

## Abuse of Authority Against Judicial Power in Constitutional Court Decision No.90/PUU-XXI/2023

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### ABSTRACT

*Each law enforcer has its own authority according to what has been regulated in Indonesian laws and regulations. These provisions are stated in the Judicial Power Law No. 48 of 2009 which states that power judiciary according to the 1945 Constitution of the Republic of Indonesia is independent power. However, what has happened in Indonesia recently seems to be diminishing justice and putting aside codes of ethics in the world of law. The facts that occurred in the Constitutional Court decision No. 90 of 2023 regarding the age limit for presidential and vice presidential candidates were considered a decision that violated the code of ethics because there was a conflict of interest. In fact, the decision was built based on less than rational legal reasoning, resulting in a decision that was considered problematic. Based on the background description above, problems arise in the form of how a judge's authority should be in deciding cases in accordance with what is contained in the legislation. Then what are the legal remedies given in the form of sanctions to judges who are proven to be abusing their authority? This research uses a normative juridical approach, namely by looking at the rules and principles applied in the judiciary in Indonesia. The administration of government must be based on the principles of legality, protection, human rights and AUPB, especially in terms of the principle of not abusing power. Article 10 paragraph (1) letter e and the explanation of Law Number 30 of 2014 stipulate the principle of not abusing one's own authority. This basis requires every government agency and official not to exceed, abuse or confuse their authority for personal or other interests.*

**Keyword:** Authority, Judicial Power, Decisions and Constitutional Court

### ABSTRAK

Setiap penegak hukum mempunyai kewenangannya masing-masing sesuai dengan yang telah diatur dalam peraturan perundang-undangan di Indonesia. Ketentuan tersebut tertuang dalam Undang-Undang Kekuasaan Kehakiman Nomor 48 Tahun 2009 yang menyatakan bahwa kekuasaan kehakiman menurut UUD Negara Republik Indonesia Tahun 1945 adalah kekuasaan yang merdeka. Namun apa yang terjadi di Indonesia akhir-akhir ini nampaknya semakin mengekang keadilan dan mengesampingkan kode etik dalam dunia hukum. Fakta yang terjadi dalam putusan Mahkamah Konstitusi Nomor 90 Tahun 2023 tentang batasan usia calon presiden dan wakil presiden dinilai merupakan keputusan yang melanggar kode etik karena terdapat benturan kepentingan. Faktanya, putusan tersebut dibangun berdasarkan penalaran hukum yang kurang rasional sehingga mengakibatkan putusan dianggap bermasalah. Berdasarkan uraian latar belakang di atas, maka timbul permasalahan berupa bagaimana seharusnya kewenangan seorang hakim dalam memutus perkara sesuai dengan apa yang tertuang dalam peraturan perundang-undangan. Lalu apa saja

upaya hukum yang diberikan berupa sanksi kepada hakim yang terbukti menyalahgunakan kewenangannya? Penelitian ini menggunakan pendekatan yuridis normatif yaitu dengan melihat peraturan dan asas yang diterapkan dalam peradilan di Indonesia. Penyelenggaraan pemerintahan harus berdasarkan asas legalitas, perlindungan, hak asasi manusia dan AUPB, terutama dalam asas tidak menyalahgunakan kekuasaan. Pasal 10 ayat (1) huruf e dan penjelasan Undang-Undang Nomor 30 Tahun 2014 mengatur prinsip tidak menyalahgunakan kewenangan sendiri. Dasar ini mewajibkan setiap instansi dan pejabat pemerintah untuk tidak melampaui, menyalahgunakan, atau mengacaukan kewenangannya untuk kepentingan pribadi atau kepentingan lain.

**Kata Kunci:** Kewenangan, Kekuasaan Kehakiman, Putusan dan Mahkamah Konstitusi

## **INTRODUCTION**

Indonesia is a rule of law country, where every resident inside it has the same position in advance law as well as have obligation For obey applicable law. That matter arranged in Law No. 12 of 2011 formation regulation legislation realizing Indonesia as a legal state, the state has an obligation carry out development law carried out nationally in a way planned, integrated and sustainable in system law national guarantee protection rights and obligations all Indonesian people based on the 1945 Constitution of the Republic of Indonesia.

When it happens violations and crimes, the Indonesian state has a number apparatus enforcer law for assist with the enforcement process law with fair. Every enforcer law own their respective authorities according to what has been regulated in order regulation Indonesian legislation. Provision the listed in Constitution Power Justice No. 48 of 2009 which reads that that power judiciary according to the 1945 Constitution of the Republic of Indonesia is independent power exercised by a person The Supreme Court and the judicial bodies subordinate to it in environment Justice general, environment religious justice, environment Justice military, environment state administrative court, and by a Court Constitution, for organize Justice To use straighten up law and justice.

In the implementation process the law has running in Indonesia, it is hoped exists justice in termination A matter. However, what happened in Indonesia recently This as if fade justice and override code ethics in the world of law. Facts that occurred in the decision Court Constitution No. 90 of 2023 regarding age limits the presidential and vice presidential candidates being considered as violation decision code ethics Because exists conflict conflicting interests. Even decision the built based on reasoning lack of law rational so that produce A considered decision problematic.

Based on the background description above, problems arise in the form of how a judge's authority should be in deciding cases in accordance with what is contained in the legislation. Then what are the legal remedies given in the form of sanctions to judges who are proven to be abusing their authority?

## **METHODS**

In this article, it is done analysis to dynamics form and system government and there is also an Islamic constitution that has applied in Islamic countries as set or

decide something law, throughout range time start from classical times to the modern era. Research process held through four step methodological , i.e stage involving *heuristics* inventory relevant sources stage criticism and *verification* involved evaluation to validity sources used ; stage involving interpretation to connection between various stated facts in sources these and stages involving *historiography* preparation results study in a way systematic and chronological .<sup>1</sup> Study This use approach history For see How Islamic government developed and changed from the time of the caliphate to the era of the nation state. The main purpose study is for identify and map the factors that contribute to this are various shape and structure governments in various Islamic countries. Apart from that, goals study This is for determine is system Islamic government is monolithic or precisely pluralistic in its implementation throughout history.

## RESULT AND DISCUSSION

### Definition of Judicial Power and Its Legal Basis

Judicial power is Indonesia's *prime power* where judicial power is the highest form of power in Indonesia. Judicial power is independent *in* carrying out justice in order to uphold the law and achieve justice in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia in order to achieve a state of law. <sup>2</sup>This is based on law no. 48 of 2009 Chapter IX Article 24. <sup>3</sup>In Indonesia, the implementation of judicial power is exercised by the Supreme Court and the judicial bodies subordinate to it (General Court, Religious Court/Shari'ah Court, State Administrative Court, Military Court) and the Constitutional Court.

Globally, judicial power must be independent, meaning free from various interventions, factors or intimidation from any party that cause disruption to the implementation of the law (*undue process of law*). Judicial power must have accountability and independence in carrying out its duties as a public servant. Because accountability can balance the freedom and independence of judicial power. So, an Honorary Council of Judges was formed in order to create a balance that is free and has social and political accountability.<sup>4</sup>

In the Indonesian context, there is period will history enforcement which law shows that power judiciary Not yet can qualified as independent. Indication will exist matter That can stated from exists notes history as follows: First, in the era of Colonialism, judges at the Hoogerechtshof and Raad van Justitie is separate employees from party government, meanwhile chairman Landraad in Java and Madura and in parts outside Java and Madura are employee normal government is under Department Justice.

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<sup>1</sup> Endah Sri Hartatik Wasino, "Historical Research Methods: From Research to Writing," *Learning Publication Series* 1, no. 2 (2018).

<sup>2</sup>Easter Hero Withyanti, "Legal Politics of Power Justice in Indonesia", *Journal of Social Sciences and Education*, Vol. 4. No. 2 March 2020, p. 119.

<sup>3</sup>Zainal Arifin, MA, *Association of Judicial Power Laws* , (Jakarta: Kencana, 2010), p. 9.

<sup>4</sup>*Ibid* , p. 120.

Second, during the Old Order period, power judiciary placed as tool for revolution law for fulfill a sense of justice public. Therefore that, during the Old Order, was President put Chairman Supreme Court as Cabinet Minister with 3 (three) positions, namely: Minister of Legal Advisor to the President, Minister of Justice, and Minister who serves and also serves as Chief Justice. Third, during the New Order, President No Again put Chief Justice below power President.

As for who became base law authority power judiciary , okay in a way technical Justice nor administration judiciary , held by the Supreme Court, first : the 1945 Constitution, second : Law no. 48 of 2009 concerning Power Justice , third : Presidential Decree no. 21/2004 about Redirection Organizational , Administrative and Financial from Government to MA, fourth the Constitutional Court decision dated 7 October 2015 which has unplug KY authority in the field recruitment of judges at the level First .

## **Judge's Authority in Giving Decisions**

There are three contextual essences contained in the freedom of judges in exercising judicial power, namely:<sup>5</sup>

- a) Judges only obey the law and justice;
- b) No one, including the government, can influence or direct the decision that will be handed down by the judge;
- c) There are no consequences for the judge's personality in carrying out his judicial duties and functions.

When we examine the points above, there are points that may often be misused by judges in deciding cases. So, what often happens is that cases are decided without elements of justice, there are allegations of conflict of interest and violations of applicable norms. This makes it seem like the judge is playing with the laws and rules that have been in place before.

If we return to statutory regulation no. 48 of 2009 concerning Judicial Power, there are the following principles of implementation;

### *Section 2*

- 1) The trial is conducted "FOR JUSTICE BASED ON THE ALMIGHTY GOD."
- 2) The state judiciary applies and enforces law and justice based on Pancasila.
- 3) All courts throughout the territory of the Republic of Indonesia are state courts regulated by law.
- 4) Justice is carried out simply, quickly and at low cost.

### *Article 3*

- 1) In carrying out their duties and functions, judges and constitutional justices are obliged to maintain the independence of the judiciary.

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<sup>5</sup>Ahmad Rifai, *Legal Discovery by Judges in Progressive Legal Perspective*, Jakarta: Sinar Graphic, 2010, p.10 4

- 2) All interference in judicial affairs by other parties outside judicial authority is prohibited, except in cases as intended in the 1945 Constitution of the Republic of Indonesia.
- 3) Every person who deliberately violates the provisions as intended in paragraph (2) shall be punished in accordance with the provisions of the laws and regulations.

#### Article 4

- 1) The court shall judge according to the law without discriminating between persons.
- 2) The court assists justice seekers and tries to overcome all obstacles and obstacles to achieve justice that is simple, fast and low cost.

#### Article 5

- 1) Judges and constitutional justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society.
- 2) Judges and constitutional justices must have integrity and a personality that is beyond reproach, honest, fair, professional and experienced in the legal field.
- 3) Judges and constitutional justices are obliged to comply with the Code of Ethics and Code of Conduct for Judges."

In connection with the Constitutional Court decision No. No. 90/PUU-XXI/2023: "Stating Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 6109) as last amended by Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2022 (State Gazette of the Republic of Indonesia of 2022 Number 224, Supplement to the State Gazette of the Republic of Indonesia Number 6832) as long as "the minimum age is 40 (forty) years;" is contrary to the 1945 Constitution of the Republic of Indonesia conditionally and has no force The law is binding as long as it is not interpreted as "... **or has experience as a Regional Head at both the Provincial and Regency/City Levels.**" so Article 169 letter q of Law Number 7 of 2017 concerning General Elections in full reads "**at least 40 (forty) years of age or has/is currently occupying a position elected through general elections including regional head elections**"

The court's reasons in matters 49-50 are stated... "in order to provide the widest possible opportunity for the younger generation or millennial generation to be able to take part in the election contestation to be nominated as president or vice president, then according to reasonable reasoning, give meaning to the limits age is not only singular but should accommodate other requirements that are equivalent to age which can indicate a person's suitability and capacity to be able to participate in the contestation as a candidate for President and Vice President in order to improve the quality of democracy because it opens up opportunities for the nation's best sons and

*daughters to contest earlier in the year. nomination, in casu as President and Vice President. Moreover, if the requirements for President and Vice President are not attached to age requirements but are placed on experience requirements that have/are currently holding positions elected through elections (elected officials). "So, these figures can be said to have met the minimum degree of maturity and experience requirements because they have been proven to have received the trust of society, the public or the trust of the state."*

The Court also opined, "Age restrictions that are only placed at a certain age without providing equivalent alternative requirements are a form of intolerable injustice in the contestation for the election of President and Vice President. Therefore, regional heads (Governor, Regent, and Mayor) and elected officials in legislative elections (members of the DPR, members of the DPD, and members of the DPRD) who have served/are currently serving should be deemed to have the appropriateness and capacity as candidates for national leadership."

The decision above gave rise to a lot of controversy and the Constitutional Court, especially the judge who decided and granted the case, showed that there was partiality or specificity in the decision. Many suspect that this was because there was a familial relationship between the chairman of the Constitutional Court and the person who wanted to be nominated as vice president at that time.

## **Legal Remedies Against Abuse of Authority**

In Indonesia, in its justice system, we know the name examination. The term examination comes from the English language examination, which means inspection or test. In Black's Law Dictionary examination is defined as an investigation; search; inspection; interrogation. If related to the context of examining judicial products [indictments, decisions] then examination means testing or examining an indictment (prosecutor) or court decision (judge).<sup>6</sup>

There has been an opinion that the establishment of a public examination was only to find fault with the judicial process and the performance of the judicial apparatus. However, this assumption is not completely correct. The essence of examination is testing or assessing a decision (judge) and/or indictment (prosecutor) whether the legal considerations are in accordance with legal principles and whether procedural legal procedures have been implemented correctly, as well as whether the decision has touched the community's sense of justice. Apart from encouraging judges/prosecutors to make decisions/indictments with good and professional considerations.

Based on the results of the examination, many academics, legal experts and other law enforcers submitted requests regarding violations of the code of ethics committed by the Panel of Judges of the Constitutional Court to the MKMK. The report is based on considerations in accordance with statutory regulations relating to judicial power.

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<sup>6</sup>Emerson Yuntho, Aris Purnomo and Wasingatu Zakiyah. 2011. *Public Examination Guide*. Jakarta: Indonesia Corruption Watch. Pg. 19

The examination results show that many violations involve conflicts of interest, especially those committed by the Chief Justice of the Constitutional Court. Following are some allegations and arguments from the examination results;

1. Has occurred judicialization politics (Judicialization of Politics). excessive or went too far.
2. By open show change establishment Constitutional Court law is implemented inconsistent, no convincing, and reckless (at times change establishment law in a way as well as immediately from Decisions 29, 51, and 55/PUU-XXI/2023, in 90/PUU-XXI/2023). So that No excessive If called There is interest Very strong practical and pragmatic in change The Constitutional Court's Legal Establishment in a quo decision.
3. Damage cycles and governance election democratic. Weaken orderly law election specifically related certainty and order procedure in context election as predictable procedures, unpredictable results.
4. Further strengthening governance \_ party politics is not democratic.
5. Give rise to speculation, doubt, and decline trust public on practice free, fair and democratic elections.
6. Decision 90 shows that the Constitutional Court conducted a strong abusive judicial review which showed the court's capture.
7. Setting aside the principle of impartiality in *Sapta Karsa Hutama*.

In the judicial power law there are regulations regarding the supervision of judges.

#### Article 44

- 1) Supervision of constitutional judges carried out by the Assembly Honorary Constitutional Justice.
- 2) Supervision as referred to in paragraph (1) is regulated with Constitution."

MKMK received the related report and decided that the Panel of Judges at the Constitutional Court was proven to have violated the code of ethics. The Chairman of the Honorary Council of the Constitutional Court decided that Chief Justice of the Constitutional Court Anwar Usman (Reported Judge) had committed a violation as stated in the *Sapta Karsa Hutama* Principle of Impartiality, Principle of Integrity, Principle of Competence and Equality, Principle of Independence, and Principle of Appropriateness and Politeness. As a result, the MKMK dismissed Constitutional Justice Anwar Usman from position Chief Justice of the Constitutional Court. " Drop penalty dismissal from position Chairman Court Constitution to the Reported Judge." Then, Anwar Usman did not entitled nominate self or nominated as MK leadership until his term of office end. Neither does Anwar permitted involved or involve self in inspection and collection decision in case dispute results Election President and Vice President, Election Members of the DPR, DPD and DPRD, as well as Election Governors, Regents and Mayors own them potency emergence collision interest.

## **CONCLUSION**

Judge's authority in give decision in accordance with elements in Constitution Constitution Number 48 of 2009 then Power Justice is independent state power for organize Justice To use straighten up law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the Rule of Law of the Republic of Indonesia. the role of the judge in power judiciary that is, basically the judge's job is give decision in every case or the conflict it faces, determines things like connection law, value law from behavior, as well position law from the parties involved in something matter, so for can finish dispute or conflict in a way Impartial based on applicable law, then the judge must always independent and free from influence any party, esp in take something decision. Therefore that, a judge in power judiciary specifically as enforcer law expected can give input and addition, with give the best in operate task principal as apparatus enforcer law (judge). In the judicial process the judge's decision becomes something things that don't can problematic, however if happen irregularities committed by internal judges take decision, then the judge the must be questioned because the judge has to professional in hold position. Therefore, writer opinion importance for made team specifically that can be drop penalty to the judge who did deviation, no competent, no quality or not fair in disconnect something case especially caused Because There is interest or profit the judge's personality. This is very urgent for the sake of justice public Indonesia, because Lots his cases involving judges cause enforcement the laws of our country become chaotic or not crazy, as if stake fate parties who do not guilty. The country must quick take attitude to phenomena that occur at the moment This.

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