with the independence of judges precisely injures justice. It is true that the government can not intervene in judges, but whoever dares to guarantee that the independence of the judge can be free from the intervention of others.

Independent judicial power to bring about an honest and objective judiciary, which in its realization is the independence of judges. On the way it seems still need to be addressed, especially on the issue of supervision over the administration of the judiciary. Therefore, efforts of various parties to encourage and maintain, so that the process of revamping the system of judicial power in the future will be better, especially in creating an accountable judiciary. This, of course, can only be realized, if the judicial power is given a firm guarantee of the independence of judicial power and the independence of judges, in examining and deciding cases, so that in the end the judge is only oriented towards the achievement of an honest and objective judiciary.

The independence of the judiciary constituting one of the functions of the Supreme Court can only be realized, if accompanied by effective supervision, or in other words the Supreme Court and the Judicial Commission shall exercise its supervisory function well in the administration of the judiciary, since supervision is highly relevant and inseparable from the problems of independence and Independence of judicial power, and of course including judges. Supervision is also concerned with the realization of the accountability of judges as perpetrators in the implementation of fair and objective judiciary.

The notion of independence of judicial power is an idea born of a particular historical situation with certain assumptions, and is aimed at achieving certain goals. Therefore, the idea should not be treated as an inviolable dogma. Therefore, it becomes a necessity, or if not a necessity, to understand the idea of judicial authority contextually and historically for interpretation, and its implementation in Indonesia contextually and historically.

In this regard, according to Gar Yein Ng that, "However, the judicial institution has no democratic mandate as with the legislative and executive branches of the state (unless election procedures are used, which is rare in most democracies), and yet the judiciary possesses a great deal of law and decision making power over people's lives. In theory, Montesquieu never meant for the judiciary to actually have a role in the separation of powers beyond being a mouthpiece of the law. Therefore, a democratic mandate may not have seemed necessary."

In today's context, the reality of the role of judges is far removed from such assumptions. Over the last few decades, there has been an expansion of judicial power by Alec Stone Sweet as judicialization, a phenomenon "...a process through which "elements of legal discourse penetrate and are absorbed by political discourse"."53

**Accountability of the Supreme Court**

The independent judiciary's power does not mean that judicial power can be exercised as freely as possible without due observation because in the lawful aspects of the courts it is known that there are general principles of proper justice and procedural rules. Or the procedural law which opens the possibility of various legal remedies. Thus in the case of a judicial function, it is the whole series of activities in the judgment of an individual, concrete disputes and in relation to the concept of an independent judicial power, which in the context of law includes authority, authority, rights and duties, judicial power may be interpreted as The power, the right and the obligation to determine what, and how the legal norm relates to the case of the concrete individual conflict presented to it.

The judge's freedom is not absolute, for the duty of the judge is to uphold the law and justice based on Pancasila, by interpreting the law and seeking the foundations, as well as the principles on which it is based, the cases confronted with it, so that its verdicts reflect the sense of justice of the Indonesian people. This means that the freedom of judges is limited by Pancasila, the law, the interests of the parties and the public order. In other words, the judge's decision should not deviate from Pancasila, and should not conflict with the interests of the state and nation of Indonesia.

However, it can not be denied that freedom of judges is influenced by government, political, economic and other systems. A judge is an ordinary person who exercises his authority and
duties will not be separated from the various interests and influences of his surroundings, including personal interests, family interests and so on. Such a condition is vulnerable and may result in a conflict of interest for the person of the judge concerned, so that the judge's conduct may injure the honor and dignity of the judge. Therefore, the independence of judiciary must be balanced with judicial accountability, including integrity and transparency, built on principles, harmonized between legal responsibility, and responsibility Social responsibility.

In such a framework it raises the idea of using the concept of code of conduct with regard to the supervision of judges. The code of ethics can be used to determine whether a judge has performed his duties and is behaving in a good manner. The indicator to determine whether there has been a violation of law or ethics, if a judge in performing his duties and obligations has committed unprofessional actions under his / her professional sub-standard, causing damage to another person as a result of his actions.

The consequence of judicial accountability is the supervision of the judiciary, including the conduct of judges. In relation to the duties of judges, the freedom of judges shall be supplemented by impartiality and professionalism in their field. Thus, aspects of accountability, moral integrity and ethics, transparency, impartiality, professionalism, and supervisory aspects, are the signals of the recognition and independence of judges. In accordance with the concept of independence of judiciary and independence of judge above, it is necessary to supervise the judges. It is based on several reasons. First, to maintain the independence of judges and to maintain their respectful and dignified behavior; And Second, giving justice to justice seekers through a judge's decision...

Supervision of judges is done through the signs in the form of legislation and code of ethics (code of conduct). The chaotic world of justice is due to the weak internal function of judges' oversight, where coaching, control, control, and reward and punishment systems do not work as they should. The supervisory function of the Supreme Court, its supervised aspects is judicial technical, with the authority to take action, such as inquiring about the issues concerned with the judicial technical, providing guidance, reprimands, or warnings deemed necessary. In addition, after the amendment of the 1945 Constitution and through Law Number 22 Year 2004 regarding the Judicial Commission, determine the establishment of a new State institution, namely the Judicial Commission, which functions to conduct supervision.

The existence of the Judicial Commission as an institution that conducts external supervision of the judge is expected to be able to answer various issues concerning the weakness of internal supervision of the Supreme Court. In addition, another important thing, is to encourage the creation of synergies between internal control and external control, not contrary. Moreover, the Supreme Court also expects the Judicial Commission to effectively become an external superintendent of judges.

In the "Blueprint of the 2010-2035 Supreme Court Reform" it is affirmed that the Supreme Court has an internal supervisor, but can not be expected, so that the Judicial Commission is required as the proper supervisor for all judges, including Supreme Court Justices. Therefore, the Supreme Court and the Judicial Commission have a relationship in the field of judicial supervision.

Based on the authority relations in the Supreme Court and Judicial Commission's supervision, understanding the relationship between state institutions in the perspective of "cheks and balances" outside the context of separation of state power functions (separation of power) is inappropriate. Although it is true that the Judicial Commission may be given a supervisory role, it is not in the context of checks and balances, nor is it a supervisory function of judicial power, but only the supervision of the behavior of individual judges.

The principle of "cheks and balances" itself, in constitutional practice is often misunderstood, for example in the perspective used in formulating the provisions of Article 24B in conjunction with Article 24A of the 1945 Constitution of the Republic of Indonesia, is the principle of "cheks and balances" Offsetting and controlling the judicial power exercised by the Supreme Court. This fact, illustrates that the original intent formulation of a norm in the constitution can be based on a particular understanding. Such arrangements, indicating the existence of the Supreme Court and the Judicial Commission confirms, that the Supreme Court as the main organ, while the Judicial Commission is an auxiliary organ.

The principle of check and balance is incorrect if applied in the pattern of internal relationships of judicial power. Because the relationship of checks and balance can not take place between the Supreme Court as the principal organ with the Judicial Commission as an auxiliary organ. The Judicial Commission is not the executor of judicial power, but as a supporting element in order to support an independent, clean, and authoritative judicial power, although to carry out its duties, the Judicial Commission itself is also independent.
The relationship between the Judicial Commission as a supporting organ, and the Supreme Court as the main organ in the field of judicial behavior oversight, should be more appropriately understood as a partnership, without interfering with their independence. The relationship between the authority of the Supreme Court and the Judicial Commission in the supervision of the conduct of judges shall indicate its constitutive arrangement based on the pattern of functional relationship between the Supreme Court and the Judicial Commission, namely the Supreme Court regulated in Article 24 paragraph (1) to paragraph (2) and Article 24A of the 1945 Constitution, While the Judicial Commission is regulated in Article 24A paragraph (3) and Article 24B. Such an arrangement, indicates that according to the 1945 Constitution of the State of the Republic of Indonesia, the Supreme Court, is the actor of the judicial authority and has other powers granted by law. While the Judicial Commission is within the scope of judicial power, although the Judicial Commission is not the actor of the judicial authorities, between the Supreme Court and the Judicial Commission have equal and equal status within the constitution as an independent institution. However, the independence of the two institutions, different in the implementation of the function, namely the Supreme Court domiciled as an institution that exercises judicial powers. Whereas the function of the Judicial Commission only exercises the authority to nominate candidates and the appointment of Supreme Court Justices, as well as to maintain and uphold the honor, dignity and behavior of judges. Thus, although the Judicial Commission is an organ or a state body within the scope of the judicial authority, the Judicial Commission is not a state institution or organ that exercises, or a judicial authority just like the Supreme Court, because the functions and authorities of the Judicial Commission are not state organs Enforce the rule of law (code of law), but rather to the enforcement of the ethics (code of etic) behavior of judges, in order to maintain the sanctity and dignity of judges' dignity.

Conclusion

1. Independence and accountability of the Supreme Court in the exercise of judicial power, is to prevent any intervention on the independence of judicial power, and the consequences of the separation of powers by a system of checks and balances requiring oversight, as well as the need for accountability in the conduct of judicial proceedings.

2. Oversight the implementation of judicial power is not only done in the form of preventive control as a means to prevent the occurrence of deviant actions, in the form of normative provisions and codes of conduct and judicial conduct guidelines, but must be supported also with refresive supervision, so that correction of irregularities can be done immediately Returns on predefined corridors

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the legal separation of powers in the English constitution, he worries that the spirit of "extreme" liberty among the English could undercut the constitutional separation of powers that protects their liberty. Montesquieu's ambivalence thus raises questions as to what sort of "spirit" a regime must have to sustain a constitution of separate powers and so to preserve individual liberty. His reservations about England are important for understanding his philosophy of liberalism and have broad significance for any polity that seeks to protect individual liberty through a constitution of separate powers.

ii Russell, Peter H, O'Brien, David M, Judicial Independence in the Age of Democracy: Critical Perspectives From Around the World, Constitutionalism and democracy, 2001, p.325, This collection of essays by leading scholars of constitutional law looks at a critical component of constitutional democracy--judicial independence--from an international comparative perspective. Peter H. Russell's introduction outlines a general theory of judicial independence, while the contributors analyze a variety of regimes from the United States and Latin America to Russia and Eastern Europe, Western Europe and the United Kingdom, Australia, Israel, Japan, and South Africa. Russell's conclusion compares these various regimes in light of his own analytical framework.

iii See, Staton, Jeffrey K.Moore, Will H., Judicial Power in Domestic and International Politics, Journal, International Organization, 2011, V0l. 65, Issue, 3, p.553 Although scholars have made considerable progress on a number of important research questions by relaxing assumptions commonly used to divide polit- ical science into subfields, rigid boundaries remain in some contexts+ In this essay, we suggest that the assumption that international politics is characterized by anarchy whereas domestic politics is characterized by hierarchy continues to divide research on the conditions under which governments are constrained by courts, international or domestic....

