



Restructuring judges' independence in the criminal justice system in the perspective of Pancasila

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Abstract

The judicial authority is a part of executive and legislative powers aiming at judges not using their powers to arbitrary exercise their powers and not imposing the laws that are unfair towards society. Recently, judges are under judicial power that is neutral and impartial, and independent in trying without any interference from executive and legislative powers. This research aims to know the reality of judges' independence in providing decisions and trying people who are having disputes based on the values of Pancasila, hence it may provide just that is living in the society. This is normative legal research; library research is used together with the approaches of concept and values. The findings are the judges' independence is still limited in deciding criminal cases using the penal approach, judges are not trying based on the values of Pancasila, judges cannot decide for themselves hearts and they are bound to the laws. It shows that the freedom of judges personally is limited to indictment and charges brought by the prosecution office. This fact requires changes towards judges' independence in trying and deciding disputes based on Pancasila. It is aimed at making the judicial institution independent based on Pancasila's legal tradition that is more religious, humanly, and just based on living laws.

Keywords: judiciary; independency; criminal justice system; Pancasila

Introduction

Restructuring is defined in the big Indonesian dictionary, namely rearrangement. The restructuring aims to rearrange the existing legal system building, thus restructuring can be interpreted very closely with reconstruction, which means rebuilding the existing legal system. Judging from the reform of the legal system, it consists of reforms in the form of substance, structure, and legal culture^[1]. Renewal of legal substance refers to changes in written legal rules, related to the legal structure, it can be in the form of restructuring law enforcement agencies, while for the legal culture it is more concerned with in terms of society.

Reform of the legal system in the form of aspects of the legal structure must be emphasized again, considering that so far law enforcement is one of the foundations that move the law. Soerjono Soekanto^[2], said that one of the factors that can influence the effectiveness of the law is a law enforcement officer consisting of police, prosecutors, legal advisors, judges, and wardens in prisons.

The Criminal Justice System can mean a system in controlling criminal acts that will be carried out by placing state agencies in it, such as the police, prosecutors, courts, and convicts^[3]. Several institutions exist in the criminal justice system, there is one institution that has a very large role in determining punishment, namely the court. The Judicial Authority heads the judiciary. The judiciary is the basis for determining whether a criminal is considered guilty. Referring to the process of the judicial system, it can be said that determining the punishment for the perpetrators of crimes must be based on the long process of the criminal justice system; it can even be the basis of crime prevention^[4].

The meeting held at the International Commission of Jurists in Bangkok in 1965 pioneered the concept of a modern rule of law, which was interpreted as "the dynamic aspects of the Rule of Law in the modern age"). At the conference that was held, it was said that there were 6 (six) basic requirements for the implementation of a democratic government under the Rule of Law^[5], it was stated that among them were the judiciary or judicial bodies that were independent and not inclined to any party. Free in the sense that there are no attachments and restrictions in deciding something. Considering that in the judicial system there are many changes due to the lack of honest law enforcement processes the freedom of judges can sometimes change following the running of the judicial system.

The impartiality of the criminal justice institution can lead to a fair trial (independent and impartial judiciary). The rule of law has the right to have this kind of independence, especially in the judiciary as one of the state institutions that is always required to enforce the law as fairly as possible, for the sake of order and legal certainty that will be obtained by the community. Thus, a judge in examining, prosecuting, and making a decision in a case must be able to protect and be given an independent and free power by the state, so that there is not the slightest intervention from any party who has power or family relations.

Judges in carrying out their duties as law enforcers cannot be influenced by political and economic factors. The political factor that is meant here is that when a judge wants to be recruited, he must not come from a political party, while the economic factor has been fulfilled by providing a salary that is sufficiently qualified so as not to be tempted by material from any party. Judges from power institutions recognized by the State are also separated from executive and legislative powers, where the executive and also the legislature classify judges into judicial power, so they cannot be influenced.

Judges in making decisions must live up to the values of justice that live amid society. The judge in carrying out his duties is not only the mouth of the law or legislation but also as the "mouth" of justice who voices the feeling of justice that lives amid society^[6]. Considering that so far the State of Indonesia is still enforcing the Criminal Code inherited from the Dutch colonial which is more oriented to the value of certainty alone so that judges do not have the freedom to make choices in determining the legal choices that will be given to criminals. As we know for ourselves that in the Law on judicial power it is stated in Article 5 paragraph (1) explaining "Judges and Constitutional Justices are obliged to multiply, follow and understand the legal values and sense of justice that live in a society". Exploring what is meant here is looking at the law not only what is stated in the law, but also having to look at the justice side that exists in society.

The findings by looking at the values that live in society is part of the mandate of the law on judicial power, so that if the law that has been excavated has been found, then a judge must decide cases based on the values that live in society^[7]. For example, the incident that happened to Minah's mbok, which Minah's man mbok was found guilty of stealing. If you explore the values that live in the community, it will show that the actions of mbok Minah are a habit of the local community, which the community only sees as an ordinary act, not part of a criminal act. To create legal certainty and order for the community, judges are obliged to explore, follow, and understand the legal values and sense of justice that live in a society (Article 28 of Law Number 48 of 2009 concerning Judicial Power). In this regard, judges are strongly demanded to try using the insights in Pancasila.

Pancasila contained in the preamble of the 1945 Constitution, which was used as the ideology of the Indonesian nation, which was agreed upon by the founders of the Indonesian nation. Many things are related to legal policies or the goals of the State that must be following the points contained in Pancasila. Based on the spirituality (philosophy) of the State, which is contained in the Pancasila points, namely God Almighty, just and centuries-old humanity, Indonesian unity, democracy led by wisdom and deliberation of representatives, and by realizing social justice for all Indonesian people^[8]. Pancasila as the ideology of the Indonesian nation can be used as a view of life, awareness, and legal ideals^[9].

So far, the independence of judges is only bound by statutory regulations, so judges can only decide according to statutory regulations without paying attention to other aspects. With the insight of Pancasila, judges in making decisions can consider aspects that exist in Pancasila, in the form of aspects of divinity, humanity, and justice that exist in society.

Research Method

This is a normative juridical method. The data collected is based on secondary data in the form of laws, books, the latest scientific journals, and searches for other law-related materials. In the normative approach, the author uses a comparative approach, a conceptual approach, and a legal approach. This method only looks at laws and regulations as the norm, but the wetting will be prescriptive

Results and Discussions

Independency reality of judiciary bodies in holding trials in criminal justice system

The word independent or independent is an absorption word from the word independence, which means the state or quality of being independent; a country's freedom to manage all its affairs, whether external or internal without control by another country.^[10] More precisely when viewed from the equivalent of the word, namely independent. Independence can be defined as being free which has the meaning of not having ties to other parties in carrying out all forms of activity, being free, autonomous, impartial, independent, or other things that have the same meaning as not having dependence on other organs or institutions, and being able to carry out their actions, including in making a decision. In other words, the independence of law enforcement cannot be limited because of the element of interest and influence from within.

Concerning judicial power, independence is one of the prerequisites for the birth of a legal state. On that basis, independent judicial power is considered very important in a state of law. So important is the independence of the judiciary that Montesquieu then explained that judicial power was necessarily separated from executive power so that the courts can protect individual rights against the state and other branches of state power. Montesquieu added^[11].

"If judicial power is combined with legislative power, then the power over the lives and freedoms of citizens will be exercised arbitrarily because judges will become lawmakers. If judicial power is combined with executive power, then judges can become oppressors."

This means that the judicial power institution as a third party in resolving cases of litigating parties must be neutral, not afraid of intervention from other state powers. In line with Montesquieu, Sir Ninian Stephen in J. Djohansyah, also essentially states that the independence of judicial power means without pressure from other powers^[12]. More details Sir Ninian Stephen in J. Djohansyah said that independence is "a judiciary which dispenses justice according to law without regard to the policies and inclinations of the government of the day,"

which means, a judiciary that administers justice according to the law without the influence of government policies and pressure at that time. So it can be ascertained that the independence of judicial power is believed to be an effective means for achieving justice in the form of guarantees for the protection of citizens from unlawful acts or repressive actions from the authorities ^[13]. With this approach, judicial power is classified as not under executive or legislative power, but judicial power is a state institution under the judiciary that can be run neutrally without any interference from the executive and also the legislature.

Reflecting on the understanding that has been described at this time. The independence of judges is also bound by the constitution. One of the important components in the rule of law is as implied in Article 24 paragraph (1) of the 1945 Constitution, namely the existence of an independent judicial power to administer justice to realize legal certainty and justice. What are meant by independence are independence, freedom, and independence in judging something. Not only the state constitution, but an independent judicial power can be said as a reflection of the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights ^[14], which regulates an independent and impartial judiciary, the elements of which are; the existence of a court (tribunal) determined by a law; (ii) the judiciary must be independent, impartial and competent; and (iii) fair trial and open examination (public hearing). All values conveyed in the declaration of human rights emphasize more on judges to assess or decide disputes based on human values. Thus, the law provides justice to humans.

In practice, the independence of judges is currently too limited by law. Not infrequently many judges' decisions only follow what is demanded by the prosecutor's office. It is as if the judge does not have the freedom to stop an indictment or even forgive the accused. All of this is inseparable from the Dutch colonial penal code doctrine, which formulated criminal acts only based on formal legality. So sometimes judges can't get out of the doctrine. While, the personal independence of judges (*Persoonlijke of rechtspositionele onafhankelijkheid*) is about the freedom of individual judges in dealing with a dispute. So the judge must follow the development of public knowledge that can be read or witnessed from the media. Judges should not be influenced by the news and then take the words of the media for granted without considering. Judges must also be able to filter pressures in society to be considered and critically examined with existing legal provisions. Judges must know to what extent they can apply social norms to social life. Due to the limited space of freedom for judges in making decisions, it is not uncommon for decisions to be given only based on the demands put forward by the public prosecutor without being able to see the condition of the local community.

Even Oemar Seno Aji wrote about his criticism of Article 24 of the Constitution relating to freedom, saying that this article does not appear to be relevant to current legal developments. Sometimes they question the severity of the punishment that must be imposed or continue the case or be terminated, even the judge cannot calm his conscience because he has to impose a sentence on someone even though there is no strong enough reason to punish him because there is not enough evidence or even his act is a criminal act ^[15]. All of this cannot be separated from interference from humans, both those who have positions above or who is next to the judge. In addition, currently, in terms of the freedom of judges in law enforcement, it is always influenced by environmental factors, especially their socio-economic life.

Restructuring Judges' Independency in Providing Pancasila-Based Decisions

Restructuring is interpreted as meaning for realignment. Concerning this realignment, the meaning of restructuring is closely related to reconstruction, namely rebuilding the criminal law enforcement system in Indonesia. Thus, the restructuring and reconstruction of the terms have the same meaning, namely to reorganize. When viewed from the KBBI definition, restructuring means rearrangement so that the structure becomes better ^[16]. The restructuring of the criminal justice system, in this case, is not only directed at rebuilding but aims to form a new, better order in the sense of creating a more humane criminal justice system and seeing the values that exist in Pancasila. So that the criminal justice system will be more beneficial to the community and restore public confidence in current law enforcement.

The realignment in the Indonesian criminal justice system is intended to reorganize the criminal law enforcement system because the judicial process is essential in the process of enforcing the law ^[17]. So it is identical with the judicial power system because judicial power is the power/authority to enforce the law. Upholding judicial power in the criminal justice system must be independent and independent or in a direct sense that judicial power in carrying out its duties must be independent. The independence of judicial power is essentially the independence of all law enforcement powers as a unit, so it is not fragmentary/partial independence, but integral independence in a system. This integral independence in judicial power is intended to be independent within a system so that the independence of judges should not be limited by law ^[18]. Considering that the judge is the mediator between the prosecutor and legal counsel. In criminal cases, several parties are involved. Among the parties facing each other are judges who are impartial from both parties who are strung between the prosecutor and legal counsel. in the prosecutor as the party representing the victim as well as the state, while the legal adviser becomes the representative of the defendant ^[19]. So it is very reasonable in law enforcement at this time, many sentencing decisions by judges no longer prioritize independence, because judges sometimes when deciding a trial only see according to the current trial procedure. So it is not uncommon for justice to be presented only to the extent of procedural justice, not substantive justice. Concerning the judicial process, it is necessary to restructure related to the legal structure and the subject of law enforcement itself.

The renewal of legal culture by covering more comprehensive and optimal matters in rearranging legal culture as has been promoted by Barda Nawawi Arief includes three integral scientific approaches, including using a

religious approach, a contextual approach, and an approach through comparative law. The religious approach is the main approach in shaping the legal culture of law enforcement to remain independent, honest, and with integrity. This religious approach is oriented towards scientific guidelines from criminal law and divine/religious guidance in enforcing criminal law. The guidance contains four principles including the principle of equality (equality/non-discrimination), the principle of objectivity (not subjective), the principle of non-favoritism (non-favoritism/non-nepotism), and the principle of impartiality (fairness/impartial).

If we refer to the change, it can be seen from the description mentioned by Lawrence M. Friedman who divides it into 3 components in shaping culture, namely; structure, substance, and culture ^[20]. If it is associated with the legal system in the judiciary, the structural component concerning the judicial institution that wants to be created is like a judge who is free from corruption, independent and independent, and has an assessment in imposing criminal penalties based on values that are sometimes in Pancasila so that with the existence of benchmarks/objectives that are If this is to be achieved, then the judiciary can apply and be used as a benchmark so that in carrying out their duties under the insights of Pancasila. The substance component is the content aspect of the legal system itself, which includes norms in the embodiment of statutory regulations. In the judiciary, what is needed to improve its structure is to improve the recruitment aspect because this will affect law enforcement in the future. Considering the recruitment aspect will determine his freedom and impartiality towards something. So far, the recruitment carried out has paid little attention to spiritual aspects and also honesty and cannot see things based on their conscience. So that in enforcing the law, it is not uncommon for law enforcers when they see a crime that has been committed, they immediately look for articles that can be imposed on them. Should there be a crime committed by the defendant, a judge must first assess it with a conscience. For example, the judge must seek and find out if he decides on the sentence for the defendant, what is the condition of his family or who will provide for his family again.

The independence of judges should be based on the values that exist in Pancasila. Considering that Pancasila is the source of all sources of law and direction in making decisions, it must be based on the values contained in it. As Prof. Barda Nawawi in his lectures once gave 3 important points of the values contained in Pancasila, namely the value of divinity, humanity, and democracy/deliberation ^[21].

Based on this description, it can be seen that what needs to be considered in giving a decision against someone must be based on 3 important points contained in the Pancasila. As in the points of the decision contained "justice based on the only human". Prof. Barda once asked prospective judges about the meaning of "justice based on the one and only God" which was understood by judges only in giving decisions based only on justice based on the principle of one God. But do not know the essence of the sound. Whereas what can be understood from these points is in upholding justice based on the guidance of God's teachings. As in Islamic teachings, there are values of justice and human values. The justice that God teaches is as stated in the Qur'an, namely when God commands justice, regardless of parents, close relatives, rich or poor, they must act fairly and not even for an enforcer of justice to be influenced by lust or other interests so that they deviate. From the truth, a judge in upholding justice may not follow his passions or act according to his interests. Even Allah denounces law enforcers who do not act fairly due to their hatred of others. As mentioned in the Qur'an, which means to enforce the law fairly, do not let your hatred of something that makes you unable to treat others fairly. Then what does justice based on the one mean and only God is to uphold justice based on religious teachings or it can be said to be under what God teaches. With this teaching, judges can be more independent in imposing criminal decisions. Not only in upholding justice according to the teachings of God but also in enforcing the law must also be based on the teachings of God. For example, the teachings in Islam emphasize more on the aspect of forgiveness. So that even though someone has committed a crime and is on trial, a judge can decide freely whether or not to punish the perpetrator. So the essence of forgiveness from the judge is very much needed. In his book, Prof. Barda Nawawi said there were 3 reasons for the judge's forgiveness (Rechterlijk Pardon) that could be given because:

1. Crime is misdemeanor
2. Perpetrators Characters
3. The effect of commission/crimes

Referring to these three points, the judge can forgive the crimes that have been committed. In this principle of pardon by the judge, a defendant has committed his crime and is legally proven. However, the judge can forgive if he sees that the crime committed is too light and can see the character of the perpetrator, and can pay attention to the loss of the victim. If the losses incurred have been replaced, then the judge can give the pardon. So this is where the independence of judges with Pancasila views can be seen because they look at the values of divinity, humanity, and deliberation.

Recently, law enforcement and especially the decisions given by judges are not based on the values contained in Pancasila. As is known, the guilty verdict was given to Mbok Minah and other people. Because law limits the freedom of judges in making decisions, judges cannot take the initiative to judge a case based on the human values that exist in them. With the weaknesses given in the current criminal justice system, it is only natural that there should be improvements and realignments to the independence of judges in making decisions. When the ideology of law enforcement only relies on legal certainty, it will be difficult to find justice because legal certainty is closely related to the desire to maintain the status quo. So as law enforcement officers, they must

look at the law dynamically but still rely on laws and regulations that are based on Pancasila values. ^[22] In addition, to make law enforcement humane and able to use conscience in punishing criminals.

Conclusion

To sum up, in the criminal justice system, there are several parties involved, the judge is the party who has the freedom to try, without any intervention from any party. So far, the public prosecutor has sided with the victim and the state, while the legal advisor has represented the defendant. To impose a fair sentence, the judge can determine his freedom in giving a decision. The current reality is that judges do not have freedom, due to their attachment to the law and the will of the defendants represented by legal advisers and also the victims represented by the prosecutors, so that sometimes judges cannot judge things with their conscience. Even judges feel restless and uneasy when they have to punish someone even though there is no strong reason and not enough evidence, but the judge must still pass the law due to his attachment to the law. Based on the current reality, it is necessary to restructure the criminal justice system related to independence based on Pancasila values. Thus, the justice that is obtained is not only procedural but can also be based on substantial justice. Law enforcement based on Pancasila insight means to judge someone by looking at the spiritual and human aspects. Sometimes the judge can also forgive the defendant based on the crime committed too lightly or the perpetrator has compensated for the loss on the part of the victim. Thus, the independence of judges based on Pancasila values provides more benefits and color in law enforcement, so that the law is not merely mere formal legality.

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