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RESEARCH ARTICLE

INDEPENDENCY AND IMPARTIALITY OF THE AD HOC JUDGES IN THE INDUSTRIAL RELATION COURT IN DECIDING INDUSTRIAL RELATION DISPUTES BASED ON THE VIRTUE OF THE DIGNIFIED JUSTICE.

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Abstract

This research has aimed at analysing and finding how the principle of independent judiciary and impartiality of the the *Ad Hoc* judges for the Indonesian Industrial Court to decide industrial disputes based on the virtue of Dignified Justice, identifying weaknesses and to do a reconstruction inventing an ideal principle of independency and impartiality of the *Ad Hoc* judges in deciding disputes based on the Dignified Justice. It has found that: the differentiation between concepts of career judges and the *Ad Hoc* judges in the Law Numb. 2 of 2004 on the Industrial Court which has not been followed by a clear and a definite stipulation of obligations for those judges to uphold their independency and duty to judge cases impartially has affected significantly on the principles, primarily due to the fact that the *Ad Hoc* judges in the Industrial Court, and to be included in the term the *Ad Hoc* judges at the Supreme Court has been appointed by the Head of the Supreme Court after recommendation given by the labour union and the employers organization. It is also worsened by the fact of which the Article 67 of the Industrial Court Act stipulating the labour union and the employers organization may request the Supreme Court to honorable terminate the *Ad Hoc* judges from their office. This is a clear indication of a factor which interfere with the virtue of independency and impartiality of the Ad Hoc judges.

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Introduction:-

Judiciary and impartiality of the the *Ad Hoc* judges for the Indonesian Industrial Court to decide industrial disputes based on the virtue of Dignified Justice, identifying weaknesses and to do a reconstruction inventing an ideal principle of independency and impartiality of the *Ad Hoc* judges in deciding disputes based on the Dignified Justice. Research method used would have been the empirical juridical method with the constructivism paradigm. Primary data, means legislations or the primary legal materials has been used in this research. The primary legal materials have been supported by the secondary one, i.e. an Indonesian judges decision and case laws for a comparative

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purposes. Several tertiary legal materials such as law literatures have also been utilised, and all of these legal materials have been analysed descriptively and qualitatively.

The research has found that: the differentiation between concepts of career judges and the *Ad Hoc* judges in the Law Numb. 2 of 2004 on the Industrial Court which has not been followed by a clear and a definite stipulation of obligations for those judges to uphold their independency and duty to judge cases impartially has affected significantly on the principles, primarily due to the fact that the *Ad Hoc* judges in the Industrial Court, and to be included in the term the *Ad Hoc* judges at the Supreme Court has been appointed by the Head of the Supreme Court after recommendation given by the labour union and the employers organization.

It is also worsened by the fact of which the Article 67 of the Industrial Court Act stipulating the labour union and the employers organization may request the Supreme Court to honorable terminate the *Ad Hoc* judges from their office. This is a clear indication of a factor that interfere with the virtue of independency and impartiality of the *Ad Hoc* judges.

A Case Study on the Supreme Court Decision:-

The weakness of the rules governing the independency and impartiality of the *Ad Hoc* judges as such not merely an assumption. It has been, however became a concern recorded on the Supreme Court Decision Number 786 K/Pdt.Sus-PHI/2016. Reconstruction on the rules in the Law of Judiciary Power and the Industrial Act is urgently needed to be undertaken by adding in their Explanatory Provisions that the Industrial Court's *Ad Hoc* judges are part in the Independent Judiciary Power institution.

The fact that those judges at the Industrial Court is appointed after the recommendation from labour union, which representing the employees and the employers organization, which representing the employers will not down degrading the principles of independent judiciary and the impartiality of the Industrial court *Ad Hoc* judges. Violation of the rules must be controlled by a severe and strict penal sanction.

Weakness of the principles of independence and impartiality of *Ad Hoc* judges for PHI in deciding industrial disputes which has been found by this study occurred in the judicial practice and also in Law No. 48 of 2009. Law of the Republic of Indonesia Number 48 of 2009 on Judicial Power promulgated in Jakarta on October 29, 2009 by the President of the Republic of Indonesia. According to the law, The Judicial Power Act was constructed due to various considerations.

First, according to the Act Basis of the Republic of Indonesia Year 1945 judicial power is an independent power. The power is conducted by a Supreme Court and the judiciary which is under the Supreme Court in the general judicial court environment, in the religious court environment, in the military environment court, and in the administrative court environment, and also by a Constitutional Court. It is the obligation for the judiciaries as mentioned to uphold law and justice.

It is seen in the consideration that the principle of independence judiciary and impartiality of judges are not clearly defined in it. The concept used is the concept of judicial power, not the concept of judge power. Among judges, *ad hoc* judge, and thus to include in it the concept of judicial power is having a vague and obscure meaning. Therefore one can argue that the weaknesses identified in the principle of independence and impartiality of judges have existed since the initial formulation of the Judicial Power Law.

Into consideration also is the fact that the free and clean judicial authority is a necessary requirement to structuring the integrated judicial system. However, the weakness, as noted above is that there is no clear formulation in the consideration of the Act on what is meant by the independent judicial power and judicial authority.

It is stipulated in Article 1 Number 1 of the Law on the Powers of the Judiciary that the Judicial Authority is the power of an independent state to administer the judiciary to uphold law and justice pursuant to the dignified justice perspective, contained in the Pancasila and the Constitution of the Republic of Indonesia Year 1945, for the implementation of the State of the Republic of Indonesia. There has been no specific description in the Act that the impartiality and independence (independence) judges. There is also no explanation on the concepts of independence and impartiality of the *Ad Hoc* for PHI, whether it the *Ad Hoc* Judges is also bear the obligation to uphold the principle of independent judicial power as stated above. This could also be the sign that there has been a

form of conceptual weakness, and may be referred to as a haziness in the formulation of the provisions of the applicable laws in the legal system of Pancasila, also with regard to the principle of independence and impartiality of *Ad Hoc* judges at PHI.

Indeed, it must be admitted that in Article 3 (1) of the Judicial Power Law has been formulated that in carrying out its duties and functions, judges and constitutional judges are required to maintain the independence of the judiciary. In the Elucidation of Article 3 paragraph (1) it is argued that the meaning of "judicial independence" is free from outside interference and free from any form of pressure, whether physical or psychic. Only, it can be seen clearly in the formulation of the provisions referred to, that there is the use of concepts that are not consistent and unclear, so that contains vagueness. It is not clear about whether what is meant by the concept of judicial authority mentioned in the early part of the Law on Judicial Power is the same as the concept of the independence of judges, including of the *Ad Hoc* judges at PHI in the explanation in question, and whether the concepts are the same also with the concept of self-reliance and impartiality of judges, especially the *Ad Hoc* judges at PHI used in this study. This is the potential weakness in the Judiciary Law and a form of defective.

Furthermore, in Article 3 paragraph (2) of the Judicial Power Law, it is also formulated that any interference in the judicial affairs by other parties outside the judicial authority is prohibited except in matters referred to in the 1945 Constitution of the Republic of Indonesia. The organizing of the principle later confirmed again with the formula in paragraph (3) of the Act, that any person who knowingly violates the provisions referred to in paragraph (2) shall be punished in accordance with the provisions of the legislation. In addition to the possible formulation of the provisions of the Indonesian Criminal Code, which seem to be imposed (criminalization), there is no clear provision of which legislation concerning it, namely the explanation and exact details of the matter which is the elaboration of the formulation of Article 3 paragraph (3), as well as a clear and definite formula for the type of legal sanction for its violation.

In General Explanation of the Law of the Judicial Power, it is proposed that the Constitution of the Republic of Indonesia Year 1945 confirms that Indonesia is a state of law. In line with these conditions then one of the important principles of a state law is the existence of collateral the establishment of an independent judiciary, free from influence other powers to administer justice to uphold law and justice. Article 24 paragraph (1) of the Constitution of the State Republic of Indonesia Year 1945 asserted that judicial power is an independent power to administer the judiciary to enforce law and justice.

Further explained also in the Explanation of Judicial Power Law is that Amendment of the 1945 Constitution of the State of the Republic of Indonesia has brought a change in state affairs, especially in the implementation of judicial power. Such changes include stresses that judicial power is implemented by a Supreme Court and judicial bodies underneath it in the public courts, religious courts, military courts, administrative courts, and by a Constitutional Court.

The Supreme Court has the authority to hear at appeal, review legislation under the law against laws, and have other powers granted by Constitution. The Constitutional Court has the authority to test the law against the 1945 Constitution of the State of the Republic of Indonesia and decide upon the dispute over the authority of the state institution granted by the Constitution of the Republic of Indonesia Year 1945.

It is clearly seen that the explanation is lengthy, as noted above, does not contain within it a formulation of the provision is for sure that there is a similarity of meaning between the concepts of judicial power, judicial power, and the power of judges, the same also with the power of an *ad hoc* judge, more specifically the power of *ad hoc* judges at PHI as stipulated in Law Dispute Resolution. In this dissertation research terminology, in reconstruction, this can be seen as a weakness, which must be addressed, and which is highlighted in this Research.

The Formulation of Explanation of Judicial Power Law also contains some of the following rights. Basically Act No. 4 of 2004 on Judicial Power in accordance with changes in the Constitution of the State Republic of Indonesia Year 1945 above, but substance of the Act has not been regulated comprehensively about the implementation of judicial power, which is an independent power which is carried out by a Supreme Court and a judicial body situated under it in the general court environment, the judicial environment religion, military court environment, administrative court environment state, and by a Constitutional Court, to organize justice to enforce law and justice.

In addition to the comprehensive arrangement, this Act is also fulfilling the decision of the Constitutional Court Number 005/PUU/2006, which one of his dicta has canceled Article 34 of Law Number 4 Year 2004 about Judicial Power. Decision of the Constitutional Court has also canceled the terms related to supervision of judges in Law Number 22 Year 2004 regarding Judicial Commission.

In addition to the various explanations above, it is also explained that in an effort to strengthen the implementation of judicial power and the realization of the judicial system integrated (*integrated justice system*), then the Law Number 4 Year 2004 on Judicial Power as the basis for the implementation of the judicial power needs to be replaced. Important points in this Act are as follows: a. To reformulate the systematic Law Number 4 Year 2004 of the Judicial Authority relating to the regulatory arrangement comprehensive in this Act, for example the existence of chapters alone on the principle of the administration of judicial power. b. General arrangements concerning the supervision of judges and constitutional judges in accordance with the laws and regulations of the Code and Code of Conduct of Judges. c. General arrangements concerning the appointment and dismissal of judges and constitutional judges. d. Arrangements regarding the special tribunal which has the authority to examine, hear and decide a particular case which can only be established in one of the neighborhoods of the judiciary under the Supreme Court. e. Judge *ad hoc* arrangements regarding the temporary and have the expertise and experience in a particular field for examine, hear, and decide a case. General arrangements on arbitration and settlement of alternatives disputes outside the court. e. General arrangements for legal aid for justice seekers who could not afford and arrangements regarding the legal aid. f. General arrangements on security and welfare that guarantees judges and constitutional judges.

Researching what is stated in the explanation, as noted above, especially the setting of the *ad hoc* judges are temporary and have expertise and experience in a particular field to examine, hear and decide a case, in which it was not encountered any formulation of words affirms that the Ad Hoc judge of the IRC is also part of the judicial power which has independence and is obliged to act in the same impartiality with a career judge, which by the Judicial Power Law is separately regulated, the two concepts (career judges and Ad Hoc judges).

Indeed, specifically regarding the principle of impartiality, it can be found in Article 4 paragraph (1) of the Judicial Power Law. Stipulated there, that the Court judge according to the law with no respecter of persons. The issue was whether the concept of the Court referred to in Article 4 paragraph (1) of the Judicial Power Act, includes also the concept of judges, and more particularly *the Ad Hoc* IRC judges, who became *vocal concern* of this study. The answer to this is vague, could not be found explicitly in the formulation of the provisions of the Judicial Power Law in intent. As noted in the previous chapter (Chapter III) This study, in search of the Law Dispute Resolution, found the formulation of provisions that can be interpreted that:

The distinction between career judges and *ad hoc* judges in the new Bill Law has a very significant effect, particularly examined from the perspective of the principle of independence or freedom (independence) judicial authority at issue in this study. Presented in Dispute Resolution Act that the judge is *the Ad-Hoc Ad-Hoc* Judge in the Industrial Relations Court and *Ad-Hoc* Judge at the Supreme Court whose appointment at the proposal of trade unions/labor unions and employers' organizations. The assertion that Judge Ad-Hoc *Ad-Hoc* Judge in the Industrial Relations Court and Ad-Hoc Judge at the Supreme Court are appointed based on the proposal of trade unions/labor unions and employers' organizations were also significant in the analysis to understand the principles of independence and impartiality of judges *ad hoc* judge career and *ad hoc* judges outside of the IRC.

A problem and thus can be seen as a form of weakness, namely that the Judicial Power, as in part of the formulation of the provisions stated above does not at all make an affirmation that even if the judge *ad hoc* PHI appointed by the Supreme Court upon the proposal of the union/trade unions and employers' organizations, but the juridical principle of judges *ad hoc* PHI was also subject to the same principles as stated above, among others, that they are to receive, examine and decide an industrial dispute in the Industrial relations Court is obliged to uphold the principle of independence and impartiality which became the center of this research study; such as according to Article 4 paragraph (1) of the Judicial Power Law, that the Court (including the Ad Hoc judges PHI?), judges by law by not discriminating against persons.

Similarly, the obligation to carry out the judicial authority (if the judicial authority is the same meaning well as Ad Hoc judge power PHI), as referred to in Article 3 (2) of the Law of Judicial Power in the state stipulates that all interventions in the affairs of the judiciary (affairs of Ad Hoc judges PHI?) by outside parties (unions/labor unions and employers' organizations?) judicial power is prohibited, except in matters referred to in the 1945 Constitution of

the Republic of Indonesia provided under the PPHI Law that the IRC Ad Hoc judge is "bound" to the interests of those who propose it?).

Furthermore, are the Ad Hoc judges of the IRC also protected by the affirmation of the formula in paragraph 3 of Article 3 of the Judicial Power Law, that every person (including trade unions and employers' organizations proposing the appointment of Ad Hoc judges of the IRC) by deliberately violating the provisions as referred to in paragraph (2) shall be subject to suit with the provisions of legislation. It is not clear where the threat of punishment from those people is if there is a violation they committed; because in addition may be used formulation of provisions in the Criminal Code of Indonesia, which is somewhat forced (criminalization), may not find the provisions of the laws and regulations which are set firmly on it, which is an explanation and details that will surely regard as an elaboration of the provisions of Article 3 paragraph (3), as well as clear and definite formulation of the type of legal sanction for its violation.

Regarding the issue of whether a judge *ad hoc* PHI that whether he is part of the concept of judges and include in nature of judicial power as stipulated in the Law on Judicial Power, indeed, implied or implicit that can be understood by reading the formulation of the provisions in Article 1 of the Law of Judicial Power as follows .

The judge is the judge of the Supreme Court and the judge to the lower courts the general judicial environment, the judicial environment religion, military court environment, environment state administrative courts, and judges to the courts specifically within the jurisdiction. Furthermore, the Chief Justice is a judge on the Supreme Court. Constitutional Justices are judges to the Court Constitution. The Special Court is a court that has authority to examine, hear and decide certain matters that can only be formed in wrong environment of the lower courts Supreme Court as regulated by law. *Ad hoc* judges are judges that are temporary have expertise and experience in a particular field to examine, hear, and decide upon case whose appointment is set in law - law.

Only drawback is visible, ie when the formulation of the provisions of the Judicial Power above have been held "cleavage" (one judge in Article 1 (5) and one judge again, the judges of the *Ad Hoc* given meaning of Article 1 (9) , then the concept of judges and the concept of a judge *ad hoc* in the judicial power of the impression that there is a difference. Being the issue is as though the judicial power of the judiciary, to understand the position of a judge *ad hoc*, including judges *ad hoc* PHI appointment carried the Supreme Court as a judicial authority, but the proposed judges *Ad Hoc* it, including judges *ad hoc* PHI come from interested parties, and that their interests should be protected when the parties are in the Industrial Relations Court and quarreling or litigants. the question is whether they were intended Judicial Power Justice is the judge "excluded", and thus can be interpreted in order to be *dependent* dan *as impartial* in accordance with the provisions of Article 3 paragraph (2) that any interference in judicial affairs by other parties outside of the judicial authority is prohibited, except in cases referred to in the Constitution of the Republic of Indonesia Year 1945.

Conclusion:-

The principle of independence and impartiality of *Ad Hoc* judges in the Industrial Relations Court of Justice to decide disputes according to value Dignified known in the Legal System of Pancasila. The two principles can be found in Act No. 2 of 2004 on the Settlement of Disputes Industrial (UUPPHI). There are a number of shortcomings in the regulation governing the principle of independency and impartiality of the *Ad Hoc* judges at PHI in deciding equitable industrial relations disputes. Especially the fact that although the principle of independence and impartiality of judges is known in the UUPPHI, the recognition is only implied or the existence of legal obscurity. It is said there is fuzziness law considering legislation that (UUPPHI) do not provide specific recognition that these two principles are the principles that must be adhered to by both the judge's career as well as by every judge *ad hoc* PHI in check, judging and resolve industrial relations disputes accompanied by criminal sanctions firmly in case of violation by a judge *ad hoc* of the provision in question.

Reconstruction resulted in the finding that weaknesses in the regulation of the principles of independence and impartiality of judges *ad hoc* PHI still vague, because it is implicit that seen in the formulation of Article 67 paragraph (2) of Law No.2 of 2002 on the settlement of dispute: The term of the *Ad-Hoc* judge for a period of five (5) years and may be reappointed for one more term. In order to achieve an ideal system of regulation regarding the principles of Independence and impartiality of judges in deciding the *Ad Hoc* PHI based on the value of industrial disputes Dignity Justice referred the formulation of Article blur can be added with an explanation of Article that:

"The task of the *Ad Hoc* judge is for a period of five years and could be reappointed every five years proposed by the Chief Justice with the prior approval of the proposing institution that the process in accordance with applicable law. Such provisions should not diminish the freedom and impartiality of judges *Ad Hoc* in receiving, examining and deciding cases".

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