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The Relationship between Political Configuration and the Characteristics of Judicial Power and the Implications for the Judicial Process in Indonesia to Realize Social Justice in Society

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Abstract: This article discusses the relationship between political configuration and the characteristics of judicial power exercised by the Supreme Court and Constitutional Court in Indonesia. In writing this article, a normative approach is used in the form of legal history and comparative law. There is a very close relationship between political configuration and the characteristics of judicial power in Indonesia so that it can influence judicial power in Indonesia. The form of political configuration intervention in judicial power is not implementing the decisions of the judiciary and replacing judges in the Supreme Court and Constitutional Court in Indonesia. This causes the level of public (society) trust in judicial power and law in Indonesia to decline drastically and of course, cannot realize social justice in Indonesia.

Keywords: Political Configuration, Judicial Power, Social Justice.

1. INTRODUCTION

The constitution is considered “The Supreme of the Land” and plays a very important part in the lives of different nations and states. According to Muladi considers it a "National symbol and Myth". Amendments to the 1945 Constitution which were carried out 4 times, namely in 1999, 2000, 2001, and 2002, have given rise to significant developments in the main ideas, institutional structure, and relations between state institutions. In fact, with this amendment, there was the elimination of existing institutions such as the DPA, as well as the emergence of new institutions (e.g., judicial commission, constitutional court and so on) that were previously unknown. The amendment to the Indonesian Republic Constitution (IRC) 1945 commonly known as "Constitutional Reform" is a strategic step to actualize democratic values,

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considering that the concept of the Indonesian constitution in the previous era was widely misused by the authorities due to the shortness of the constitution which opened up opportunities for multiple interpretations, the result of which we have all experienced in the form of "abuse of power" resulting in the severe. violations of different human rights, that is, civil, political, economic, social, cultural, and so on.

The explanation of the IRC 1945 (UUD NRI 1945) firmly states "The Indonesian state is based on the law (resistant), not based on mere power (machtsstaat)". It was also stressed that the government in Indonesia was "based on a constitutional system" instead of absolutism. As a rule of law, it is appropriate that the rule of law must be respected and upheld. One of them is the recognition of an independent judiciary. In administering free and impartial justice, "judicial justice is carried out for the sake of justice based on the belief in the Almighty God", this means that a judge in deciding cases must reflect justice, and the measure of justice is placed on the basis or standard established by God. The benchmark for how far this principle works can be seen from the independence of judicial bodies. In carrying out its functions and authority, it enforces the law in the judicial sector, as well as statutory regulations that provide juridical guarantees fair and independent exercise of judicial powers, independent of any interventions by the legislative and executive institutions while administering justice in order to uphold law and justice and create an integral (integrated) justice system. In determining the characteristics of judiciary, it is also affected by the political configuration of the legal country in question. So it can be said that politics and law have a relationship that can influence each other. For example, the Indonesian People's Representative Council (DPR RI) recalled a Constitutional Court judge named Aswanto with respect to the judicial review process with regard to the Indonesian Job Creation Law (UU omnimbuslaw) which caused the omnimbuslaw law to be unconstitutional. The judgement of the Constitutional Court of Indonesia that rejects a statutory regulation cannot be separated from politics because this decision has a political impact on the parties in Parliament (DPR RI). The influence of the Constitutional Court on political dynamics in the country can be seen from its 2 (two) judicial review decisions in 2020 (i.e., 37/PUU-XVIII/2020 and 91/PUU-XVIII/2020) of the Constitutional Court of Indonesia.

The formation and enactment of the Indonesian law No. 48 of 2009 referring to the principles of judicial authority (hereinafter referred to as the Republic of Indonesia Judicial Power Law) certainly did not appear by itself but required a fairly long process starting from the background matters, the objectives to be achieved and quite a tortuous process in the formation of this law. In the study of legal science, this problem is included in legal politics, where legal politics is assigned to assess need of potential revisions in the existing laws in order to make it helpful to solve public issues. Legal politics formulates the direction of the development of legal order. From the "Ius Constitutum" determined by the previous legal framework, legal politics seek to formulate the "Ius Constituendum" or law in the future. According to Abdul Hakim Garuda Nusantara, legal politics can be interpreted as legal policy (Legal Policy) which is intended to be enforced nationally by the government of a particular state. The working area of legal politics includes first, the territory of legal politics, and second, the legislation and reforms process that facilitates a critical attitude of the public towards the law in terms of the Ius Constitutum. More than that, he also emphasized the importance of confirming the function of

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institutions and developing law enforcers, something that was not mentioned by previous experts.

From the above, the author wants to further explore the background relationship between political and legal elements of the birth of the Indonesian Law#48 introduced in 2009 with regard to the judicial authority. The things that will be discussed in this article are the development of Indonesian judicial laws and to what extent is the legal political configuration related to the characteristics of judicial authority in Indonesia?

2. DISCUSSION

A. Development of Judicial Power Laws and Potential for Political Intervention in Indonesia

The law governing the world of justice (judicial power) in Indonesia has undergone several amendments in substance, vision, and orientation in adapting to developments and changes in the political system.

When a guided democratic political system is in power, the desired judicial system is also a guided judicial system. So it is considered and felt to be shackling the administration of justice which is independent of any interference from extra-judicial forces. The main points of the guided democracy era were laws on the main tenents of judicial law numbered# 19(1964) and 13(1965) concerning the establishment and exercise of courts within the judiciary as well as the Supreme Court.

Law No. 19 of 1964 was passed in Jakarta on October 31, 1964, and signed by the acting President of the Indonesian Republic, namely Dr. Subandrio. In the judicial power law, the judicial authority in administering justice can be seen. Article#19(1964) states that "In the interests of the revolution, the honor of the state and nation or the urgent interests of society, the president can step down or intervene in "judicial" matters. Furthermore, in his explanation, the lack of freedom of judicial power is emphasized as follows:

"The courts are not free from the influence of executive power and the power to make laws. The main basis for the courts as a tool of revolution is Pancasila and Manipol/Usdek. Everything that is a legal issue in the form of cases that are submitted, must be decided on that basis with "remembering the function of the law as protection. However, there are times when the President/Great Leader of the Revolution must be able to intervene or intervene in both civil and criminal cases. This is due to the greater interests of the State and Nation."

In the following year, namely on July 6, 1965, Law#13(1965) concerning the functioning of Courts within the General as well as Supreme Courts. As with previous laws, Law No. 193 of 1965 was signed by the Acting Minister of the Indonesian President, namely Dr.J. Leimena. In this law, Presidential Decrees#13(1965) and #194(1965). As a follow-up to the President's authority to step in or inttrude in the court matters, Article#23 of Law#13(1965) determines:

1) In cases where the President intervenes, the court immediately stops the investigation being carried out and announces the President's Decision in open session by making a note in the minutes and attaching the President's Decision to the file without passing a decision.
2) In cases where the President expresses his desire to intervene according to the provisions of the Basic Law on Judicial Power, the court shall stop deliberations with the Prosecutor.

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3) The deliberation referred to in paragraph (2) is aimed at implementing the President's wishes.
4) The President's wishes and the results of the deliberations are announced in open session after the session reopens.

The Old Order regime (Guided Democracy) ended in 1965, marked by the G-30S-PKI incident which failed to seize the legitimate government. The Old Order was then replaced by the New Order which officially took over power. With the emergence of the New Order government, the validity period of the two laws also ended. These two laws were considered very laden with the political interests of the Old Order regime. Apart from that, these two laws conflict with the 1945 Constitution which upholds the principle of independent judicial authority. This aligns with the New Order Government's obligation of the enforcement of Pancasila and the 1945 Constitution purely and consistently, by reviewing various legal and regulatory products which are deemed inconsistent with the 1945 Constitution and hamper the aspirations of the new government. Juridically, the statement that the two laws did not apply after the birth of Law#14(1970) describing the Principles of Judicial Authority, but de facto these two laws have lost the basis for their application, both philosophically, juridically and sociologically, because they can no longer be accepted and obeyed by society.
With the non-enforcement of Laws#19(1964) and #13(1965) which explicitly regulates the granting of authority to the President of the Indonesian state to intervene in the judicial process, several laws have been issued successively as follows:
1) Law no. 14 of 1970 concerning Basic Provisions on Judicial Power;
2) Law no. 14 of 1985 concerning the Supreme Court;
3) Law no. 2 of 1986 concerning General Courts
4) Law no. 5 of 1986 concerning State Administrative Courts;
5) Law no. 7 of 1989 concerning Religious Courts
6) Law no. 31 of 1997 concerning Military Justice.

Laws#14(1970) and #14(1985) explicitly state that judicial authority is independent in the sense of being independent of government power. The New Order, which had been in power for 32 years, finally collapsed and was replaced by the Reform Order under the Habibie government, marked by the overthrow of President Suharto on May 21, 1998. During the Reform Order period, as was done during the early days of the New Order, a review of various legal products was also carried out. and legislation that is considered inconsistent with the nature of reform. Law No. 14 of 1970 is considered to still have weak points, such as the dualism of judicial power and the problem of the Judicial Review, that relates to the right to judicial review of laws. In the Reform Order, Law#35(1999) the Amendments related to the Law#14(1970) describing the Basic Provisions of the Judicial Authority. In this Law, changes were made to Article 11 and the addition of Article 11 A to Law No. 14 of 1970. Law NO. 35 of 1999 amended several provisions in Law No. 14 of 1970 as follows:

Article I

1. **The provisions of Article 11 are amended to read as follows:**
   Article 11

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(1) Judicial bodies as intended in Article 10 paragraph (1), organizationally, administratively, and financially are under the authority of the Supreme Court
(2) Provisions regarding organization, administration, and finance as intended in paragraph (1) for each judicial environment are further regulated by law under the specifics of each judicial environment.

2. Between Article 11 and Article 12, 1 (one) Article is inserted, namely Article 11 A which states as follows:
Article 11 A
(1) The organizational, administrative, and financial transfer as intended in Article 11 paragraph (1) is carried out in stages, no later than 5 (five) years after this Law comes into force.
(2) The organizational, administrative, and financial transfer for the Religious Courts is not determined as intended in paragraph (1).
(3) Regarding the procedures for the gradual transfer as intended in paragraph (1), it is determined by the Presidential Decree.

With the approval of Law#35(1999), the dualism of judicial authority which has been questioned so far can influence independent judicial power to find a way out, namely by placing judicial power within the jurisdiction of the Supreme Court, although the implementation is exercised in different stages. The way to do this is by transferring the Directorate General of General Justice and TUN which was previously under the Justice Department of the Supreme Court. However, some parties doubt the ability of the Supreme Court to accept this transfer. The reason is that so far the Supreme Court has had many problems and its performance has not been good, especially in resolving the many arrears in cassation and judicial review cases which amount to tens of thousands. So, if it is already a hassle to resolve technical judicial problems, what's more, it is then burdened with matters relating to administrative, organizational, and financial problems of the existing judicial environment; Isn't the performance of the Supreme Court getting worse? But we certainly agree that improvement efforts must be started even though along the way we will encounter various kinds of obstacles. In 2003, a law was issued regarding the Constitutional Court, namely Law#24(2003). This law further complements the regulations regarding judicial power in Indonesia. In general, the Law determines the composition, and authority of the Constitutional Court, the Appointment as well as the Dismissal of Judges alongwith the procedural law of the Constitutional Court. Now this law has become the foundation for trials at the Constitutional Court, which in its first trial, heard cases of applications for Judicial Review of several laws. In subsequent developments, in 2004, new legislation was also issued in succession relating to judicial power. These laws are:

1. Law#4(2004) related to the Judicial Authority. This law explicitly states that Law#14(1970) was declared no longer valid (Article#48 of the Law#4 of 2004).
2. Law#5(2004) related to the amendments to law#14(1985) concerning the Supreme Court of Indonesia.
3. Law#8(2004) related to the amendments to the Law#2(1986)about General Courts.

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4. Law#9(2004) related to the amendments to the law#5(1986) about the State Administrative Courts.

In 2009 there was another change to the Judicial Power Law. This is due to the substance of Law#4(2004) does not yet provide a comprehensive regulation for the enforcement of judicial law, that is regulated as an sovereign power exercised by the Supreme Court as well as judicial bodies subordinate to it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court, for administering justice to uphold law and justice. Apart from comprehensive regulations, this law also fulfills the decision of the Constitutional Court Number 005/PUU/2006, one of the decisions of which was to annul Article#34 of Law#4(2004) related to the Judicial authority. The Constitutional Court's decision also annulled provisions related to the supervision of judges in Law#22(2004) related to the functioning of the Judicial Commission. In this concern, in an attempt to ensure the enforcement of the judicial authority and create a potential justice system, Law#4(2004) related to the Judicial authority forming the base for the enforcement of the judicial power required to be replaced. So the Law on Judicial Powers was changed to Law no. 48 years old 2009.

B. The Relationship between Political Configuration and Judicial Power

The enforcement of judicial powers is also allied with political configuration. According to Benny K Harman, judicial power is subject to the government's political vision and interests, its organization and administration are not part of the government bureaucracy, and it has Judicial Review authority. Meanwhile, Judicial Power that is not independent has the following indicators: The nature of its decisions reflects the vision and interests of the political players as well as the desire of the government, its organization, and administration to be part of the government bureaucracy and does not have the authority of Judicial Review.

The political configuration during the Guided Democracy period (1959-1965) also had an influence on the character of judicial power at that time. Guided Democracy which made the figure of Sukarno the center of power showed a tendency towards authoritarianism. At this time almost all state institutions had their functions reduced by the President, even their members were appointed and dismissed by the President, as happened with the MPRS and DPRS. Guided Democracy which gave birth to a patrimonial leadership style has also controlled judicial power. At this time, Law#19(1964) concerning Basic Provisions of Judicial Power and Law#13(1965) related to the Courts functioning within the General Court and Supreme Court were born. It turns out that these two laws function more to intervene in judicial power because the material of the two laws better reflects the vision and interests of orderly patrimonial politics during the Guided Democracy era. This is visible in the foreword to the Law which stresses that the Law is adapted to the Political Manifesto issued by President Soekarno in his Speech on 17 August 1959 and stated in the form of Presidential Decree No. 1 of 1960 and TAP MPRS No. l /MPRS/1960 concerning GBHN. The contents of the Manifesto contain an invitation to abandon liberalism and switch to Guided Democracy. At this time the judges were also bound to be loyal to Soekarno's Political Manifesto. Judicial decisions also allow intervention by the President's power so that the possibility of judicial decisions reflecting the vision and interests of the political/ruling elite is also greater. This is reinforced

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by the existence of legal regulations that allow this intervention, as stated in Article#19 of Law#19(1964) and Article#23 Law#13(1995). Organizationally and administratively, the judiciary is also inseparable from the control of the authorities. Regarding the authority of Judicial Review, neither Law No. 19 of 1964 nor Law No. 13 of 1965 regulates it. Thus, during the Guided Democracy era, the Supreme Court did not have judicial review authority.

The journey of judicial power during the New Order/Pancasila Democracy era was also inseparable from the political influences that prevailed at that time. The enactment of Law#14(1970) related to the Principles of Judicial Powers was responded to differently. On the one hand, the law provides new enthusiasm for realizing independent judicial power, because the law in its formal regulations does not allow for interference from powers outside the judiciary, including the powers exercised by the President. On the other hand, the hope of realizing independence seems half-hearted, because organizationally and administratively, judicial power is under the Ministry of Justice, an executive departmental institution. So in that position, there is a possibility that judges can intervene. In the field of Judicial Review, although it is contained in Law No. 14 of 1970, it is restricted to the regulations under the Law. This seems to confirm that the legislature, which includes the President, does not want to submit to the control of the Supreme Court, in issuing its legal products. So this gives the President as part of the legislative body the opportunity to make laws that suit his vision and political interests.

There are several differences and similarities regarding the character of judicial power in the two eras mentioned above. The difference is first, under Guided Democracy, the President is allowed to intervene in judicial power and this is legalized through law. Meanwhile, during the Pancasila Democracy era, this intervention was not legalized through law. Second, Judicial Review during the Guided Democracy period was not given to the judiciary's power. In contrast, during the Pancasila Democracy period, Judicial Review was given to the power of the Judiciary. The similarities are, first, in the two power regimes mentioned above, judicial power is placed as part of the executive and advisory government. Second, in both regimes judicial power is divided into a dualism of power. In the technical juridical field, judicial power is exercised under the jurisdiction of the Supreme Court, and in the organizational and administrative field, it is under executive power. Third, judicial power in both regimes is equally devoted to the ruler, whereas, during the Guided Democracy period, the service was directed to the great leader of the revolution, whereas during the Pancasila Democracy era, the service was directed at Law and Development which was controlled by the executive leadership. Fourth, judicial power in both eras was subject to law (to the law and the government) so it did not have real authority to carry out judicial reviews. Even though during the Pancasila Democracy period there was Judicial Review authority, authority was paralyzed because the judges were bound by an oath to submit to every legal product from the Government.

In general, the practice of judicial power ever since the emergence of State of Indonesia until the abolishment of the New Order shows that the judicial process in court institutions throughout the country is often influenced by government power. As a result, the judiciary in Indonesia is not only not constitutionally administratively independent, but also not functionally-procedurally independent in the process of resolving cases. This indicates that the character of judicial power throughout the Old Order and the New Order had more or less the

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same character. In the Reform era, where the political configuration wanted to build a democratic political configuration and also attempted to create responsive legal products, power in the reform era was formed so that there was no interference from the executive and legislative institutions.

Understanding legal politics as legislation is important, considering that the making of laws or legislation cannot be separated from the political system that existed at that time (in a regime). Law is a political product. Law is seen as the crystallization of the process of interaction or struggle between the wills of existing political forces. In (Das Sollen) politics it is politics that must be subject to legal provisions, but in (Das Sein) empirical terms, it is the law that is intervened by politics, so that the character of the legal product and its enforcement will be largely determined by the political configuration behind it. Based on these assumptions, according to Mahfud MD, certain political configurations will give birth to certain legal products. So it can be said that a configuration can influence the characteristics of judicial power that is formed in legislation. Even though the new Judicial Power law is now in effect, there is still intervention by other institutions towards the judiciary in the use of judicial powers. One form of this is disobeying the constitution, namely that State institutions do not conform to the judgments of the Constitutional Court of Indonesia and the replacement of its Judges. The results of research in 2019 to find scientific truth regarding the level of compliance with 109 decisions of the Constitutional Court from 2013 to 2018 found that there were three categories of level of conformity with the decisions of the Constitutional Court of the Republic of Indonesia, namely fully complied with, partially complied with, and not complied with. The findings: 59 decisions (54.12 percent) complied completely; partially complied with in 6 cases (5.50 percent); 24 cases were not complied with (22.01 percent). The remaining 20 decisions (18.34 percent) could not be identified for various reasons.

Then the replacement of the Indonesian Constitutional Court judge named Aswanto was a form of confrontation with the Indonesian People's Representative Council (DPR RI) as a result of the Job Creation Law being declared unconstitutional through a judicial review by the Indonesian Constitutional Court. Interventions like this have been experienced in In Poland, where the party winning the election rejected the nominee suggested by the party supporting the previous regime. Then, five new justices were appointed to delegitimize the nominees. The authoritarian regime attempted to influence the Constitutional Court to its benefit. Therefore, the independence of the judiciary must be defended and the government may not amend the MK Law at will. As stated by Levitzky and Ziblatt, an independent judiciary is the last bastion of democracy.

Maintaining judicial independence. There will be no rule of a good law without an independent judiciary. In this respect, MK as a pillar of reform must be free from any political interests. MK will eventually adjudicate the policy made by the government. The court may not only legitimize the unilateral action of lawmakers. We should learn from Poland and Hungary. The politicization of the judiciary will only lead to legitimizing the government's power. The third amendment to the MK Law shares several similarities to autocratic legalism in Hungary and Poland. There, the government has intervened in the judiciary employing a political process, amending the law on judicial appointments. In Hungary, for example, Orban's administration has increased the number of Constitutional Court justices from eight to fifteen. Besides, the ruling party can directly appoint new justices.

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The impact of forms of confrontation between state institutions and judicial power certainly has quite broad implications, namely the decline in public (society) trust in Indonesia towards the quality of law in Indonesia, for example, as a result of the passing of the job creation law in Indonesia, one of the obvious things is the behavior of companies. In employing workers (laborers) in Kudus Regency, Central Java, that is, almost all workers (laborers) work every day from Monday to Sunday from 08.00 in the morning to 17.00 in the afternoon and only have 1 (one) day off a week. If the worker refuses, the company can dismiss the worker (laborer). Under these conditions, judicial power exercised through judicial institutions does not create conditions for social justice in Indonesian society.

3. CONCLUSION

Closing

Judicial power has experienced various changes and developments from various government eras (regimes). This can be seen from various developments in judicial power laws, namely starting from Law No. 19 of 1964 to Law No. 48 of 2010. The relationship between political configuration and judicial power can be said to have a very big influence on the characteristics of judicial power in administering the justice system because law and politics greatly influence each other. In a certain era, politics has a big influence on judicial freedom, so in this case, whether or not judicial freedom can be intervened by another institution is seen from the political view of that particular era. As a recommendation for the creation of a free and independent judicial system and judicial power, a "Political Good Will" is needed from legislators. This is also a framework for creating justice and the supremacy of law following the philosophy of the Indonesian nation and state.

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