



## “Title” And “Judiciary Power Based On Law Number 48 Of 2009”

Tedy Subrata<sup>1\*</sup>

<sup>1\*</sup>Sekolah Tinggi Ilmu Hukum (STIH) Painan, Indonesia

### ARTICLE INFO

#### Article history:

Received Oct 25, 2022

Revised Nov 12, 2022

Accepted Nov 27, 2022

#### Keywords:

Code of Ethics;  
Conduct of Judges;  
Judicial Power.

### ABSTRACT

Judicial Power, based on Law Number 48 of 2009, is the power of an independent state to administer justice to uphold law and justice based on Pancasila for the sake of the implementation of the Republic of Indonesia. The state judiciary implements and enforces law and justice based on Pancasila. The trial was conducted "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD." In the profession of a judge, all rules are regulated in the Code of Ethics and Conduct of Judges (KEPPH) and Law Number 48 of 2009 concerning Judicial Power. Any interference in judicial matters by other parties outside the judiciary's power is prohibited except in cases referred to in the 1945 Constitution of the Republic of Indonesia. Courts try according to the law without discriminating against people. This research was carried out in a normative juridical manner by examining the object or research target in the form of regulations, legislation, and other legal materials related to the prohibition of judges examining cases with a kinship relationship.

### ABSTRAK

Kekuasaan Kehakiman berdasarkan Undang-Undang Nomor 48 Tahun 2009, adalah kekuasaan negara yang merdeka untuk menyelenggarakan peradilan guna menegakkan hukum dan keadilan berdasarkan Pancasila, demi terselenggaranya Negara Hukum Republik Indonesia. Peradilan negara menerapkan dan menegakkan hukum dan keadilan berdasarkan Pancasila. Peradilan dilakukan "DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA". Dalam profesi hakim segala aturan diatur dalam Kode Etik dan Perilaku Hakim (KEPPH) dan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman. Segala campur tangan dalam urusan peradilan oleh pihak lain di luar kekuasaan kehakiman dilarang, kecuali dalam hal-hal sebagaimana disebut dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Pengadilan mengadili menurut hukum dengan tidak membeda-bedakan orang. Penelitian ini dilakukan secara yuridis normatif dengan mengkaji obyek atau sasaran penelitian berupa peraturan, perundangundangan dan bahan hukum lainnya terkait dengan pelanggaran hakim dalam memeriksa perkara yang mempunyai hubungan kekerabatan.

*This is an open access article under the [CC BY-NC](https://creativecommons.org/licenses/by-nc/4.0/) license.*



#### Corresponding Author:

Tedy Subrata,  
Ilmu Hukum,  
Sekolah Tinggi Ilmu Hukum (STIH) Painan,  
Raya Serang Number.18 Street, Sukanagara, Kec. Cikupa, Tangerang District, Banten City, 15710, Indonesia  
Email: [tedy.subrata53@gmail.com](mailto:tedy.subrata53@gmail.com)

## INTRODUCTION

Legal Politics of Judicial Power in the 1945 Constitution of the Republic of Indonesia, before the amendment, is regulated in Chapter IX concerning Judicial Power which consists of two articles, namely Article 24 and Article 25. Article 24 paragraph (1) states that judicial power is exercised by the Supreme Court and other statutory judicial bodies. Paragraph (2) The composition and powers of the judicial bodies are regulated by law (Revisi, 2010). Whatever the contents of Article 25 relating to

the conditions for becoming and being dismissed as a judge are determined by law. The formulation of the two articles later in the Elucidation section of the 1945 Constitution of the Republic of Indonesia states that judicial power is independent, meaning that it is independent of the influence of government power (Budiardjo, 2003)(Sugiarto, 2021).

The formulation of these two articles is the source of all laws related to the exercise of judicial power. Legal politics of judicial power is an independent state power to administer justice and uphold law and justice based on Pancasila for the sake of establishing the rule of law of the Republic of Indonesia (Haji, 2004)(Amir, 2003). The implementation of judicial power is carried out by the Supreme Court and judicial bodies under it, namely the general court, religious court, military court, state administrative court, and Constitutional Court (Fadjar, 2003).

Judicial power in Indonesia is an independent and independent power whose task is to adjudicate and enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Soemantri, 2006). There have been many deviations from the 1945 Constitution of the Republic of Indonesia relating to the judiciary being free and independent in its duties (Jimly Asshiddiqie, 2008).

This was influenced by government intervention in the Judicial Powers, and the Soekarno Government carried both out during the Old Order era and the Soeharto Government during the New Order period. During the Old Order period, after the Presidential Decree dated July 5, 1959, the Government issued Republic of Indonesia Law Number 19 of 1964 concerning Principles of Judicial Power and Republic of Indonesia Law Number 13 of 1965 concerning Courts within the Judiciary and Supreme Court (Wahjono, 1991). During the Old Order, the political system built by President Soekarno was an Authoritarian Political System that concentrated power in the hands of the President (Manan, 2000)(Wahjono, 1983).

Arguing that western democracy is incompatible with the nation's personality and culture, President Soekarno adopted the concept of guided democracy, which was not democratic. Former Prime Minister of Indonesia, Muhammad Natsir, said that in a guided democracy everything could exist except democracy itself (Wahjono, 1983). The Law of the Republic of Indonesia Number 19 of 1964 and the Law of the Republic of Indonesia Number 13 of 1965 contain provisions that eliminate the judiciary's power. Article 7 of the Law of the Republic of Indonesia Number 19 of 1964 states that the Ministry of Justice carries out Administrative and Financial Technical Development, the Ministry of Religion, and the Departments within the Armed Forces, also state the permissibility of executive interference in Judicial power (Rousseau, 2007)(Asshiddiqie, 2004).

According to the author, Legal Politics depends on stakeholders; in this case, stakeholders on the political will to achieve state goals (Malian, 2001), which can take the form of making new laws or replacing old ones. In this study, there are formulations of the problem, namely (1) analyzing the Legal Politics of Judicial Power Against Law Enforcement, (2) analyzing the Legal Politics of Judicial Power Against Justice, and (3) analyzing steps for Law Enforcement and Justice Based on Laws. This research was carried out in a normative juridical manner by studying the object or research target in the form of regulations, laws, and other legal materials related to the prohibition of judges examining cases with a kinship relationship (Latuconsina, 2017).

## II. RESEARCH METHOD

This research was carried out in a normative juridical manner by examining the object or research target in the form of regulations, legislation, and other legal materials related to the prohibition of judges examining cases with a kinship relationship. A judge is obliged to withdraw from a trial if he is bound by a family relationship by blood or marriage to the third degree, or a husband or wife relationship even though they are divorced, with the chairperson, one of the member judges,

prosecutors, advocates, or clerks. The chairman of the panel of judges, members, prosecutors, or court clerks must withdraw from the trial if they are bound by a family relationship by blood or marriage to the third degree or a husband or wife relationship even though they have been divorced from the party being tried or an advocate. A judge or court clerk is obligated to withdraw from the trial if he has a direct or indirect interest in the case being examined, either at his own will or at the request of the litigants (Fajar & Achmad, 2010).

### III. RESULT AND DISCUSSION

#### 1. Judicial Power

##### a. Basic Principles of Judicial Power

Judicial Power in the context of an independent country to administer justice to uphold the law and justice based on Pancasila and the 1945 Constitution for the sake of the implementation of the Republic of Indonesia (Soerjono, 1986).

The 1945 Constitution of the Republic of Indonesia confirms that Indonesia is a rule-of-law country; in line with these provisions, one of the important principles of the rule of law is that there is a guarantee that the administration of judicial power is independent, free from the influence of other powers to administer justice to uphold law and justice (Fanani, 2010).

Law Enforcement Law enforcement is the process of making efforts to uphold or function legal norms as guidelines for behavior in traffic or legal relations in society and the state. Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce the law by the subject in a limited or narrow sense; in a broad sense, the law enforcement process involves all legal subjects in every legal relationship, whoever. Who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules means he carries out or enforces it (Laica Marzuki & Berjalan-jalan di Ranah Hukum, 2006) (Tanya, 2006).

In connection with independent judicial power, Article 1 of Law Number 4 of 2004, concerning Judicial Power, provides a limitation regarding the scope of "independence," namely that judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the Republic of Indonesia (Wiyono & Kusnu Goesniadhie, 2007).

Freedom in exercising judicial authority is not absolute because the judge's job is to uphold the law and "justice based on Pancasila" so that his decisions reflect the sense of justice of the Indonesian people.

Indonesia is a rule-of-law state, thus affirming Article 1, Paragraph (3) of the 1945 Constitution. Despite the simplicity of the formulation of the intended article, it contains a question relating to law enforcement in the context of a rule of law country, and given that the Republic of Indonesia is a democratic country, it means that the law that is upheld is within the scope of a democratic society (Ranggawidjaja, 1996).

Substantially, the 1945 Constitution of the Republic of Indonesia emphasizes freedom and the right to freedom as the essence of law and justice, which is regulated in the form of Legislation following the articles related to the matter referred to, paragraph 4 of the Preamble to the Constitution Republic of Indonesia 1945, contains the primary substance of "law and justice" namely law and justice which reflects the existence of "people's sovereignty" based on;

- a. Belief in The One True God
- b. A fair-minded and civilized humanity
- c. Unity of Indonesia
- d. Democracy (from the people) led by Wisdom of consultation (of the) representatives (of the people)

#### e. Social justice for every people of Indonesia

Regarding the limitations of law enforcement and justice, the 1945 Constitution emphasizes law and justice contained in the laws and regulations issued for this purpose, as well as limitations related to the recognition and respect for the rights and freedoms of others and to fulfilling just demands following moral considerations (Abdul Hakim, 1988). Religious values, security, and public order in a democratic society as emphasized in Article 28, Paragraph (2) of the 1945 Constitution, Law enforcement and justice, the 1945 Constitution confirms in a trial as emphasized in Article 24, Paragraph (1) of the 1945 Constitution (KURNIAWAN, 2021), that; "judicial power is an independent power to administer justice to uphold law and justice."

Justice is abstract; how to realize justice if you don't know what justice means. For this reason, it is necessary to formulate a definition that is at least close to and can give an idea of what justice means.

Justice is a condition of ideal moral truth about something, whether it concerns objects or people. According to most theories, justice has a great level of importance; John Rawls, the American philosopher who is considered one of the leading political philosophers of the 20th century, stated that "Justice is the first merit of social institutions, as is true in systems of thought." But, according to most theories, justice has not yet been achieved: "We don't live in a fair world."

Most people believe that injustice must be confronted and punished, and many social and political movements worldwide are struggling.

- a. Protecting the entire Indonesian nation and all of Indonesia's bloodshed,
- b. Improving public welfare,
- c. Educating the nation's life, and
- d. Participating in carrying out world order based on freedom, lasting peace, and social justice,

Indonesian Legal Politics, which makes law a tool to achieve these goals, apart from being based on the five principles of Pancasila above to achieve national goals, must also function and always be based on the four principles of Indonesia's legal ideals (rechtside), namely;

- a. Protecting all elements of the nation for the sake of integrity,
- b. and realizing social justice in the economic and social fields,
- c. Realizing people's sovereignty and the rule of law,
- d. Creating tolerance based on humanity and justice in religious life.

The four principles of legal ideals must always be general principles that guide the realization of the ideals and goals of the state because legal ideals are a belief framework that is normative and constitutive; legal ideals are normative because they function as the base and ideal prerequisites that underlie every positive law (Haji, 2004).

The achievement of state goals is always influenced by the political configuration adopted by the state; according to Bintan Saragih, the political configuration is a real political power and exists in a political system. This political configuration is usually depicted in the form of political parties. The political configuration of a country can be divided into two, namely;

- a. IUS Constitutum; Current or current legal regulations for people from within a specific area
- b. Law Number 48 of 2009, Regarding Judicial Power

## 2. IUS Contituum

Laws that are aspired to or that are wished for in the future

Based on Law Number 48 of 2009, Regarding Judicial Power. in this case, the author addressing the Act mentioned above, two things must be addressed, among others (Fanani, 2010);

Concerning the title, the Law is less strict in law enforcement and justice, following the spirit of the 1945 Constitution of the Republic of Indonesia and Pancasila; Precept 2 (two) reads; Just and

Civilized Humanity, the title does not represent the contents of the law mentioned above, based on attachment 1, Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation, concerning the Technique of Compiling Academic Papers, Draft Laws and so on, CHAPTER I, Framework of Legislation, that the TITLE, Paragraph (3) reads the name of the legislation made briefly using only 1 (one) word or phrase but must be sensitive and reflect the contents of the Legislation, as well as CHAPTER IV concerning JUDGES AND ITS OBLIGATIONS, Article 28, Paragraph (1), reads; Judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society.

Based on the explanation above, it is necessary to propose that the TITLE of Law Number 4 of 2004, concerning JUDICIAL POWER, needs to be added to the phrase so that the TITLE can represent the entire contents of the Law. The public is not stuck with the TITLE only representing the interests of a judge as if -if judges have extraordinary and authoritarian authority in making their decisions, the author proposes TITLE, as follows; TITLE.

### 3. Judicial Power Against Law Enforcement and Justice Enforcement

CHAPTER VI, regarding the Implementation of Court Decisions, Paragraph (2) reads; Supervision of the Implementation of Court Decisions as referred to in Paragraph (1) Is Conducted by the Chairman of the Court in question-based on the law. In law enforcement, the derivation of the above classification of judges can be categorized into 3 (three) kinds, namely idealist judges, materialistic judges, and materialistic idealist judges (Arifin, 2008).

The Idealist Judge is the Judge who is seriously trying to find clarity on a case being examined and tried. The Idealist Judge considers the law in a decision and will only compete in juridical and sociological. In philosophical considerations, he does not think about and is influenced by temptation And who is materialistic, he will not accept any gifts from people who, in his opinion, are related to the case he is handling. In conditions of a materialistic work environment, idealistic judges are demanded to be better able to resist temptation so as not to be carried away by materialism; even though it is not uncommon for halim to become "victims", their names are taken up by the parties related to the case in question.

On the other hand, for materialistic judges, legal considerations in a decision are only used as justifications that materialistic considerations will defeat. Materialistic judges can use various ways to get "material" from the litigants they handle.

The method used to obtain material assets can be done openly, the judge meets and promises a favorable decision in return for material assets, or in a subtle way hidden through the parties involved in handling the case concerned, such as clerks, substitute clerks, or bailiff, as well as other parties who have a relationship with the judge.

The materialistic idealist group of judges is a group of judges who are in the middle between idealists and materialists, this materialistic idealist class of judges is passive, does not want to seek, but is willing to accept gifts, even though selectively from the people whose cases are handled.

An independent judiciary or an independent judge (independence of judges) courts in Indonesia adhere to a juridical-idealism school, which teaches that in processing a provision from a law alone (as taught by the juridical-positivism school), but must pay attention to the soul that controls the legal system that enforces the law (Koesnoe, 1996). Based on the explanation above regarding the supervision of judges, the authors must propose that CHAPTER VI concerning the Implementation of Court Decisions, Paragraph (2) reads; Supervision of the Implementation of Court Decisions as referred to in Paragraph (1) Is Conducted by the Chairperson of the Court in question-Based on the law, it is proposed to be changed to;

- a. CHAPTER VI concerning the Implementation of Court Decisions, Paragraph (2) reads; Supervision of the Implementation of Court Decisions as referred to in Paragraph (1) Is Conducted by an Independent Judge Supervisory Board Based on the Law.

#### IV. CONCLUSION

The role of the judge in carrying out the functions and authorities of the judiciary to uphold law and justice, through his decisions, is expected to be able to apply accurate and fair laws, to be able to provide education and lessons to litigants and the public, to provide firm corrections, to provide pretensions and to provide severe repressions, to be able to engineer the order of society in the future, and must also be able to play a role in reconciling litigants, who in carrying out these roles adhere to the Code of Ethics and the Code of Conduct of Judges.

#### Reference

- Abdul Hakim, G. N. (1988). *Politik Hukum Indonesia*. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia Cetakan Pertama.
- Amir, Z. A. (2003). *Peta Islam Politik Pasca-Soeharto*. LP3ES.
- Arifin, J. (2008). *Peradilan agama dalam bingkai reformasi hukum di Indonesia*. Kencana.
- Asshiddiqie, J. (2004). *Format kelembagaan negara dan pergeseran kekuasaan dalam UUD 1945*. FH UII Press.
- Budiardjo, M. (2003). *Dasar-dasar ilmu politik*. Gramedia pustaka utama.
- Fadjar, A. M. (2003). *Reformasi Konstitusi Dalam Masa Transisi Paradigmatik*. Institute for Strengthening Transition Society Studies.
- Fajar, M., & Achmad, Y. (2010). *Dualisme penelitian hukum normatif dan empiris*. Yogyakarta: Pustaka Pelajar.
- Fanani, A. Z. (2010). *Kekuasaan Kehakiman yang Merdeka dan masa Depan Peradilan Agama (Analisis UU No. 48 Tahun 2009 dan UU No. 50 Tahun 2009)*. Disertasi. UNTAG, Surabaya.
- Haji, M. (2004). *Kekuasaan kehakiman yang merdeka & kebijaksanaan asasi*. STIH" Iblam".
- Jimly Asshiddiqie, S. H. (2008). Ideologi, Pancasila, dan konstitusi. *Mahkamah Konstitusi*, 10–23.
- KURNIAWAN, B. (2021). *Politik Hukum Di Indonesia*. LICENSI.
- Laica Marzuki, M., & Berjalan-jalan di Ranah Hukum, S. (2006). *Jenderal dan Kepaniteraan Mahkamah Konstitusi*. Jakarta.
- Latuconsina, R. (2017). POLITIK HUKUM KEKUASAAN KEHAKIMAN. *TAHKIM*, 11(2).
- Malian, S. (2001). *Gagasan perlunya konstitusi baru pengganti UUD 1945*. UII Press.
- Manan, B. (2000). Pembaruan UUD 1945. *Jurnal Magister Hukum*, 2(1).
- Ranggawidjaja, R. (1996). *Wewenang Menafsirkan UUD*. Bandung: Citra Bhakti Akademika.
- Revisi, T. P. (2010). *Naskah Komprehensif Perubahan Undang-Undang Dasar Republik Indonesia Tahun 1945, Latar Belakang, Proses, dan Hasil Pembahasan 1999-2002, Buku III Jilid 1 dan Jilid 2, Lembaga Permusyawaratan Perwakilan*. Jakarta: Sekretariat Jenderal MKRI.
- Rousseau, J. J. (2007). *Du Contract Social (Perjanjian Sosial)*. Penerjemah: Vincent Bero, Jakarta: Visimedia.
- Soemantri, S. (2006). *Prosedur dan sistem perubahan konstitusi*. Bandung: Alumni, 23.
- Soerjono, S. (1986). *Pengantar penelitian hukum*. Universitas Indonesia, Jakarta.
- Sugiarto, U. S. (2021). *Pengantar Hukum Indonesia*. Sinar Grafika.
- Tanya, B. L. (2006). *Judicial Review dan Arah Politik Hukum, Sebuah Perspektif. Makalah Seminar Judicial Review Dan Arah Politik Hukum, Fakultas Ilmu Sosial Universitas Negeri Semarang, Semarang, 17*.
- Wahjono, P. (1983). *Indonesia Negara Berdasarkan Atas Hukum*. Ghalia indonesia.
- Wahjono, P. (1991). *Menyelisik Proses Terbentuknya Peraturan Perundang-undangan, majalah Forum Keadilan*. Nomor.
- Wiyono, S., & Kusnu Goesniadhie, S. (2007). *Kekuasaan kehakiman pasca perubahan UUD 1945*. Penerbit Universitas

Negeri Malang.