



Rights of judges in handling criminal cases: An Indonesian's perspective

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Abstract

According to Law Number 48 of 2009 concerning Judicial Power, which is an independent power to administer justice in order to uphold law and justice, judges play a vital role in the enforcement of the law in courts. They must be able to investigate and locate laws using a variety of methods. In the preparation of this study, the normative juridical approach was utilized. This study seeks to explain the concept of setting the Contempt of Court in the Indonesian criminal law system and the ideal concept of judge protection when carrying out their duties in protecting them. According to current research, there is no law that specifically regulates court contempt. The application of Article 351 of the Criminal Code in Contempt of Court cases is a setback for the Indonesian judicial system, and there are no legal protection standards for judges. Judges are the executors of Judicial Powers and are responsible for deciding cases fairly and they are entitled to be protected.

Keywords: legal protection, judges, on duty, tortured

Introduction

Pursuant to the Law Number 48 of 2009 concerning Judicial Power, which is an independent power to administer justice in order to uphold law and justice, judges play an important role in law enforcement in courts. They must be able to make various efforts to explore and discover the law. Article 33 paragraph (1) of the Law of the Republic of Indonesia Number 5 of 2018 concerning amendments to Law Number 15 of 2003 concerning the stipulation of government regulations in lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism stipulates that legal protection for judges is only specifically regulated in the context of criminal acts of terrorism. Stated "Investigators, public prosecutors, judges, attorneys, reporters, experts, witnesses, and correctional officers, as well as their families, must be protected by the state from potential threats that endanger their lives and property either before, during, or after the case examination process."

The incident that occurred on the ground was that judges continued to be persecuted, such as in case 199/PID.B/2020/PN IDI. Based on the verdict, the defendant has been legally and persuasively proven guilty of committing a criminal act of persecution in accordance with Article 351 paragraph (1) of the Criminal Code and has been sentenced to one year and three months in prison.

The application of Article 351 of the Criminal Code in this Contempt of Court case demonstrates that there is a lack of legal norms in terms of protection for judges who are law enforcement officers, and it can be said that this is a setback for the Indonesian judicial system, indicating the need for legal rules or regulations. The law that explicitly regulates legal protection for judges while performing their duties, in accordance with what is desired, and which is contained in Law Number 48 of 2009 regarding Judicial Power, pertains to providing security and welfare guarantees for judges. by territory.

Research Method

The approach method used in the preparation of this research is the normative juridical approach, which is a legal

method carried out by examining library materials or secondary data ^[1]. in addition, and Legal principles, legal systems, legal synchronization, legal history, and comparative law research ^[2]. Library materials are classified as secondary data that are in every state of publication readiness, their form and content have been compiled by previous researchers, and they can be accessed without time constraints ^[3].

Results and Discussions

The explanation of the 1945 Constitution (prior to amendment) contains the formulation of the Indonesian legal state, which is a translation of the term *rechtstaat*. The formula is: "The Indonesian state is founded on law (*rechtstaat*), not power (*machtstaat*) alone". Following the amendment, Article 1 paragraph 3 of the 1945 Constitution now reads: "The State of Indonesia is a law-based state." Regarding the element of judicial power that is independent of other powers, the formulation can be seen in the explanation of Articles 24 and 25 of the 1945 Constitution (prior to the amendment), which states: "Judicial power is an independent power, meaning that it is not subject to the influence of government power" ^[4].

Article 24 paragraph 1 of the Indonesian Constitution of 1945 guarantees the freedom of judges based on the independence of the Judicial Power: "Judicial power is an independent power that administers justice to uphold law and justice." The Indonesian constitution mandates the separation of the judicial and executive powers, as well as judicial independence ^[5].

As the core apparatus of judicial power, the term freedom is applied to both judicial institutions (independent judicial power) and judges (freedom of judges) in Indonesia's judicial power system. As a constitutionally enshrined principle, the concept of judicial independence has given rise to a variety of personal and social interpretations. When the term "freedom of judges" is formed by combining the words freedom and judge, various meanings are possible. Some believe that the freedom of judges is not absolute, as

it is their responsibility to uphold law and justice, which must be based on Pancasila^[6].

Historiographically, the concept of Contempt of Court in Indonesian criminal law is derived from English common law. Essentially, it seeks to protect the judiciary so that it remains honorable and authoritative as an independent institution, free from the influences of other parties (executive, legislative, and internal institutions of the judiciary) or those who seek to undermine the judiciary's honor and authority, in accordance with the provisions of Article 24 of the 1945 Constitution, which states that judicial power is an independent power to administer justice in order to uphold the law and maintain public order. In order to uphold law and justice based on Pancasila, Law No. 14 of 1985 pertaining to the Supreme Court focuses on ensuring the creation of the best possible atmosphere for the administration of justice. And Law Number 48 of 2009 regarding Judicial Power, pertaining to the state's provision of security and welfare guarantees for judges. Therefore, legal protection for judges while performing their duties to prevent criminal acts of persecution and threats of violence is essential for the efficient operation of the judicial system. However, there is currently no law that specifically regulates Contempt of Court.

The essence of Contempt of Court as a criminal act that can be committed by people involved in a case process or not, inside or outside of court, consists of acting actively or passively with the intent to interfere with or disrupt the system or process of administering the judiciary. (the proper administration of justice), degrades the authority and majesty of the court, or impedes court officials from administering justice^[7].

As the executor of judicial authority, the judge must decide a case with a sense of justice. The application of Article 351 of the Criminal Code in Contempt of Court cases reflects a setback in the Indonesian justice system, and there is a lack of legal protections for judges who are law enforcement officers against threats of violence while performing their duties. This is the primary objective of the inclusion of a special chapter on criminal acts against the judicial process in the Draft Criminal Code (contempt of court). There are already articles in the new Draft Criminal Code that reflect efforts to protect independent judicial powers from attempts to interfere with the judicial process, particularly in terms of ensuring the safety of judges while they perform their duties in the face of threats of violence. These rules are contained in Book II, Chapter IV of the Draft Criminal Code, which is titled Crime Against the Judicial Process. Article 296 letter b, fourth paragraph, protection of witnesses and victims. Which aims to provide judges with legal protection against the threat of violence when performing their duties. However, there are still several articles in the draft of the new Criminal Code for which the pros and cons are still being weighed. Therefore, it is preferable that the Draft Criminal Code, which has been included in the DPR's national legislation program, be discussed as soon as possible. Judges are God's representatives on earth^[8].

The judge is a noble position, not only because his duty is to embody God's representative in the wordings of "for the sake of justice based on the one and only divinity," but also because it is filled by a professional and honorable representative of God, allowing judges to reign with honorable dignity. A just Indonesia as the embodiment of the state of Pancasila law requires the state to regulate the

independence, professionalism, and honor of judges through the law^[9].

The evolution of the state's relationship with judges is documented in the history of Indonesian legal politics. The journey began with Law No. 14 of 1970 regarding the Fundamental Provisions of Judicial Power, which was later amended by Law No. 35 of 1999 regarding Amendments to Law No. 14 of 1970 regarding the Fundamental Provisions of Judicial Power. The most significant modification to the Law on Judicial Power concerns the elimination of executive interference with the judiciary (judicial). The abolition of executive interference with the judiciary is also a result of the TAP MPR X/MPR/1998 reform agenda in the field of law.

Only within the scope of Terrorism is legal protection for judges specifically regulated. Article 33 paragraph (1) of the Law of the Republic of Indonesia No. 5 of 2018 regarding amendments to Law No. 15 of 2003 regarding the stipulation of government regulations in lieu of Law No. 1 of 2002 regarding the Eradication of Criminal Acts of Terrorism became law. Stated "Investigators, public prosecutors, judges, advocates, reporters, experts, witnesses, and correctional officers, as well as their families, must be protected by the state from potential threats that endanger their lives and property before, during, and after the investigation of terrorist crimes.

Government Regulation Number 77 of 2019 regarding the Prevention of Criminal Acts of Terrorism and the Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers replaces Government Regulation Number 24 of 2003 regarding Procedures for the Protection of Witnesses, Investigators, Public Prosecutors, and Judges in cases of criminal acts of terrorism. The procedures for the protection of witnesses, investigators, public prosecutors, and judges in cases of terrorism-related crimes were emphasized. Witnesses, public prosecutors, and judges must feel safe from threats that endanger their lives, their property, or both, in order to testify and carry out their duties of investigation, prosecution, and examination in court. The provision of such protection is essential to ensure the smooth operation of the judicial process. If the content and intent of Article 33 paragraph (1) of the Law of the Republic of Indonesia Number 5 of 2018 and Government Regulation Number 77 of 2019 are interpreted as intended, the purpose is limited to terrorism crimes and is intended to protect judges performing their duties in court proceedings from being intimidated and terrorized by those committing the Crime of Terrorism.

The Draft Criminal Code is a draught law that was drafted with the intention of modernizing the Criminal Code and adapting it to legal politics, conditions, and developments in social, national, and state life. The inclusion of a special chapter on criminal acts against the judicial process is one of the most important of the many advancements contained in the Draft Criminal Code (contempt of court). Book II, Chapter VI, which consists of 27 Articles, contains the provisions regarding criminal acts against this judicial procedure.

Article 2 of Government Regulation No. 94 of 2012 on the Financial Rights and Facilities of Judges outlines the rights of judges. By the Supreme Court, namely judges' Financial Rights, and Judge Facilities, judges' financial rights and judge facilities (administration of judges) are one of the most significant factors supporting judge independence. The

principle of independence requires the state to provide financial rights and adequate facilities so that judges can perform their duties without being easily tempted to accept gifts from the parties. The state must also ensure the safety of the judges so that they are unaffected by terror, threats, and physical and non-physical fears that could impede their ability to perform their duties. In addition, in the same Article, letter f, the judge is entitled to security guarantees; in other words, the judge has the right to himself when or when not handling a case, and this must be met by the government for the judge to handle a case independently.

Conclusion

Legal protection for judges while performing their duties to prevent criminal acts of persecution and threats of violence is a top priority for the efficient administration of justice. There is currently no law that specifically addresses Contempt of Court. The application of Article 351 of the Criminal Code in Contempt of Court cases reflects a setback in the Indonesian judicial system, and there is a lack of legal protection for judges who are law enforcement officers from threats of violence while performing their duties. The right of judges to handle cases should have a legal foundation, to achieve legal certainty, and judges avoiding pressure and fraudulent attitudes that can influence their case decisions.

References

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6. Miriam Budiarto, *Aneka Pemikiran Tentang Kuasa Dan Wibawa*, Jakarta: Sinar Harapan, 1991, 1.
7. Johny Ruby Hadiarti, *Contempt of Court (Kajian Tentang Ide Dasar dan Implementasinya dalam Hukum Pidana)*, *Jurnal Dinamika Hukum*, Mei, Purwokerto, 2009:9(2):1.
8. In the XVIII century, Charles Secondat Baron de Labrede et de Montesquieu (1668-1748) developed the Trias Politica teachings in his book *L'Esprit des Lois* (The Spirit of the Laws). The legislative power, the executive power, and the judicial power are the three branches of government that Montesquieu identifies (judicative). Strictly speaking, according to Montesquieu, the powers must be separated in terms of both the tasks (functions) and the equipment (institutions) doing these tasks.
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