

DIMENSIONS OF JUDGES INDEPENDENCE IN THE JUDICIAL PROCESS

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Abstract

This research aims to analyze and criticize the independence of judges in maintaining integrity and social trust in the judicial process. This type of research is normative research. The results showed that factors that can affect the independence of judges in carrying out their duties. Judges in resolving conflicts faced by them must be able to resolve objectively based on applicable law and the concept of judge independence is a fundamental principle in the judicial system which emphasizes that judges must be able to carry out their duties independently, without pressure or influence from any party. The independence of judges is an important prerequisite in maintaining integrity, fairness and trust in the judicial process in a country. The presence of independent judges ensures that the judicial process is transparent, fair, and in accordance with the principles of democracy and the rule of law.

Keywords: Judge; Integrity; Independence.

Abstrak

Penelitian ini bertujuan untuk menganalisis serta mengkritisi kemandirian dalam menjaga integritas dan kepercayaan masyarakat terhadap proses peradilan. Tipe penelitian ini adalah penelitian normatif. Hasil penelitian menunjukkan bahwa faktor-faktor yang dapat mempengaruhi kemandirian hakim dalam menjalankan tugasnya. Hakim dalam menyelesaikan konflik yang dihadapkan kepadanya harus dapat menyelesaikan secara obyektif berdasarkan hukum yang berlaku dan konsep kemandirian hakim adalah prinsip fundamental dalam sistem peradilan yang menegaskan bahwa hakim harus dapat menjalankan tugasnya secara independen, tanpa adanya tekanan atau pengaruh dari pihak manapun. Kemandirian hakim adalah prasyarat penting dalam menjaga integritas, keadilan, dan kepercayaan terhadap proses peradilan dalam sebuah negara. Kehadiran hakim yang independen memastikan bahwa proses peradilan berjalan dengan transparan, adil, dan sesuai dengan prinsip-prinsip demokrasi dan supremasi hukum.

Kata Kunci: Hakim; Integritas; Kemandirian.

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INTRODUCTION

Article 24 paragraph (1) of the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia confirms the nature of judicial power by stating that the Judiciary is the power of an independent state to regulate and enact laws and protect justice. Article 1 paragraph (1) of Law No. 48/2009 on Judicial Power also states that the Judiciary is the power of an independent state to administer the law in order to maintain law and justice. Meanwhile, Article 18 of the Judicial Power Law explains that judicial power is exercised by the Supreme Court and the judicial organs under it including the general court, religious court, military court, state administrative court, and constitutional court.

In the judiciary, judges have the most important role and authority. Article 11(1) of the Judiciary Law explains that the main duties of judges are to investigate, try and decide cases. Judges must be responsible for their findings and decisions and must base their legal considerations on proper and correct legal reasons and principles.¹ The judge is a very powerful figure in the judicial system. The existence of the authority and responsibility of judges has the consequence that judges are required to be highly responsible in carrying out their duties to uphold law and justice, by not discriminating against people as stated in the judge's oath taken before taking office, besides having to act fairly judges are also obliged to be independent, meaning that judges must be independent, which means that judges are free to decide against (the will of) the government and without fear.²

Judicial independence is an important concept in the judicial system, which emphasizes that judges must be able to carry out their duties independently without pressure or influence from any party. This concept reflects the principle of separation of powers between the executive, legislative and judiciary in a democratic system, which must function separately and in balance³. Judicial independence also emphasizes that judges must decide cases based on facts and applicable law, without taking sides. The importance of judicial independence lies in the need to ensure that judicial procedures are fair, transparent and free from the influence of political or personal interests. Independent judges can make decisions based on the law and available evidence without fear of retaliation or intimidation from special interests. This is an important prerequisite for maintaining public confidence in the judicial system and upholding the rule of law.

One form of judicial independence includes the freedom to make decisions without interference from external parties, including government agencies or politicians. This allows judges to carry out their functions with integrity and courage, without fear of pressure or influence that could affect the objectivity and fairness of court proceedings. Although the independence of judges is a fundamental principle in a democratic judicial system, its implementation can face challenges and controversies in practice. Various factors, such as political policies, economic interests, or social pressures, can influence or interfere with the independence of judges. Therefore, it is important for the justice system to have mechanisms that ensure and protect the independence of judges, including through a system of internal and external oversight and legal protection against attempts to interfere with such independence.

The independence of judges is very important from a democratic perspective, as it ensures the continuity of an independent, transparent and fair judicial system. In a democracy, separation of powers is a fundamental principle to prevent abuse of power and maintain a balance between the government

¹ Article 68 A of Law Number 49 of 2009, Concerning General Courts.

² Marni Emmy Mustafa, *Bunga Rampai Hukum dan Peradilan*, (Bandung: Alumni, 2019), pp 24-25.

³ Rosas, A. (2012). The Independence of the Judiciary: Some Remarks on the Situation in Europe. *European Constitutional Law Review*, 8(3), 407-422.

and other institutions. Within this framework, the independence of judges is key in safeguarding individual freedoms and rights and ensuring the rule of law. Judges' independence provides assurance that judicial decisions are based on the applicable law and available evidence, rather than being influenced by political pressure, personal interests, or interventions from parties with vested interests. It maintains fairness in the judicial process and confirms that every individual, including the government, is subject to the same law.⁴ In addition, the independence of judges is a form of protection for individual rights in a democratic state. Independent judges can be the last line of defense for individuals who do not have the political or economic power to resist abuse of power by the government or powerful parties. As such, judicial independence helps prevent the tyranny of the majority and protects minorities from oppression.

In maintaining integrity and public trust in the judicial process, the independence of judges is a very important issue because the independence of a judge in carrying out his/her duties and positions provides a guarantee that judicial decisions are based on applicable law and available evidence, not influenced by political pressure, personal interests, or intervention from parties with certain interests. Integrity and trust in the judicial process are crucial in maintaining the rule of law and ensuring that every individual, regardless of age, is treated fairly before the law. Without the independence of judges, the risk of abuse of power, corruption or politicization of the judicial process increases significantly. This can lead to injustice, where judicial decisions are no longer based on the principles of law and justice, but are influenced by political considerations or particular interests. As a result, public trust in the judicial system will erode, and the authority and legitimacy of judicial institutions will be questioned.⁵

The independence of judges is also important because it maintains the balance between executive, legislative and judicial powers in a country. Separation of powers is a fundamental principle in a democratic system that aims to prevent abuse of power and ensure the protection of individual rights. Independent judges are able to perform their judicial functions without interference from other powers, thus ensuring that each branch of government operates in accordance with its respective roles and functions. The separation of powers between the executive, legislative and judiciary is a very important principle in a democratic system as it aims to prevent abuse of power, maintain a balance of power between the branches of government, and protect individual rights. This principle ensures that each branch of government has separate powers and authority, and supervises each other to prevent excessive domination or abuse of power.

The executive consists of the president or head of government and executive departments and is responsible for implementing government policy and national administration. The Legislature consists of legislative bodies such as parliament and congress, and is in charge of making laws and overseeing administrative activities. The Judicial Branch, on the other hand, consists of the judiciary and judges, and is responsible for enforcing the law, interpreting the law, and resolving legal disputes. The separation of powers between the executive, legislature, and judiciary is intended to prevent abuse of power, maintain a balance of power between governments, and protect individual rights, and is of paramount importance in a democratic system. This principle ensures that each government has its own powers and authority and monitors each other to prevent undue domination and abuse of power.

⁴ Schiemann, K. (2015). Judicial Independence in Europe: Threat or Opportunity? *European Journal of Law Reform*, 17(1), 36-48.

⁵ Garoupa, N., & Ginsburg, T. (2015). *Judicial Reputation: A Comparative Theory*. University of Chicago Press.

METHODS

The type of research in writing is Normative Legal Research, which is legal research that uses secondary data sources or data obtained through library materials. Normative legal research is conducted by examining and reviewing laws and regulations, and legal materials related to "Dimensions of Judges Independence In The Judicial Process".

RESULTS AND DISCUSSION

1. *The Importance of Judge Independence in Maintaining Integrity and Trust in the Judicial Process*

Judges must be independent in carrying out their duties, as independence is an essential prerequisite for maintaining integrity, impartiality and trust in the justice system. The independence of judges ensures that their decisions are based on the applicable law and evidence and are not influenced by political, economic or personal interests. Independent judges have the freedom to act without fear of reprisal or pressure from parties representing special interests.⁶ This is crucial to maintaining the fairness of the legal process and safeguarding the rule of law. In addition, the independence of judges is necessary to ensure the functioning of the judicial system in accordance with the principle of separation of powers in a democratic system.⁷ Judges must be able to carry out their duties without interference or pressure from the executive or legislative parties, and court decisions must not be influenced by political policies or other interests outside the legal aspects concerned. The independence of judges is also important to maintain the credibility and legitimacy of the judicial system in the eyes of the public. Public confidence in the fairness and integrity of the judicial process is largely dependent on the perception that judges can carry out their duties without outside interference that could undermine the objectivity and impartiality of the courts.

In addition, the independence of judges also contributes to the political and social stability of democratic societies. When people believe that the judicial system can act independently and fairly, they are more likely to obey the law and respect judicial authority. This contributes to maintaining peace and stability in society and strengthens the foundation of democracy as a constitutional system of government.⁸ The independence of judges is therefore an essential prerequisite for maintaining the integrity and sustainability of the judicial system in a democracy. It ensures that democratic principles such as the rule of law, separation of powers, and protection of individual rights are implemented and strengthened in a democratic society. The independence of judges is also a cornerstone of the rule of law. In a state of law, judges' decisions must be objective, transparent, and easy to understand. An independent judge will make decisions based on legal considerations and relevant facts, without pressure or influence from any party. This is a prerequisite for preserving justice and maintaining the authority of the judicial system in ensuring compliance with applicable laws.⁹ Thus, the independence of judges is not only an important issue in the context of maintaining integrity and trust in the judicial process, but is also a key cornerstone for upholding the rule of law, separation of powers, and protection of individual rights in a

⁶ Geyh, C.G. (2011). What's Really Wrong with Judicial Elections. *Ohio State Law Journal*, 62, 33-49.

⁷ Peerenboom, R. (2009). Judicial Independence and Accountability: The Case of China. *Journal of Contemporary China*, 18(60), 475-493.

⁸ Helmke, G., & Staton, J. (2011). The Puzzling Judicial Politics of Latin America. *Political Science Review*, 105(1), 138-154.

⁹ Ferejohn, J. (1999). Independent Judges, Dependent Judiciary: Explaining Judicial Independence. *Southern California Law Review*, 72, 353-384.

democratic society.¹⁰

Judges in resolving conflicts faced by them must be able to resolve objectively based on applicable law, so in the decision-making process judges must be independent and free from the influence of any party, including the executive.¹¹ In making decisions, judges are only bound by relevant facts and legal rules that are used as the legal basis for their decisions, but the determination of which facts include relevant facts and the choice of which legal rules will be used as a basis for resolving the case at hand is decided by the judge concerned himself.¹² There are three duties of judges when examining cases, namely:

- a. The affirmation of a legal event proposed by one of the parties, without regard to whether the proposed legal event actually occurred. The judge wants to know and believe whether the legal event is true.
- b. Recognizing legal events proposed by the parties. This means that the judge determines that the events that are considered to have actually occurred have a certain legal relationship according to the applicable law. This legal relationship is referred to and used as a legal basis in decision making.
- c. Constitutive, namely legal decisions or decisions of the parties involved in a case.¹³

The concept of judicial independence is a basic principle of the judicial system that emphasizes that judges must be able to carry out their duties independently, without pressure or influence from any party.¹⁴ This independence includes several aspects that are important to maintain the integrity and fairness of the judicial process, including :

- 1) The independence of judges ensures that judicial decisions are based on the applicable law and available evidence, without favoring any party. An independent judge will interpret the law and make decisions based on legal arguments and principles of justice, rather than being influenced by political, economic or social considerations.
- 2) The independence of judges ensures that every individual has equal access to justice before the law. Independent judges will ensure that every case is treated fairly and every individual has the right to a transparent and impartial judicial process.
- 3) The independence of judges helps maintain public trust in the justice system. When people believe that judges can perform their duties independently and fairly, they are more likely to obey the law and respect judicial authority. This is crucial to maintaining social and political stability in a country.
- 4) The independence of judges ensures that the judicial system can act as a barrier against the abuse of power by the government or powerful parties. Independent judges can be the last

¹⁰ Hayo, B., & Voigt, S. (2007). Explaining De Facto Judicial Independence. *International Review of Law and Economics*, 27(3), 269-290.

¹¹ Guarnieri, C., & Pederzoli, P. (2002). *The Power of Judges: A Comparative Study of Courts and Democracy*. Oxford University Press.

¹² Muhammad Ridho, Independence and Confidence of Judges in the Judicial Process, as an Effort to Become an Ideal and Professional Judge, [tps://pa-purwodadi.go.id/index.php/26-front-page/article/359](https://pa-purwodadi.go.id/index.php/26-front-page/article/359).

¹³ Elizabeth Nurhaini Butarbutar, *The Law of Evidence (Analysis of the Independence of Judges as Law Enforcers in the Evidentiary Process)*, (Bandung: Nuansa Aulia, 2016).

¹⁴ Skåre, T. (2017). Political Influence on the Judiciary: Perspectives from European and American Courts. *Global Jurist*, 17(2), 233-255.

guardians of individual rights and prevent the tyranny of the majority or authoritarianism.¹⁵

Article 3 paragraph 1 of the Judicial Magistrates Law stipulates that in order to realize judicial independence, judges must always maintain judicial independence in carrying out their duties and tasks. Article 3 paragraph (1) of the Law explains that judicial independence means judges are free from interference from third parties and free from all forms of pressure, both physical and psychological.¹⁶ Basically, the definition of an independent judge can be explained as follows :

- a) Free from interference by extra-judicial powers

In carrying out their duties and functions in the judiciary judges are free, meaning that judges are not under the influence or power of anyone. This guarantee of judges' freedom is made by providing criminal sanctions for those who violate these provisions;

- b) Free to perform his/her basic duties

The purpose of the judge's freedom in hearing and deciding cases is so that the court can fulfill its duties as well as possible so that it can provide decisions based on truth, justice and honesty.¹⁷

The concept of judicial independence is an important foundation for maintaining integrity, impartiality and trust in the judicial system. The independence of judges guarantees transparency and fairness in judicial procedures, ensuring democratic principles and the rule of law. The independence of judges plays an important role in maintaining integrity and trust in the judicial process, because the independence of judges ensures that court decisions are made in accordance with applicable law and principles of justice. Integrity and trust in the judicial process are essential to a democratic justice system that ensures that every individual is treated fair and equality before the law. Without the independence of judges, the risk of abuse of power, corruption or politicization of the judicial process increases significantly. Independent judges are able to act without pressure or intervention from any party, thus making decisions that are objective and based on applicable law. This helps maintain the integrity and credibility of the judicial process, and provides assurance that judicial decisions are not influenced by irrelevant factors.

In addition, the independence of judges also ensures that every individual has equal access to justice before the law. When people believe that the judicial process is fair and transparent, they are more likely to obey the law and respect judicial authority.¹⁸ This is crucial to maintaining social and political stability in a country, as well as ensuring that the rule of law is upheld. Furthermore, the independence of judges also plays a role in maintaining the balance between executive, legislative and judicial powers in a country. By having the independent authority to interpret laws, decide legal disputes, and oversee the actions of the executive, judges can ensure that no single branch of government dominates or oversteps its authority. This helps maintain stability and justice in a democratic system of government.¹⁹

¹⁵ Brennan, G., & Hamlin, A. (1998). Independence, Judicial Power, and Democracy. *Public Choice*, 97(1-2), 189-204.

¹⁶ Keith, L.C. (2012). Political Repression and Judicial Independence: A Global Survey. *International Political Science Review*, 33(4), 447-462.

¹⁷ Nurlaila Harun, The Judicial Process and the Meaning of a Judge's Belief in Deciding a Case at the Manado Religious Court, *Scientific Journal*, Vol. 15, No. 2, 2017.

¹⁸ Popova, M. (2010). Judicial Independence and Anti-corruption Reform in Russia: A Double-edged Sword. *Democratization*, 17(4), 763-785.

¹⁹ Solberg, R.S., & Waltenburg, E.N. (2006). Judicial Independence and Judicial Accountability. *The Journal of*

The independence of judges is therefore an essential prerequisite for maintaining integrity, impartiality and trust in the country's judicial procedures. The presence of independent judges ensures that judicial procedures are transparent, fair and in accordance with democratic principles and the rule of law.

2. *Factors that can affect the independence of judges in carrying out their duties*

Everyone is instilled with a fear of something, and the pattern of behavior changes depending on the cause of the fear itself. From a psychological point of view, fear is a subset of dread. Atkinson defines anxiety as an unpleasant emotion characterized by terms such as worry, anxiety, and fear and experienced in varying degrees.²⁰ Based on these definitions, the nature of anxiety exhibits varying levels of intensity depending on the event and potential risks that a person may face.²¹ In relation to the profession of judges, there is a tangent between fear and the independence of judges, when examining and deciding cases with several factors that influence it. In general, fear cannot be detected directly from judges because it lies in the mind, but through observation and experience in judicial practice, the following things can be qualified as a form of fear that has the potential to erode the independence of judges, namely²² :

a. Safety Guarantee.

Security is one of the reasons why judges are afraid to consider and decide cases. Despite the following provision in Article 48 Paragraph 1 of the Judicial Power Law, there are still many cases where judges experience treatment that threatens their safety and become victims of murder, torture, and others. A state that guarantees safety and security. The welfare of judges and constitutional judges in carrying out their duties and responsibilities in exercising judicial power.²³

b. Public opinion.

Public opinion is the opinion of the majority of the public regarding certain information that is discussed. The formation of public opinion on the case being handled requires the judge examining the case to maintain his independence by putting aside the fear of differences in the judge's judgment with public opinion. For example, public opinion considers the defendant on trial to be the perpetrator of a criminal offense, but the judge assumes that the defendant is innocent based on the evidence presented at trial. In such a case, the judge must allay the public's negative concerns regarding the acquittal. It is an occupational risk for judges to be commented on, harassed, and even reported to regulators, judicial commissions, ombudsmen, and other stakeholders.²⁴ At the time, the judge had doubts about his decision. If such doubts exist, then the independence of judges has actually been shackled by public opinion. The concept of the above opinion shows that fear can affect the independence of judges in the trial and post-trial process.²⁵ In dealing with situations like this, judges must adhere to the Code of

Politics, 68(2), 436-450.

²⁰ Sadurski, W. (2012). Judicial Independence and Accountability: Developing a European Perspective. *Journal of International Law and International Relations*, 8(3), 281-295.

²¹ Riki Perdana Raya Waruwu, A Sense of Intervention and Strengthening the Independence of Judges, <https://www.mahkamahagung.go.id/id/artikel/5123>, Journal, 2022.

²² *Ibid.*

²³ Choudhry, S. (2008). Judicial Independence and Democratic Accountability: Defining the Terms of the Relationship. *Journal of International Constitutional Law*, 2(3), 281-304.

²⁴ Epstein, L., & Knight, J. (1998). *The Choices Justices Make*. Congressional Quarterly Press.

²⁵ Kritzer, H., & Pickerill, J. (2001). *The Politics of Judicial Independence in the United States*. Law & Society

Ethics and Code of Judicial Conduct, particularly responsibility. Responsibility means the willingness to do everything to the best of one's ability and duty and the courage to bear all consequences in exercising one's power and duty.

c. Surveillance,

Fear of surveillance can also affect a person's sense of justice. For example, when a judge is about to rule on a criminal case, the defendant's lawyer files all kinds of complaints aimed at pressuring the judge to rule on a criminal offense.²⁶ This line of thinking becomes a reason to convict the defendant, and at that point fear prevents him from being independent. Judges should treat all reports/complaints as a normal part of their judicial duties. As long as the judicial process is conducted in accordance with the law and the principles of the Code of Ethics and Code of Conduct for Judges are applied as much as possible. However, the Supervisory Authority of the Supreme Court and the Judicial Commission must also treat judges/complaints with respect for the independence of judges.

There are other factors that can affect the independence of judges in carrying out their duties in court, as follows:

- a) Political pressure is one of the main factors that can affect the independence of judges. Judges often face pressure from the government, political parties, or certain interest groups to decide cases in accordance with their interests. This political pressure can take the form of threats to a judge's position, promotion or even personal security, which can influence judicial decisions.
- b) Economic factors can also affect a judge's independence. Judges involved in cases involving parties with large economic interests, such as large corporations or wealthy individuals, may face the temptation to make decisions in their favor for financial gain or other rewards. This financial pressure can threaten a judge's integrity and independence.
- c) Social and cultural factors can also play a role in influencing the independence of judges. A culture of corruption or nepotism within the judicial system, as well as pressure from society or certain groups to make decisions in accordance with social or cultural norms, can affect the independence of judges in carrying out their duties. Judges may also face threats or intimidation from parties dissatisfied with judicial decisions, which can affect their independence.²⁷
- d) Internal, external factors such as pressure from the media or public opinion can also affect a judge's independence. Judges who are subject to pressure from the media or the public to make certain decisions may feel compelled to follow those opinions or expectations, even if they are contrary to the law or principles of justice. This can threaten the independence and autonomy of judges in carrying out their duties.

In the face of various factors affecting independence, it is important for judges to adhere to the moral and ethical principles of the profession. They must be able to maintain their independence in making judicial decisions, in the absence of inappropriate external influences.²⁸ Protecting the

Review, 35(3), 613-637.

²⁶ Dahl, R.A. (1957). Decision-making in a Democracy: The Supreme Court as a National Policy-maker. *Journal of Public Law*, 6(2), 279-295.

²⁷ Vanberg, G. (2005). *The Politics of Judicial Review: Courts, Policy, and Congressional Response*. Princeton University Press.

²⁸ Friedman, B. (2009). *The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution*. Farrar, Straus and Giroux.

independence of judges is also important to ensure that the judicial process is fair and transparent, and to maintain the integrity of the judicial system as a key institution in upholding law and justice.²⁹

CONCLUSIONS

The independence of judges is an important prerequisite for maintaining integrity, impartiality and trust in the judicial process in a country. The presence of independent judges ensures that judicial procedures are transparent, fair and in accordance with democratic principles and the rule of law. In maintaining integrity and trust in the judicial process, the objectives achieved by judicial independence are 1) maintaining Justice, 2) Preventing Abuse of Power, 3) Ensuring the Protection of Individual Human Rights, 4) Maintaining the Integrity, 5) Maintaining the Balance of Power, 6) Preventing Corruption and Nepotism, and 7) Maintaining Public Trust. The factors that can affect the independence of judges in carrying out their duties in court are political pressure, economic, social and cultural, and internal and external factors such as pressure from the media or public opinion can also affect a judge's independence.

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²⁹ Rogers, J.R. (2001). Information and Judicial Independence. *American Political Science Review*, 95(1), 191-206.

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