

Implementation of the Appointment of Judges in District Courts Based on Law Number 49 of 2009 regarding General Courts

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Abstract. The judicial system is an integral part of a country's legal system. In the Indonesian justice system, judges are key elements tasked with ensuring the implementation of law and justice. Therefore, the appointment of judges is a critical matter and requires careful consideration. The 1945 Constitution of the Republic of Indonesia (UUD 1945) regulates various aspects related to the appointment of judges, including district court judges. The appointment of district court judges is a process that must proceed by the principles of independence, transparency, and accountability. It will ensure that the appointed judges are qualified individuals and have the competence to carry out judicial duties properly. In addition, a transparent and accountable appointment system will also strengthen the integrity of the judiciary and public trust in the justice system. The appointment of District Court Judges is fully regulated in Articles 14-20 of Law Number 49 of 2009 concerning General Courts.

Keywords: Appointment of Judges; District Court; UURI Number 49 of 2009.

1 Introduction

The appointment and dismissal of district court and high court judges require a careful and thorough examination process so that the exercise of judicial power in administering justice, enforcing regulation and equity in light of Pancasila and the Constitution of the Republic of Indonesia is a spotless and legitimate legal foundation that satisfies the feeling of equity in the public eye.[1]

The judicial system is an integral part of a country's legal system. In the Indonesian justice system, judges are key elements tasked with ensuring the implementation of law and justice. Therefore, the appointment of judges is a very important matter and requires careful consideration. The 1945 Constitution of the Republic of Indonesia (UUD 1945) regulates various aspects related to the appointment of judges, including district court judges.[2]

The appointment of district court judges is a process that must proceed by the principles of independence, transparency, and accountability. This will ensure that the appointed judges are qualified individuals and have the competence to carry out judicial duties properly. In addition, a transparent and accountable appointment system will also strengthen the integrity of the judiciary and public trust in the justice system.[3]

The appointment of district court judges is influenced by various factors involving various parties. The following are some of the main factors that influence the appointment process of district court judges:

1. Legal Requirements:

The most basic factor is the legal requirements stipulated in the law or statutory regulations that regulate the appointment of judges. These requirements include education, experience, integrity, and other requirements that must be met by prospective judges.

2. Selection Process:

The selection process used to assess prospective judges is a key factor in appointment. The selection process must be transparent, objective, and meritocratic. Factors such as competency tests, interviews, personality assessments, and fit tests greatly influence who is ultimately selected.

3. Authority of Relevant Institutions:

Institutions such as the Judicial Commission or equivalent institutions in other countries have the authority to nominate prospective judges to the institutions authorized to appoint judges. The powers and procedures implemented by these institutions greatly influence the appointment process.

4. Government Policies and Priorities:

Government policies and national priorities also influence the appointment of judges. For example, governments may have specific policies to increase gender inclusion or encourage diversification in judicial powers.

5. Political Influence:

Political factors often play a role in the appointment of judges. The government, parliament, or political parties may try to influence the process of selecting or appointing judges to achieve their political goals.

6. Candidate Reputation and Performance:

A prospective judge's reputation and performance in their previous career can greatly influence their selection. A good ethical record and dedication to justice and the law can be important factors.

7. Interests of the Community and Other Stakeholders:

In some cases, the interests of society and other stakeholders such as advocates, academics, and human rights organizations can influence the process of appointing judges.

8. Quality and Capacity of Legal Education:

The quality of a country's legal education system can influence the availability of qualified prospective judges. Universities and legal education institutions play a role in producing competent future judges.

9. Special Issues:

Certain issues such as gender inclusion, social justice, and diversification in judicial power may also influence the appointment of judges. Some countries may have special policies to ensure better representation in judicial power.

10. Law and Justice Reform:

Reform of a country's judicial and legal system can also influence the process of appointing judges. Changes in the judicial structure or appointment laws and regulations may occur as part of reform efforts.

The above factors are interrelated and may vary between countries based on existing legal systems, culture, and policies. It is important to have a strong and transparent mechanism

for appointing judges to ensure that the process is carried out by the principles of justice and independence.

As a consequence of being a state of law, it is a condition sine qua non that in our country there must be a judicial authority or an independent and authoritative judicial body capable of upholding legal authority, legal protection, legal certainty/justice if violations or legal disputes occur within the country. Regarding judicial power, the doctrine of separation of powers does not allow invasion of the territory of other branches of power. This means that one branch of power may not carry out the main functions that are the authority of another branch of power.[4]

The appointment of judges is an effort to look for people who have impeccable integrity and personality, are fair, professional, and have experience in the legal field. It makes sense that in today's more open and democratic system, there is a process for selecting judges that guarantees the selection of the best people with the best qualities. For this reason, the current conditions in terms of appointing judges are idealized through a fit and proper test process.[5]

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The problem in this paper is How is the Appointment of Judges in District Courts Based on Law Number 49 of 2009 concerning General Courts?

2 Method and Approach

2.1 Method

The method used in writing this applied paper is a descriptive-analytical method, namely by using data that clearly describes problems directly in the field, then analysis is carried out and then conclusions are drawn to solve a problem. The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper.

2.2 Approach

Empirical juridical approach, namely an approach that does not contradict composed positive regulation (regulation) as optional information, however from genuine way of behaving as essential information got from field examination areas.[7] This research describes the situation of the object under study, namely focusing on the regulation and implementation of the appointment of judges to the District Court based on Law Number 49 of 2009 concerning General Courts. This research also describes the situation of the object under study, namely focusing on the enactment of the Appointment of Judges in District Courts Based on Law Number 49 of 2009 concerning General Courts in practice.[8]

3 Discussion

3.1 Arrangements for the Appointment of Judges in District Courts Based on Law Number 49 of 2009 concerning General Courts.

Regulation Number 49 of 2009 in regards to the Second Alteration to Regulation Number 2 of 1986 with respect to General Courts.

Article 14A

- (1) The arrangement of locale court judges is helped out through a straightforward, responsible, and participatory choice interaction.
- (2) The determination process for designating region court judges is completed mutually by the High Court and the Legal Commission.
- (3) Further arrangements with respect to the choice cycle are controlled mutually by the High Court and the Legal Commission.

Article 14B

- (1) To be appointed as an ad hoc judge, a person must fulfill the requirements as intended in Article 14 paragraph (1) except for letters d, e, and h.
- (2) Apart from the requirements as intended in (1) to be appointed as an ad hoc judge, a person is prohibited from serving as an entrepreneur as intended in Article 18 paragraph (1) letter c unless the law determines otherwise.
- (3) Procedures for implementing the provisions as intended in paragraph (1) are regulated in statutory regulations.

Article 15

- (1) To be appointed as a high court judge, a judge must fulfill the following requirements:
 - a. requirements as intended in Article 14 paragraph (1) letters a, b, c, d, f, g and i.
 - b. at least 40 (forty) years of age;
 - c. experience of at least 5 (five) years as chairman, deputy chairman of a district court, or 15 (fifteen) years as a judge of a district court;
 - d. pass the examination conducted by the Supreme Court; And
 - e. never been sentenced to temporary dismissal due to violating the Code of Ethics and Code of Conduct for Judges
- (2) To be appointed as chairman of a high court, he must have at least 5 (five) years of experience as a high court judge or 3 (three) years as a high court judge who has previously served as chairman of a district court.
- (3) To be appointed as deputy head of the high court, you must have at least 4 (four) years of experience as a high court judge or 2 (two) years as a high court judge who has filled in as top of a locale court. Regulation Number 49 of 2009 concerning the Second Alteration to Regulation Number 2 of 1986 concerning General Courts.

Article 16

- (1) Court adjudicators are selected by the President on the proposal of the Main Equity of the High Court. (1a) Court judges are excused by the President on the proposal of the Administrator of the High Court as well as the Legal Commission through the Executive of the High Court. (1b) The Legal Commission's proposition to excuse an appointed authority as planned in

section (1a) must be made on the off chance that the appointed authority concerned disregards the Implicit set of principles and Set of rules for Judges.

- (2) The director and appointee administrator of the court are delegated and excused by the Executive of the High Court. Regulation Number 8 of 2004 concerning Changes to Regulation Number 2 of 1986 concerning General Courts.

Article 18

- (1) Unless otherwise determined or based on law, a judge may not serve as:
 - a. executor of court decisions;
 - b. Guardians, guardians, and officials related to a case examined by him;
 - c. Businessman
- (2) Judges may not double as advocates
- (3) Positions that can't be held simultaneously by decided as planned in passage (1) and section (20) are additionally controlled by Unofficial law. Regulation Number 49 of 2009 concerning the Second Alteration to Regulation Number 2 of 1986 concerning General Courts.

Article 19

- (1) The chairman, deputy chairman, and court judge are honorably dismissed from their positions because:
 - a. at your request in writing;
 - b. persistent physical or mental illness;
 - c. have arrived at the age of 65 (65) years for the administrator, delegate director, and judge of the area court, and 67 (67) years for the executive, appointee executive, and judge of the great court; or
 - d. incompetent in carrying out his duties.
- (2) The chairman, deputy chairman, and court judges who die are automatically dismissed from their positions honorably by the President.

Article 20

- (1) The chairman, deputy chairman, and court judges are dishonorably dismissed from their positions for the following reasons:
 - a. sentenced to prison for committing a crime based on a court decision that has permanent legal force;
 - b. committing disgraceful acts;
 - c. neglecting obligations in carrying out his work duties continuously for 3 (three) months;
 - d. violating an oath or promise of office;
 - e. violates the prohibition as intended in Article 18; and/or f. violates the Code of Ethics and Code of Conduct for Judges.
- (3) The proposal for dismissal as intended in paragraph (1) letter a is submitted by the Chairman of the Supreme Court to the President.
- (4) The proposal for dismissal for the reasons as intended in paragraph (1) letter b is submitted by the Supreme Court and/or the Judicial Commission.
- (5) The proposal for dismissal for the reasons as intended in paragraph (1) letters c, d, and e is submitted by the Supreme Court.
- (6) The proposal for dismissal for the reasons as intended in paragraph (1) letter f is submitted by the Judicial Commission.
- (7) Before the Supreme Court and/or the Judicial Commission proposes dismissal for the reasons as intended in paragraph (3), paragraph (4), and paragraph (5), the court judge has the right to defend himself before the Honorary Panel of Judges.

(8) The Honorary Panel of Judges as referred to in paragraph (6) is regulated by the provisions of statutory regulations.

Clarification of Article 20 passage (7) What is implied by "authoritative guidelines" is Regulation Number 22 of 2004 concerning the Legal Commission and Regulation Number 3 of 2009 in regards to the Second Change to Regulation Number 14 of 1985 concerning the High Court.

Article 21

If the chairman or deputy chairman of the court is honorably dismissed from his position because of his own written request as intended in Article 19 paragraph (1) letter a, he is not automatically dismissed as a judge. Article 22 paragraph: (1) The chairman, deputy chairman, and court judges before being dishonorably dismissed as intended in Article 20 paragraph (1) letters b, c, d, e, and f, may be temporarily dismissed from their positions by Chief Justice of the Supreme Court.

- (1) a) Temporary suspension as intended in paragraph (1) can be proposed by the Judicial Commission.
- (2) The temporary dismissal as intended in paragraph (1) also applies to the provisions as intended in Article 20 paragraph (2).
- (3) The temporary suspension as intended in paragraph (1) is valid for a maximum of 6 (six) months.

Explanation of Article 22 paragraph (1) Temporary suspension in this provision, other than as intended in Law Number 43 of 1999 concerning Personnel Principles, is a position penalty imposed on a judge for not examining and adjudicating cases within a certain duration.

The mandate of the Judicial Power Law cannot be separated from the derivative of Article 24C paragraph 6 of the 1945 Constitution of the Republic of Indonesia which states that the appointment of constitutional judges and the conditions are regulated by law. On this basis, the Constitutional Court Law should strengthen the norms governing the selection of constitutional judges. However, Article 20 of the Constitutional Court Law only regulates the same norms as those contained in the Constitutional Court Law, where provisions regarding procedures for the selection, selection, and nomination of constitutional judges are regulated by each institution authorized to nominate constitutional judges and are implemented objectively and accountable.

The existence of differences in norms can give rise to legal uncertainty which can lead to incompatibility with the judge selection arrangements. The mandate of the Judicial Power Law opens a gap for the President, DPR, and Supreme Court to formulate a standard standard that can be used as a joint guide in selecting constitutional judges. These standard standard provisions should be stipulated in the Constitutional Court Law which specifically regulates institutional matters. However, this legal loophole was denied by the legislators in revising the Constitutional Court Law.

Legal Power and the High Court are two things that can't be isolated, accordingly the quintessence of the law on Legal Power and the law on the High Court should not cause struggle. At the point when the Legal Establishment (KY), the Regulative Foundation (DPR RI) and the Leader (President), for this situation, are as yet engaged with the arrangement and excusal of the Adjudicator for the nation's highest court, Administrator, Agent Executive, Junior Director and Part Judges of the High Court, then, at that point, the importance of the Freedom of Legal Power become obscured, so

the incredible beliefs of the 1945 Constitution which needs the legal executive (particularly the High Court, as the most elevated legal organization and the legal executive underneath it and the Protected Court to be fully independent without other parties interfering) must continue to be fought for so that justice for everyone citizens can be fulfilled according to Montesqui's theory of trias politica which divides state institutions into 3, executive, judicial and legislative powers.[7]

The place of the legal executive in Indonesia (Mama) is equivalent to the place of different foundations, specifically, the MK, President, DPR, MPR, and BPK. It's simply that it is underlined in the 1945 Constitution that "Legal power is a free ability to direct equity to maintain regulation and equity". The legal power being referred to is the legal establishments which incorporate the Sacred Court and the High Court, to be specific under the general court, strict court, military court, and state authoritative court (Regulation, 2009). To start with, this legal foundation should maintain regulation and equity. Second, legal power is free power.[9]

The arrangements for the arrangement and excusal of judges can't be isolated from the state government framework which sticks to official perspectives, incorporating leader power vested in the possession of the President and the arrangement and excusal of pastors (as collaborators to the President) by the President himself. Aside from that, the President is both head of state and head of government. This implies that the President has political power in running the public authority in genuine terms.[10]

It should be realized that the Constitutional Court Law has given free space to the president, DPR, and Supreme Court to create a recruitment system for Constitutional Judges, so that the recruitment pattern created looks very contrasting. The element of subjectivity by the President, the voting mechanism by the DPR, and the closed system implemented by the Supreme Court are the 3 models for recruiting constitutional judges that have been implemented so far. Unfortunately, the product of this system experienced complex problems amid the periodization of the leadership of Constitutional Justices. Although the three models of Constitutional Judge recruitment systems do not have an absolute influence on the integrity of judges, at least there is a standardization design for recruiting Constitutional Judges that is compatible without reducing the authority of the president, the DPR, and the Supreme Court which have been stipulated by law.[10]

4 Conclusion

The judicial system is an integral part of a country's legal system. In the Indonesian justice system, judges are key elements tasked with ensuring the implementation of law and justice. Therefore, the appointment of judges is a very important matter and requires careful consideration. The 1945 Constitution of the Republic of Indonesia (UUD 1945) regulates various aspects related to the appointment of judges, including district court judges. The appointment of district court judges is a process that must proceed by the principles of independence, transparency, and accountability. It will ensure that the selected magistrates are qualified individuals and have the competence to carry out judicial duties properly. In addition, a transparent and accountable appointment system will also strengthen the integrity of the tribunal and general belief in the justice system. The appointment of District Court

Judges is fully regulated in Articles 14-20 of Law Number 49 of 2009 concerning General Courts.

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