

CHAPTER ONE

INTRODUCTION

A. Background

The bribery case which involved the judges of the District Courts created a "distrust" of the public against the courts. Toton, a judge at the Bengkulu district court was arrested by the Corruption Eradication Commission from an accusation for accepting a bribe in the case of abuse of honorarium as supervisor and commission of RSUD M. Yunus Bengkulu. The case has given a bad impact on the Court itself which made public lose trust on the court, and particularly on the integrity of judges in Indonesia.¹

The important things to improve the future of legal development including law enforcement in Indonesia, is how to exercise judicial power in accordance with the objectives of the 1945 Constitution and Law No. 48 of 2009 on the rulers of the judiciary. The realization of law enforcement in the field of free and independent judiciary is one of the goals to be achieved within the framework of the rule of law and democracy.

The 1945 Constitution and Law No. 4 of 2004 which has been amended by Law No. 48 of 2009 on Judicial power, has provided a basis for the judicial power to uphold justice, but the legal facts generally indicate a lack of confidence in society² on judicial power as one of the main factors the judge's verdict has not reflected the value of justice coveted by the seeker of justice.³

¹ Tama S. Lankun, <https://antikorupsi.org/sites/default/files/LAGI%20HAKIM%20TERTANGKAP%20KPK.pdf> Accessed on 15 December 2017 At 3:35

² Fence M. Wantu, 2011, *Peranan Hakim dalam Mewujudkan Kepastian Hukum, Keadilan, dan Kemanfaatan di Peradilan Perdata*, disertasi, Program Doktor Fakultas Hukum, Universitas Gadjah Mada, Yogyakarta.

³ Taufik Sri Soemantri, 2014, *Konsep Pengawasan Kehakiman*, Malang, Setara Press, p. 1.

Regarding judicial reform in Indonesia, the judicial review and advocacy institution of the judiciary in 1999 confirmed that what shall be reformed by judicial power are as follows: First, establishing judicial power as an independent institution; Second, restore the essential function of the judicial power to bring about justice and legal certainty; Third, perform check and balance principles; Fourth, encourage and facilitate and uphold the principles of a democratic constitutional state in order to realize the sovereignty of the people; Fifth, protect human dignity in the most concrete form.⁴

The great challenges that continue to overshadow the development of judicial power in Indonesia is the effort to place the appropriate role of judges in realizing the certainty of law, justice, usefulness, and placing the position of interaction with the people and the state. Judge as one of the law enforcement officers has the task to determine a case from the dispute parties. In order to resolve any problems or conflicts faced by the parties, in the decision-making process, the judge must be independent and free of influence from any parties. The judge in taking the decision is only tied to the relevant events or facts and the legal principles which become juridical basis in making decision.

However, realizing the judge's decision based on legal certainty, justice and benefit is not easy, let alone the demands of justice, because is not easy to find a benchmark in the concept of justice in the judge's decision. Where it is fair for one party, it is not necessarily felt the same by the other party. It is based on the nature of justice itself. The statement is in accordance with the opinion of Sudikno

⁴ *Ibid*, p. 206.

Mertokusumo stating that "The essence of justice is a judgment of someone to others, who are generally seen from the parties' interest".⁵

The Judge is in the position that has a responsibility to receive, process and decide cases until no further problems arise. If the law is unclear, incomplete, or even absent then the judge must seek the law or make a legal finding (*rechtsvinding*).⁶ The role of the judge is in line with the principle that the Republic of Indonesia is a state based on law and the consequence according to the 1945 Constitution is that there should be an independent judicial power and free from any influences of government power.

The judge is a profession known as representative of God to conduct justice and law enforcement. In accordance with the 1945 Constitution, the authority of the judiciary is mentioned in article 24 Paragraph 1 and article 24 A Paragraph 2 which states:⁷

Article 24 Paragraph (1):

"The judicial powers shall be independent with the authority to organize the judicature in order to uphold law and justice.

Article 24a Paragraph (2):

"Each supreme justice must have integrity and a personality beyond reproach, just be professional and experienced in matters relating to law.

Furthermore, a Judge is placed on a position which is very much filled with worldly temptations. Imagine, in the hands of judge the future of a person will be determined. A person who is wealthy and famous can suddenly fall and lose his

⁵ Sudikno Mertokusumo, 2007, *Mengenal Hukum*, Yogyakarta: Pustaka Pelajar, p. 77.

⁶ Sudikno Mertokusumo, 1993, *Bab- Bab tentang Penemuan Hukum*, Bandung, Pustaka Pelajar, p. 32.

⁷ Indonesian 1945 Constitution, Article 24 Paragraph (1) and Article 24A Paragraph (2).

dignity as a human being due to the decision of judge. Therefore it has become a common view that if the person is dealing with the court, they will do anything to justify everything as long as the judge's decision support their concern.

With regard to the position of the judge, the Prophet Muhammad *shallallahu 'alaihi wasallam* once said,⁸ "two thirds of the part of judges will go to hell". The message seems to be tough, and it is difficult for judges to avoid the threat. Why did the Prophet Muhammad SAW say so? Because the temptation the judge will face in breaking a case is enormous. Even though the temptations for a judge are great, the judge is not a meaningless position, he is the noble figure as mentioned above. Why is that? A judge's ruling which is done honestly using the earnest mind, will produce true value, so that a principle appears: "justice can't do wrong".

Seeing the dilemma, on the case of some of the judges, the author think that the requirement system for candidate of judges need to be evaluated. A good judge is not born but it is built by a long process. It means that a good judge is a judge who has the professionalism, integrity and quality. They are not born but they are built by a long process⁹ through the requirement system and therefore the recruitment system of judges is important to be evaluated. Accordingly, this research will evaluate the recruitment system of judges in Indonesia.

B. Research Problems

1. How is the judge recruitment system in Indonesia?
2. What is a better model of recruitment judges system which may ensure the integrity of judges?

⁸ Taufiqurrohman Syahuri, 2010, *Problematika Tugas Konstitusional Komisi Yudisial Republik Indonesia*, Jakarta: Universitas Sahid, p. 1.

⁹ Mira Fajria, 2015, Refraksi dan Alinasi Pengangkatan Hakim Konstitusi, *Jurnal konstitusi*, vol 12, No. 2, 2015, Mahkamah Konstitusi Republik Indonesia, p. 256.

C. Objectives of Research

The objectives of the research are:

1. To understand the judges recruitment system in Indonesia.
2. To evaluate a better model of judges recruitment system which may ensure the integrity of judges.

D. Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Benefit

This research will provide the understanding on the judicial system in Indonesia, particularly on the requirements and recruitments mechanism of the judicial system in Indonesia. This research will open the view on the importance of the selection of candidates in the judicial system in Indonesia.

2. Practical Benefit

This research will propose some recommendation to the relevant state organs related to the process and requirements in the recruitment of candidates in the judicial system in Indonesia.