GENERATING A HIGH QUALITY AND INTEGRITY CAREER JUDGES RECRUITMENT POST-CONSTITUTIONAL COURT DECISION NUMBER 43/PUU-XIII/2015[Ω]

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Abstract

Recruitment of judges is an instrument to produce high quality and integrity judges. There are some different views related to the authorized institution to carry out career judges recruitment. It makes Indonesian Judges Association (Ikahi) proposes Judicial Review on the involvement of Judicial Commission to the Constitutional Court. The problem is how to implement the recruitment of career judges after the decision of Constitutional Court Number 43/ PUU-XIII/2015. This is a doctrinal research. Based on the result of the research, the Constitutional Court Decision has fully mandated the Supreme Court to recruit first-level judges. It requires an improvement in the career judges recruitment by the Supreme Court to be more objective, open, and transparent to obtain a high quality and integrity judges.

Keywords: career judges, recruitment, constitutional court decision

Abstrak

Rekrutmen hakim merupakan instrumen untuk melahirkan hakim yang berkualitas dan berintegritas. Terdapat perbedaan pandangan terkait lembaga yang berwenang melakukan rekrutmen hakim karir. Hal inilah yang mendorong Ikatan Hakim Indonesia (Ikahi) mengajukan *judicial review* tentang keterlibatan Komisi Yudisial ke Mahkamah Konstitusi. Permasalahan penelitian adalah bagaimana mewujudkan rekrutmen hakim karir yang berkualitas dan berintegritas pasca putusan Mahkamah Konstitusi Nomor 43/PUU-XIII/2015. Penelitian ini merupakan penelitian doktrinal. Berdasarkan hasil penelitian, putusan Mahkamah Konstitusi Nomor 43/PUU-XIII/2015 telah memberi kewenangan sepenuhnya kepada Mahkamah Agung untuk merekrut hakim tingkat pertama. Perlunya penyempurnaan rekrutmen hakim karir oleh Mahkamah Agung agar lebih objektif, terbuka dan transparan untuk memperoleh hakim yang berkualitas dan berintegritas.

Kata kunci: hakim karir, rekrutmen, putusan mahkamah konstitusi

Introduction

A judge has central role in judicial process. Judge's position strategically in judicial institution according to Soejono Koesomo Sisworo is a main actor who functionally performs judicial power and judge's duty which is gracefully formulated.[1] As stated by Henry Arianto, judge who is not mastering the law may make the verdict disadvantageous for people.[2]

Judge recruitment is required to produce a judge who has quality and integrity.[3] The recruit-ment of new judge is an urgent matter[4] since the recruitment is one of the components

Ω This article is made based on the Research Result by the contract of Professor Grant Research of Universitas Muhammadiyah Purwokerto by Number: A11-III/580-S.Pj./ LPPM/XI/2017.

1 Indriati Amarini, 2017, *Keaktifan Hakim Dan Peradilan Administrasi*, Purwokerto: UMP Press, p. 61.

2 Henry Arianto, "Peranan Hakim dalam Upaya Penegakan hukum di Indonesia", *Jurnal Lex Jurnalica*, Vol. 9 No. 3, December 2012, p. 16.

3 Idul Rishan, "Redesain Sistem Pengangkatan dan Pemberhentian Hakim di Indonesia", *Journal Ius Quia Iustutum*, Vol. 23 No. 23, April 2016, p.166.

4 Ridarson Galingging, "Peran Komisi Yudisial dalam Membangun Peradilan yang Bersih dan Berwibawa", *Jurnal Hukum Adil*, Volume 7 No. 1, 2016, p. 11.

which is related to and given effects on the court independence.[5]

The career judge recruitment post the Constitutional Court Decision Number 43/PUU-XII/2015 becomes the authority of Supreme Court.[6] Once the Supreme Court's decision is made then the Supreme Court Regulations Number 2 Year 2017 of Procurement of Judges is issued.

Supreme Court Regulations are issued based on judge's needs, education process and recruitment process for prospective judges. It also contains principles that procurement of judges must be transparent, accountable, participatory and KKN-free practice (corruption, collusion and nepotism).[7] The implementation of judge recuritment is more established nowadays. One of the examples is the open process through the use of technology facilitation.[8] Nevertheless, comments and opinions continue to grow asking about the procedures, openness, transparency and guarantee of integrity of the prospective judges if it is done by the Supreme Court itself.[9] Besides, there are still no institution supervised the judge recruitment.[10]

In this regard, this article discusses how to generate career judges who have quality and integrity through recruitment process post-decision of the Constitutional Court No. 43/PUU-XIII/2015.

Research Method

This is a doctrinal legal research by analyzing the primary legal data involving the 1945 Constitution, Law No. 49 Year 2009 on the Second Change on Law No. 2 Year 1986 of General Justice, Law No. 50 Year 2009 of Second Change on Law No. 7 Year 1989 of Religious Court, Law No. 51 Year 2009 of Second Change on Law No. 5 Year 1986 of State Administrative Court and Supreme Court Decision No. 43/PUU-XIII/2015. The secondary legal data include books, journals, articles and research result which are relevant to the theme and research problems. The approach in this research is legal approach, comparative approach, and conceptual approach. The collected data are analyzed descriptively and qualitatively.

Discussion

The Basic essence of judicial formation is to place judge and court to stay in balance in every aspect of nation and state life. As stated that:

> "Constitutional principle of the independence of judges is an essential guarantee for any system of law, reflected in the procedure of the recruitment and promotion of judge...."[11]

while WF Dressel stated about the existence of court, Judicial systems exist to provide fair, timely, accessible and economical justice to all who come before a court.

Role of judge in realizing the justice cannot be separated from the verdict. A judge must be learned in law and also skilled in law which mean a judge must clearly understand the substance and meaning of law, and also has skill in practice of law. In the judge's hand, science of law becomes applied science. It is the judges who give life to the articles and other regulations consisting of non-living alphabet since things faced by judge's duty are the law related of people's lives in the community which keep changing. Therefore, judge "are forever con-

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5 Rusli Muhammad, "Strategi dalam Membangun Kembali Kemandirian Pengadilan Di Indonesia", *Jurnal Hukum Ius Quia Iustum*, No. 26 Vol. 11, May 2004, p. 26.

6 Meylin Sihaloho, "Seleksi Pengangkatan Hakim Dalam Sistem Peradilan Indonesia: Kajian Putusan Mahkamah Konstitusi Nomor 43/PUU-XII/2015", *Jurnal Wawasan Yuridi-ka*, Vol. 33 No. 2, September 2015, p. 217.

7 Hermansyah, April 07th 2017. "*MA Tetapkan Mekanisme Pengadaan Hakim PN, PA, dan PTUN*". Available on website: https://badilag.mahkamahagung.go.id., Accessed on May 4th, 2018

8 Holcombe Ehrhart, Et.Al. "Web-Based Recruitment in the Millennial Generation: Work Life Balance, Website usability and attactiveness of the Organization", *European Journal of Work and Organizational Psychology*, Vol. 21 Issue 6, 2012, p. 850.

9 Yunawan Kurnia, July 11th 2017, Rekrutmen Calon Hakim Tahun Anggaran 2017, Available on website: https://www.mahkamahagung.go.id/id/artikel/2623/rekrutmen-calon-hakim-tahun-anggaran-2017. Accessed on Sunday, December 31th, 2017.

10 Fence M. Watu, "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan dan Kemanfaatan Di Peradilan Perdata", *Journal Mimbar Hukum*, Vol. 25 No. 2, 2013, p. 210.

11 Florina Mitrofan, "The Independence of Judge-a guarantee of the rule of law state", *Journal of Law & Adminnis-trative Science*, Special Issue, 2015, p. 93.

demned for the rest of their lives to continue studying the law".[12]

Human resources in law includes judge play pivotal role in actualizing the law supremacy.[13] Court is an institution which functions to protect and uphold the law, indeed it must have competent and high integrity of law enforcement lines in their profession.[14] Judge recruitment becomes a basic problem because it will influence, even create, many types of people who have duty as judge, including their decisions as judge.[15] This is why the recruitment should produce a judge who is competent along with the objective performance, integrity, and professional. Recruitment systems are credible by building the profile concept of ideal judge, building process, and making monitoring systems, and evaluating it.[16]

One of the complicated problems in justice system is the mechanism of filling the judge position.[17] Career judge recruitment also causes polemic between IKAHI (Indonesian Judges Association) and The Judicial Commission that ends with judicial review suit to The Constitutional Court. IKAHI's reasons are Article 14A paragraph (2) and paragraph (3) throughout the word "together" and phrase "and The Judicial Commission" in Law Number 49 Year 2009 of Second Change on Law Number 2 Year 1986 of General Justice, Article 13 A paragraph (2) and paragraph (3) Law Number 50 Year 2009 of Second Change on Law Number 7 Year 1989 of Religious Court and Article 14A paragraph (2) and paragraph (3) Law Number 51 Year 2009 of Second Change on Law Number 5 Year 1986 of State Administrative Court on the contrary to The Constitution. Pro and cons over the involvement of The Judicial Commission in the first-level judge recruitment on General Justice, Religious Court and State Administrative Court have been finished by the issuance of The Constitutional Court Decision Number 43/PUU-XIII/2015. The decision stated that the word "together" and phrase "and The Judicial Commission" in articles of law above have no binding legal force.

The Constitutional Court revoked the Judicial Commission's decision in the first-level elections in three judicial field. The Authority of judge election remains solely under the Supreme Court authority. There were dissenting opinions expressed by one of the Constitutional Judges, I Dewa Gede Palguna, who disagreed with the decision. Essentially, dissenting opinion explained that the participation of the Judicial Commission in the recruitment of first-level judges did not contradict the constitution, so I Gede Palguna mentioned some existing factors in the form of a conditionally constitutional decision, namely throughout the phrase "with the Judicial Commission" the process of elevation to third-level judge of the first level court is defined by the involvement of the judicial commission in providing ethic code and guidance of judges attitude.[18]

The recruitment of judge is theoretically influenced by the legal system or legal tradition adopted by the country. However, today the development of recruitment is no longer based on the legal system adopted by the concerning country.[19] There are 2 (two) types of judges recruitment models, namely a closed recruitment system and an open recruitment system. The closed recruitment is based on a system of judicial theory that functions as a career where court is considered as closed organizations which is based on the pattern of government bureaucracy with a complex personnel hierarchy, supervision, transfer control, promotion, supervision and so on. The recruitment system used is

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[12] Busthanul Arifin "Sepanjang Jalan Kenangan Bersama Bis-mar Siregar, Sang Hakim", *Majalah Varia Peradilan*. Vol. XXIV No. 282 May 2009, Jakarta: Ikahi, p. 67.

[13] Arfan Faiz Muhlizi, "Reposi Lembaga Pendidikan Dalam Proses Legislasi Di Indonesia", *Jurnal Konstitusi*, Vol. 6 No. 2, July 2009, p. 157.

[14] Dian Fithriwati Darusmin, Et.Al, "Subjective Well Being pada Hakim yang Bertugas di Daerah Terpencil", *Gadjah Mada Journal Of Psychology*, Vol. 1 No. 3, September 2015, p. 193.

[15] Susi Dwi Harijanti, "Pengisian Jabatan Hakim: Kebutuhan Reformasi dan Pengekangan Diri". *Journal Ius Quia Iustutum*, Vol. 4 No. 21, October 2014, p. 532.

[16] Akbar Faisal, "Politik Hukum Perlindungan Hakim", *Jurnal Cita Hukum*, Vol. 4 No. 1, 2016, p. 7.

[17] Susi Dwi Harijanti, *op.cit.*, p. 533.

[18] Zaki Ulya, "Pembatalan Kewenangan Komisi Yudisial Dalam Rekrutmen Hakim Dikaitkan Dengan Konsep Independensi Hakim (Studi Putusan Mahkamah Konstitusi Nomor 43/PUU-XIII/2015)", *Jurnal Mimbar Hukum*, Vol. 28 No. 3, October 2016, p. 485.

[19] Susi Dwi Harijanti, *op.cit.*, p. 536.

generally the civil law system.[20] Judge recruitment with civil applied in Indonesia (by the Netherlands) is arranged by career systems and closed systems. In the ideal context, justice court is closed organization based on government bureaucracy, with a complex personnel hierarchy, supervision structure, transfer control, promotion, supervision and so on.

Sebastiaan Pompe[21] argued that courts based on career systems were also reflected in their professional self-image in a work environment similar to the state bureaucracy. As a result, a closed recruitment system does not look conducive to create strict and independent-minded judges as the career judges tend to avoid making controversial and potentially political choices. Career judges are sometimes lack of personality and are ultimately more inclined to bureaucratic mentality than judges screened from "a group of talented advocates" (recruitment of judges in the tradition of common law). The Career judges tend to handle thousands of small routine cases rather than having to be responsible for filtering and deciding cases that bring a greater impact.

A different opinion was expressed by JAG Griffith that the career justice system allows the generation of judges to be more independent since the recruitment from the lower levels does not take into account of the political sympathy and loyalty of candidates (who are generally too young to have a clear political track record). Recent history shows that some countries that use career systems such as the Netherlands, Italy and France have been able to make the judiciary there stronger institution. This is just what Sebastiaan Pompe states that in the development of a country that adopts a career system including Italy, they are able and willing to make a breakthrough to handle political corruption and mafia activity. Likewise, court bodies in France are highly proactive in combating networks of political corruption. Thus, the Italian and French court institutions (which adhere to the career system) can take care of cases of political corruption and mafia activities because the firmness of the courts do not want to be intervened by government politics. Such conditions also occur in the Netherlands. The Dutch court keeps track of every controversial political decisions and even begin to develop jurisprudence *contra legem* (which explicitly makes decisions that are contrary to legislative provisions). When com-pared to courts in England, Malaysia or America (adhering to an open recruitment system or common law tradition) the performance of the court with a career system does not seem too bad.[22]

Judicial recruitment in Indonesia is carried out by the Government (Department of Justice) and the Supreme Court. However, since the existence of Law Number 4 Year 2004 there has been a change in the justice system namely the One Roof System. The authority of recruitment is entirely at the Supreme Court institution. There is a plan to change the One Roof System with the concept of shared responsibility. Historically, the emergence of one roof system is the need for independence of the judiciary from executive interference. The Supreme Court with one roof system is expected to continue to improve and reform the management system so that a transparent and professional judge management system is formed. This system can form judges of high quality and integrity.[23]

In general, the problem of recruitment of legal professions is co-arranged with training including judges.[24] There are several models of recruitment and training of judges in various countries. As a comparison, the authors takes the judicial training model in South Korea. South Korea, as one of the countries in Asia known as The Land of the Morning Calm has shown significant progress in various fields. The progress is emphasized more on aspects of human resources.

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[20] Sebastiaan Pompe, 2012, *Runtuhnya Institusi Mahkamah Agung*, Jakarta: Lembaga Kajian dan Advokasi untuk Inde-pendensi Peradilan, p. 46.

[21] *Ibid*. p. 49.

[22] *Ibid.*, p. 491.

[23] Laksanto Utomo, September 4th 2017, "Beri Kesempatan MA jalankan system satu atap", Available on: website http://antaranews.com, Accessed on August 28th 2018.

[24] Johannes Riedel, " Training and Recruitment of Judges in Germany", *Internasional Journal Court Administration*, Vol. 5 No. 2, October 2013, p. 42.

A person who will take part in the legal profession in South Korea must take the legal profession position test first which is held by the Department of Justice. Then it is followed by the judicial training held by "The Judicial Research and Training Institute" (JRTI). The Judicial Research and Training Institute (JRTI) is an institution under the Supreme Court which functions to educate the basic practical principles and moral ethics the legal profession must possess. This institution was founded in 1971. This institution originally aimed to educate judges and prosecut-ors exclusively, but since 1997 it has changed its aim to educate lawyers for international competitiveness. The education system in JRTI is divided into 4 semesters, using a credit system, a departmental system and attaches great importance to the education of moral ethics and fields of specialization.[25] The institute also conducts refresher training for judges, training for prospective judges and special training for candidates for the legal profession in the military. As an educational institution, JRTI under the Supreme Court has an equal position with the High Court. The recruitment system in facing globalization in general requires international capabilities.[26] This is applied in the recruitment of judges in South Korea which requires the ability to access Information Technology in the form of computer, internet, and language skills. A foreign language proficiency and law of other coun-tries are the obligatory requirements for legal profession in globalization era. That is why in 2006, there were a university subject called Eng-lish for law, and law for United Stated of America. JRTI provides some programs to rise up the service and moral ethic for the participant, especially the subject Justice Ethics which is expected that the running law profession will get to understand the misery and pain of the society.[27]

In Japan, judges is not selected by Supreme Court. After graduate, law bachelor student who are interested in becoming judges will take a test. Every law school students will take a final test and if they pass the test, they (the legal professional candidates) will take a national exam (*shiho-shiken)* held by Department of Justice. If they pass the national exam, they will follow law profession training for a year. In the end of training, they will take a final test. After going through a rigorous evaluation, they will be placed as judges, attorney or lawyer based on their competence and interest. There is no particular education after they are accepted as judges or attorney. After working for 5 years, every judges must join an education program outside the court even they must study abroad to get LLM title or non-title.[28]

Regardless the judges recruitment models as mentioned above, judges with good quality and integrity are obtained by objective, open, and transparent system. As Odette Buitendam ex the Netherland Minister of Justice said that *good judge are not born but made*. Judges as described previously can only made by a good system that is recruitment, selection and good training. Since it takes a good system to create good judges, Brian Tracy said[29] "everything happens of a reason, and for every effect there is a specific cause".

Human sources (judges) who have good quality and integrity can be obtained through a recruitment system or judges selection. In the context of human resources (judges) development by Supreme Court, causal law can be meant that a good or bad organization has a relation with particular rule that is created deliberately for it. An organization success is directly or indirectly generated by causes or particular action that is fabricated and well-planned consciously. Supreme Court as an organization is highly affected by its human sources in its organization namely the judges. The judges of high

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[25] Nani Indrawati, "Selayang Pandang Tentang Judicial System Di Korea Selatan", *Majalah Hukum Varia Peradilan*, Vol. XXIII No. 269, April 2008. Jakarta: Ikahi. p. 16.

[26] Rong Ma dan David G. Allen, "Recruiting Across Cultures : A value-based model of recruitment", *Human Resource Management Review*, Vol. 19 Issue 4, December 2009, p. 334.

[27] Nani Indrawati, *op.cit.*, p. 16.

[28] Detik News. 15 April 2015. "Para Hakim Agung Membonsai KY, Bagaimana di Jepang?" Available on: website: http://m.detik.com/news/read/2015, Accessed on Monday, June 8th 2017.

[29] Indriati Amarini, *op.cit.*, p. 268.

quality and integrity is also internal factor that can affect freedom or independence of the judicial power.[30] Human resources management is a strategic partner to embody judges of high quality and integrity.[31]

How good a system will be misused if the people within are dishonest. As a proverb said that a morale without a law is weak and a law without a morale is not worth.[32] In judicial system in Indonesia, there is basic principle of morality in Pancasila that is "by the grace of God Almighty" and "a belief in the One and Only God".[33] Work as judges is a part of devotion and worship.[34]

Many factors affect judges such as judges education, spirit of the corp, external supervision and judges integrity.[35] Hence, reason, conscience and morality need noticing in judges capacity development.[36] In this regard, it is necessary to build judges behavior, good spirit and bravery in dealing with cases and not following in judicial corruption.[37] Morality Aspect of Law en-forcement authorities plays important role. Ac-cording to Elisabeth Nurhaini Butarbutar, she said that basically the deterioration of judicial body is caused by a person called as the dirty broom still works in any legal institution.[38]

Conclusion

Judges recruitment become a basic problem to produce high quality and integrity career judges. First-level judges recruitment on general court, Religious court, civil court of justice run by Supreme Court based on Ministerial Decree No 43/PUU-XIII/2015. It is in line with one roof system by Supreme Court to develop a transparent and professional judges management system. After Ministerial Decree is set, Supreme Court is-sued a Ministerial Decree No 2 Year 2017 of Judges procurement. There are some principles in recruitment process which must be done by Supreme Court that is transparent, accountable, participatory and KKN-free (corruption, collusion, and nepotism). Judges of high quality and integrity is obtained by an objective, open, and transparent system.

Suggestion

Judges recruitment is more emphasized on quality aspect than quantity aspect. Supreme Court should monitor and evaluate the judges quality and integrity.

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30 Richard A. Posner, 2010, *How Judges Think*, United States: Harvard University Press, p. 171.

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