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Judicial Reform Under Democratic Consolidation in Indonesia*

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Abstract
Constitutional Reform after fall of Soeharto's New Order bring favorable direction for judiciary. Constitutional guarantee of judicial independence as regulated in Art 24 (1) of the 1945 Constitution, closing dark memories in the past. In addition, in Art 24 (2) of the 1945 Constitution decide the Judiciary is held by the Supreme Court and the judicial bodies below and a Constitutional Court. Such a strict direction of regulation plus the transformation of the political system in a democratic direction should bring about the implementation of the independent and autonomous judiciary. But in reality, even though in a democratic political system and constitutional arrangement affirms the guarantee of independence, but it doesn't represent the actual situation. There some problem which still remains, such as (i) the absence of a permanent format regarding the institutional relationship between the Supreme Court, the Constitutional Court and Judicial Commission, and (ii) still many efforts to weaken judiciary through many ways such criminalization of judge. Referring to the problem above, then there are gaps between what "is" and what "ought", among others, *First,* by changes political configuration that tend to be more democratic, and the judiciary should be more autonomous. *Second*, by the constitutional guarantee of the independence of the judiciary, there will be no legislation which reduced constitutional guarantee. This paper reviews and describes in-depth about how to implement constitutional guarantees of judicial independence under democratic consolidation after fall of new order and conceptualize its order to strengthening rule of law in Indonesia

Keyword: Judicial Reform, Judicial Independence, Judicial Accountability, Democratic Consolidation

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Reformasi Peradilan
Di Bawah Konsolidasi Demokrasi di Indonesia

Abstrak

Perubahan UUD 1945 membawa arah yang menguntungkan bagi cabang kekuasaan kehakiman di Indonesia. Penjaminan kemerdekaan kekuasaan kehakiman sebagaimana diatur dalam Pasal 24 (1) UUD 1945 seperti menutup ingatan kelam di masa lalu. Selain itu, dalam Pasal 24 (2) UUD 1945 yang menentukan kekuasaan kehakiman dipegang oleh Mahkamah Agung dan badan-badan peradilan di bawahnya dan Mahkamah Konstitusi. Dengan dasar ini, tidak ada landasan hukum sedikit pun bagi Presiden atau DPR untuk mengintervensi cabang kekuasaan kehakiman. Tetapi dalam kenyataannya, meskipun dalam sistem politik yang demokratis dan pengaturan konstitusional menegaskan jaminan kemerdekaan namun kenyataannya tidak mewakili situasi aktual. Terdapat beberapa masalah yang masih tersisa, seperti (i) tidak adanya format permanen mengenai hubungan kelembagaan antara Mahkamah Agung, Mahkamah Konstitusi dan Komisi Yudisial, (ii) masih banyak upaya untuk melemahkan peradilan melalui banyak cara kriminalisasi hakim. Mengacu pada masalah di atas, maka ada kesenjangan antara apa yang senyatanya dan apa yang seharusnya antara lain, *Pertama*, perubahan konfigurasi politik yang cenderung lebih demokratis, dan kekuasaan kehakiman harus lebih otonom. *Kedua*, dengan jaminan kemerdekaan kekuasaan kehakiman, seharusnya tidak akan ada undang-undang yang mengurangi jaminan kemerdekaan kekuasaan kehakiman. Makalah ini bermaksud menguraikan secara mendalam tentang bagaimana menerapkan jaminan konstitusional atas kemerdekaan kekuasaan kehakiman dalam masa konsolidasi demokrasi pasca jatuhnya orde baru dan mengkonseptualisasikan agenda reformasi peradilan untuk memperkuat supremasi hukum di Indonesia

Keyword: Reformasi peradilan, kekuasaan kehakiman, Akuntabilitas Peradilan

Определение независимости судебной власти и ответственности после политического преобразования в Индонезии

Аннотация

Конституционная реформа после падения Нового Порядка (New Order) Сухарто дала благоприятное направление для судебной власти. Конституционная гарантия на независимость судебной власти, регулируемая статьей 24 (1) Конституции 1945 года, позволяет оставить мрачные воспоминания в прошлом. Кроме того, в статье 24 (2) Конституции 1945 года определено, что судебная власть находится в ведении Верховного Суда, нижестоящих судебных органов и Конституционного Суда. Такие строгие нормативные директивы в сочетании с трансформацией политической системы в демократическом направлении должны привести к созданию независимой и автономной судебной власти. Но на самом деле, хотя в демократической политической системе и конституционных механизмах закрепляется гарантия независимости, она не отражает реальную ситуацию. Ссылаясь на вышеупомянутую проблему, существует разрыв между тем, что «есть» и что «должно быть», среди прочего: во-первых, изменяя политические конфигурации, которые имеют тенденцию быть более демократичными, судебная власть должна быть более автономной. Во-вторых, с конституционной гарантией на независимость судебной власти не будет закона, который ограничивал бы конституционные гарантии. В этой статье рассматривается и подробно объясняется, как реализовать конституционные гарантии независимости судебной власти после политического преобразования и концептуализировать его порядок для укрепления верховенства закона в Индонезии.

Ключевые Слова: независимость судебной власти, судебная ответственность, судебная реформа

Introduction

After the fall of the New Order, the 1945 Constitution secure constitutional guarantee of judicial independence. Judicial Independence was fully emphasized in Art 24 (1) of the 1945 Constitution, which was previously never been as clear as after amendments on media 1999-2002. However, even though on constitutional stage has guaranteed independence of judiciary, but many legislation and regulations relating to judiciary still remains contains several problems such as (i) some legislation not synchronized especially on institutional relation between Supreme Court, Constitutional Court and Judicial Commission, and (ii) some legislation and regulation tried to weakening constitutional guarantee on independence of judiciary which was formulated on the 1945 Constitution

The presence of court reform law package such as Judiciary Act on 2004, Law Supreme Court Act on 2004, Constitutional Court Act on 2003, and Judicial Commission Act on 2004 which was compiled under democratic and participatory political structured (Isra, 2014: 66-69), but it still often received pressure and resistance especially through a judicial review on those activities (Hoesseien, 2010: 39-41). Therefore, another court reform law package such as Supreme Court Act on 2009, Judiciary Act on 2009 and Judicial Commission Act on 2011 and Constitutional Court Act on 2011 are existed to rearrange the relationship between the judiciary and judicial commission after Constitutional Cort Decision No. 005/PUU-IV/2006 (Handoko, 2015: 39-41). However, on the other hand, another court reform law package such as Constitutional Court Act on 2011, Juvenile Justice System Act on 2012, and the Supreme Court Bill in 2011 brought legal policy which has a direction to restrain their independence especially in decisional powers. Through Constitutional Court Act on 2011, Juvenile Justice System Act on 2012, and the Supreme Court Bill in 2011, judge prohibits a made court decision which exceeds the limit (*ultra petita*). If the court makes a decision that can cause chaos situation, then the judge can be punished by through criminal sanction. Art 97 third version of Supreme Court Bill of 2011: "The Supreme Court in the cassation level is prohibited: a. Making a decision that violates the law; b. Making a decision that causes confusion and damage and results riots; c. Prohibited from making decisions it is impossible to implement because it is contrary to reality in the midst of society, customs, and habits that are hereditary so that it will lead to disputes and commotion, prohibited from changing the joint decision of the Chief Justice of the Supreme Court and Chairperson of the Judicial Commission, and/or Joint Decree on The Code of Ethics and Judicial Guidelines unilaterally and Art 57 (2a) of Constitutional Court Act of 2011: The Constitutional Court Decision does not

contain: a). Conclusion other than as referred to in paragraph (1) and paragraph (2); b) judicial order to legislator, and c) creating of norms as a substitute for the norms of laws that are declared contrary to the 1945 Constitution. In addition, criminalization of judges strictly appears in Juvenile Justice System Act on 2012, by provided 2 (two) years imprisonment or a maximum of Rp200,000,000.00 (two hundred million rupiahs) as a criminal sanction if a judge does not use diversion (Bakhti, 2014: 88-90).

Referring some legal problems as described, there are gaps between what "is" and what "ought to", among others, *First*, by changes political configuration that tend to be more democratic, the judiciary should be more autonomous (Harman, 1998: 40). But in reality, various problems arise such as (i) disharmony in regulating the pattern of relations between judicial power actors, (ii) various attempts to criminalize judges over their decisions, (iii) judicial corruption. *Second*, by the constitutional guarantee of the independence of the judiciary, there will be no legislation which reduced constitutional guarantee. But in reality, many legislation or regulations that still not in line with a constitutional guarantee concerning judicial independence. This paper has the intent to reviews and describes in-depth about how to implement constitutional guarantees of judicial independence and conceptualize ideas to strengthening rule of law in Indonesia

Institutional and Personal Guarantees on Judicial Independence

After being appointed as Chief Justice in 1996, Sarwata said that the first thing he intends to do was to conduct internal consolidation (Assegaf, 2007: 11-12). Sarwata keeping his promises together with his successors to maintains consolidate even though invisible (Assegaf, 2007: 22). Judicial reform itself declared since the amendment to the 1945 Constitution and when Bagir Manan appointed as Chief Justice in 2001 (Pompe, 2005: 4-5). By broad support, especially from newly appointed non-career judges, reformist judges and officials, civil society groups and donor agencies, slowly but surely the first judicial reform agenda has proceeded as it should. (Erlyana, 2007: 87-88)

The first stage of judicial reform agenda to defining constitutional guarantee of judicial independence is a one-roof system policy. The adoption of a one-stop system has a historical connection with the Asociation of Indonesia's Judges (*Ikatan Hakim Indonesia* or IKAHI) memorandum on "Improvement of Judiciary Position Accordance to the 1945 Constitution" which explained in IKAHI's National Conference at Ujung Pandang in October 23rd, 1996. in 1997,

Ali Budiarto Secretary-General IKAHI proposed that the Judiciary Act of 1970 be reviewed. The proposal was submitted because some Arts in Judiciary Act of 1970 were replicas of the Judiciary Act of 1964, which provide legality for executive (president or government) intervention on behalf of *revolution* (Erlyana, 2007: 38). After fall of New Order, this effort finally materialized in Judiciary Act on 1999 which amended Judiciary Act on 1970 by provided Art 11 which turn judicial administration from two roof system into one roof system. In addition, Judiciary Act on 1999 also regulating the transfer of organizational, administrative and financial affairs of judges from the Ministry of Justice into the Supreme Court, and also regulates General Courts jurisdiction to deal cases which involving members of the Army, unless otherwise determined by the Supreme Court. However, at that day, one roof system has not been implemented properly, because the organizational, administrative and financial affairs of Religious Courts and Military Courts Judges are still under the Ministry of Religion and the Ministry of Defense. The transfer of this one roof system completed in 2004 through Judiciary Act 2004 which completely eliminates Judiciary Act on 1970 and Judiciary Act on 1999.

After one roof system stage, the next stage is establishment of special courts. For Rikardo Simarmata, there are two main factors that underlie formation special courts. *First*, the need to create a debt settlement mechanism and business certainty for investors in order to implement Letter of Intent (LoI) agreement between the government and the International Monetary Fund (IMF). The LoI requires structural adjustments including in the judicial sector. According to Tim Lindsey, the commercial court is one of the courts made by this framework (Lindsey, 2005: 21). Beside establishing commercial court, the LoI requires another adjustment through minimizing the role of the state (neo-liberal), which results establishing labor court as a substitute for the Tripartite. previously, the settlement of disputes between employers and workers was handled by third parties as government side, meanwhile in labor court, employers and workers were confronted directly without presence of a government (Wiratraman, 2007: 41). The second factor is the need to overcome the gap between the judicial reform agenda and external demands (public pressure and markets) (Simarmata, 2013: 145-146). As mentioned earlier, judicial reform process has slow movement until before 2004. This condition is connected with failure of legislation reform which did not necessarily exclude corrupt behavior or increase professionalism of judges. This situation increase mistrust to judiciary and forming special courts as a way out (Mochtar, 2012: 149). Bagir Manan has a view that the presence of special court was to guarantee the quality and accuracy of court decisions (Manan, 2005: 3). For

Adriaan Bedner, special court was intended to improve the performance of judicial services which had a deteriorating image (Bedner, 208: 230). Therefore, it can be concluded that the establishment special courts is a reflection institutional independence of judiciary.

After reformation, the idea to established special court was developed, especially for fulfilling demands judicial reform. At the end of New Order, a special court was formed, namely the Juvenile Court based on Child Protection Act on 1997. In addition, the decentralization of government and diversification of function of the and liberalization and democratization in all areas of life, therefore, special court are increasingly being established by the Government. Commercial Court is established in 1998, by Emergency Act on 1998 which was later passed into Commercial Court Act on 1998. Subsequently, in 2000 and 2002, followed by the establishment of the Human Rights Court (Human Rights Court Act of 2000), and the Corruption Court (Corruption Eradication Commission Act of 2002). In addition, the establishment Labor Court (Labor Court Act of 2004) and Fisheries Court (Fisheries Act of 2004), and so on. In the end, until mid-2005, more than 12 types of special courts had been established, amomg other: (1) Juvenile Court (Juvenile Court Act of 1997 juncto Juvenile Court System Act of 2011); (2) Commercial Court (Bankruptcy Act of 2004); (3) Human Rights Court (Human Rights Court Act of 2000); (4) Corruption Court (Corruption Eradication Commission of 2002); (5) Labor Court (Labor Court Act of 2004) (6) Fisheries Court (Fisheries Act of 2004); (7) Tax Court (Tax Court Act of 2002); (8) Shipping Court; (9) Syar'iyah Court in Aceh (Presidential Decree No 11 of 2003 concerning Syariah Court and Syariah Court for Province of Aceh); (10) Customary Courts in Papua (Papua Special Autonomy Act of 2001); (11) the Traffic Court (Indonesian Republic Police Act of 2002) and recently, (12) regional head election court (Regional Head Election Act of 2016). In fact, according to Jimly Asshiddiqie, there was always new ideas to form another special courts which are generally intended to make law enforcement more effective in certain fields, such as forestry court, and so on (Asshiddiqie, 2013: 5-6). Not only special court which explicitly and officially referred as a court, Jimly Asshiddiqie also notes that many growing and developing institutions which, although not explicitly referred to as courts, have the authority and work mechanism like ‘a court’. The institutions which are 'judicial' but not referred to as courts, or known theoriticaly as quasi-court or semi-court. Some of them are in the form of state commissions, but some other use the term body or even authority. These institutions, besides being judicial, but often mixed functions with regulatory functions and/or administrative functions. Some examples include: (1) Anti Monopoly Supervisory Commission (*Komisi*

Pengawasan Persaingan Usaha or KPPU); (2) Broadcasting Commission (*Komisi Penyiaran Indonesia* or KPI); (3) Central Information Commission (*Komisi Informasi Pusat* or KIP) and Regional Information Commission (*Komisi Informasi Daerah* or KID); (4) Election Supervisory Agency (*Badan Pengawas Pemilu* or Bawaslu); (5) Ombudsman (*Ombudsman Republik Indonesia* or ORI); (6) Financial Service Authority (*Otoritas Jasa Keuangan* or OJK).

In the third stage, judicial reform agenda were institutionalizing the judicial review into the judiciary. The establishment of Constitutional Court is a purpose to realize constitutional review (Asshiddiqie, 2006: 2-3). The other hand, Supreme court has authority to legality review. In case of exercise Constitutional Court authority on constitutional review during the transition period, the Supreme Court has issued Supreme Court Regulation No. 2 on 2002 concerning Procedures for Organizing Constitutional Court and the Supreme Court Authority. After then, Supreme Court Regulation No 1 of 2011 which states that to submit aplication for judicial review is carried out by (1) directly to the Supreme Court and (2) through the District Court in charge of applicant's domicile. Based on this provision, character judicial review at the Supreme Court concerns public law issues. so judicial review was handled by Chamber of Administration case. This was similar to administrative court process in other countries which have authority to review general binding rules including general policy regulations as long as they cause legal consequences, but do not include in judicial review (Lotulung, 2010: 1-2). After the Amendment the 1945 Constitution and provide Constitutional Court Act on 2003, the Constitutional Court began to operationalize the authority of constitutional review.

In the fourth stage, judicial reform has focus on minimizing political intervention on appointment and dismissal process of judges. Art 24A (2) of the 1945 Constitution has determined Supreme Court Judges must have integrity and has good and fair personality, profesionality and experienced at law. Meanwhile, Art 24C (5) of the 1945 Constitution has determined Constitutional Court Judges must have integrity and has good and fair personality, statesmen who expert at constitutions, and not concurrently state officials. It is not known exactly why the conditions are made differently, eventhough still there are similarities between them. Chief Justice is required to be experienced at law, while Constitutional Justices must expert at constitution. In addition to the terms and condition to be Chief Justice, constitutional justices and judges under the Supreme Court, after the amendment to the 1945 Constitution, *ad hoc* judges were introduced. Eventhough among the six special courts act that regulate *ad hoc* judges, none of them provides a clear enough understanding of what is meant by the *ad hoc* judge. General norms concerning all condition of Supreme

Court Judges which stipulated at The1945 Constitution are further elaborated in Supreme Court Act on 1985 as amended by Supreme Court Act on 2004 and Supreme Court Act on 2009. On the other hand, Terms and condition of the Constitutional Court Judges are stipulated in Constitutional Court Act on 2003 as amended by Constitutional Court Act on 2011 *jo* Constitutional Court Act on 2014. However, in 2014, Constitutional Court Act on 2014 was canceled by the Constitutional Court through Decision No. 1-2/PUU-XII/2014. Regarding terms and condition of the Supreme Court Judges, Supreme Court on 1985 distinguishes divide the path by separated between career judges and non-career judges. Non-career candidates must have at least 15 years of experienced at law. Later on, experienced condition refined and increased through Supreme Court Act on 2004. Some changes occur through Supreme Court Act on 2009 which reduced experience conditions and add another condition. Acording Supreme Court Act on 2004 where previously for non-career paths must have experienced at least 25 years, now revised to 20 years. Meanwhile, career candidates must have experienced 20 years and have ever at least 3 years have been high judges. Another education level condition for non-career candidates must have master and doctoral degrees, while career candidates are masters, and both of these pathways require a Bachelor at Law degree. It cannot be known with certainty why the conditions for having a master's degree are applied to candidates from career paths. Based on the whole, so it will describe in categorization as follows:

Table 1. Categorization of Requirements for Supreme Court Judges

Description	**Career Candidates**	**Non-Career Candidates**
Nationality	Indonesian Citizen	
Religious	Fatih in God	
Age	Minimum 45 years Maximum 60 years	
Level Education	Masters at law with a Bachelor at law degree or other Bachelor degree which related at law	Doctor at Law or Masters at law with a Bachelor at law degree or other Bachelor degree which related at law
Experienced	At least 20 years become a judge, including at least 3 years as a high judge	Experience in the legal profession and/or legal academics for at least 20 years

Physical and Psychological	Able to be physical and psychological to carry out duties	
Behavior	Never been imposed temporary termination due to violations code of cunduct and/or judges's guidelines	Never been sentenced to imprisonment based on a court of law for committing a crime that is threatened with 5 years or more imprisonment
Specific Terms	must have integrity and has good and fair personality, profesionality and experienced at law.	

On the matter selection of judge mechanism, before the Amendment the 1945 Constitution, there were no clear rules. The law only stipulates that candidates for supreme court judge are proposed by the Parliament (DPR) to the President. Then, the President as head of state appoints by politically decision. DPR also have to consult with Supreme Court and the government though Ministry of Justice. However, after reformation era, the process of selecting Supreme Court Justice has different route. DPR took over the role of the government and the Supreme Court at the election process. Since 2000 the selection mechanism for supreme justices has been carried out through a mechanism called fit and proper tests (Arifin, 2015: 14-15). This model is a new step on finding Supreme Court Justice who is clean and has high moral integrity. The fit and proper test mechanism began with nominations from the Supreme Court and the government. In addition, DPR opens up possibility of nominating non-career judges which can be submitted either by the government or other parties such as NGO, Indonesian Judges Association (*Ikatan Hakim Indonesia*) and Indonesian Advocates Association (*Perhimpunan Advokat Indonesia*) (Mochtar & Satriawan, 2009: 151-152). From 17 judges which selected in 2009, among them were non-career judges from legal academics and legal practitioners, while the other 8 judges were career judges. The involvement of academics and legal practitioners outside career judges is intended to improve court performance (Konsorsium Reformasi Hukum Nasional, 2001: 25). This process upholds the principle of transparency, which is enough to provide opportunities for broader community to participate and increase objectivity in the selection process (Academic Studies on Judicial Commission Bill, 2004: 19). However, this method also brought some weaknesses. *First*, Transparency has not been fully implemented. There is still a dark room that is far from public monitoring. DPR's assessment has not been done accountably, there are still considerations beyond the objective results of selection. The public does not know how DPR members provide an assessment

of integrity, legal understanding, or vision and mission of candidates. There is a strong suspicion that some members of the DPR have made judgments based on personal or political interests, or even there was bribery in the process. *Second*, the lack of public participation. the time given to the public to participate in observing and making complaints related to the candidate is still too short and insufficient. *Third*, the objective parameters used to assess candidates still unclear. *Fourth*, the qualifications of the selected candidates have not matched to the needs of the Supreme Court. *Fifth*, some DPR members acted or argued in an unethical manner during the fit and proper test process, which disrespect judge candidates (Mahkamah Agung, 2003: 69).

Finally, the selection process by the DPR puts political interests ahead (Isra, 2013: 4-6). Therefore, the birth of the Judicial Commission which has the authority to propose the appointment of Supreme Judges and has other authorities in order to maintain and uphold the honor, dignity and behavior of judges implies that the Judicial Commission has taken over functions previously held by the Supreme Court, President and DPR. Basically, the Judicial Commission acts as a selection committee for judges who will be elected by the DPR. The Judicial Commission proposes three candidates for each vacancy in the Supreme Court. According to Fajrul Falaakh, recruitment methods involving the role of the Judicial Commission, Parliament and the President called multi-voter model because involves many parties on Supreme Court Judges selection process (Falakh, 2010: 19-20).

On the matter of constitutional judge, its has been stipulated in Art 24C of 1945 Constitution. Art 24C (3) of the 1945 Constitution states that the Constitutional Court has nine constitutional judges which selected by President for three judges, DPR for three judges, and Supreme court for the last three judges. In addition, Art 24C (5) of the 1945 Constitution stipulates that constitutional Justices must have integrity and personality that is not impeccable, fair, statesmen, and not concurrently as state officials. The constitutional foundation is further regulated in Art 15 and Art 18 (1) of Constitutional Court Law on 2003. Art 19 and Art 20 (2) of the Constitutional Court Law on 2003 also states that the nomination and election of constitutional justices must be carried out transparently and participatively, as well as objectively and accountably. In terms of appointment procedures of constitutional justices, Art 20 (1) of the Constitutional Court Law on 2003 stipulates that selection process, election and submission of constitutional judges are regulated by each institution, namely the Supreme Court, DPR and President. The conditions underwent changes through Constitutional Court Law on 2011, especially on level education, experience and age. The

constitutional judge candidates must be a doctor and master's degree at law with at least 15 years of experience in legal profesional and/or has been a state official. To become a constitutional judge is at least 47 years old or at most 65 years of age at the time of appointment. Another revision for constitutional judge requirements re-occur on Emergency Law on 2013. The requirements for the level education from having a master and doctor at law degree, changed to only a doctor at law degree. Another new requirement is the candidate must been stop become a member of a political party for 7 years as minimum period before being submitted as a constitutional judge candidate. Those new requirements considered contrary to the 1945 Constitution, and therefore some people submitted a petition to review the law to the Constitutional Court. In the end, the constitutional court stated that those regulation regarding having stopped being a member of a political party was not contrary to the 1945 Constitution. According the explanation, selecetion and appointment process contains the *split* and *quota* perspective. Deciphering the juridical concept of the selection and appointment process of constitutional judges is explained in the following table:

Table 2. Juridical Concepts of Selection and Appoinment Process of Constitutional Judges

The 1945 Constitution	Judiciary Act	Constitutional Court Act
Appointment of 9 constitutional judges determined by the President begins with a submission of 3 constitutional justices by the House of Representatives, the President and the Supreme Court. [Art 24C (3)]	Submission of each of the 3 constitutional judges by the Supreme Court, Parliament and President. [Art 34 (1)]	Determination of the president through a presidential decree to appoint 9 constitutional justices submitted by 3 constitutional justices by the House of Representatives, the President and the Supreme Court no later than 7 working days from the submission of candidates received by the President. (Art 18)
Constitutional judges must have integrity and personality, fair, statesmen, and not state officials. [Art 24C (5)]	The requirement to be a constitutional judge is a statesman, integrity, personality and fair. (Art 33)	The requirement to be a constitutional judge is a statesman, integrity, personality and fair. (Art 15)
		Terms of candidates for constitutional judgess: Indonesian citizens, doctoral and masters with a bachelor's degree at law, Believe in God Almighty and have a noble character, minimum age of 47 years and a maximum of 65 years at the time of appointment, physically and

		spiritually capable in carrying out their duties, they have never been sentenced to imprisonment based on court decisions, are not declared bankrupt based on court decisions, have legal work experience of at least 15 years and/or have been state officials. Administrative requirements for candidates for constitutional justices: a statement to become a constitutional judge, curriculum vitae, copy of education certificate that has been legalized, a list of assets and a source of income accompanied by valid supporting documents and approved by the institution authorized person and taxpayer number (Art 15) Prohibitions on the position of constitutional judges as other state officials, members of political parties, employers, advocates, civil servants. (Art 17)
Regarding the appointment of constitutional justices and the conditions stipulated in the law. [Art 24C (6) and Art 25]	The elements of constitutional judge submission consist of the nomination concept which is carried out transparently and participatively, and the concept of election carried out in an objective and accountable manner. [Art 34 (2) and (3)]	The nomination of constitutional justices is carried out transparently and participatively. (Art19)
		The constitutional judge in his appointment both as a member and or chairperson/vice chairman pronounces oaths and promises according to his religion before the President. (Art 21)
	Further provisions regarding the terms and procedures for the appointment of constitutional judges are regulated in the law. (Art 35)	Provisions regarding the procedures for selection, selection and submission of constitutional judges are regulated by each authorized institution in the submission of constitutional justices and carried out objectively and accountably.

The fifth stage is strengthening the status of judges. The status of judges as state officials was initially regulated in Art 1(1) State Official which Clean and Free of Corruption, Collusion and Nepotism Act of 1999. Furthermore, the status of the judge becomes a state official already stipulated in Art1 (4) on State Civil Apparatus of 2014. The status of state official is explained in Art 11 (1) letter d of the Act, that State Officials, one of which consists of, *"The Chairperson, Deputy Chairperson, Junior Chairperson and Chief Justice of the Supreme Court, as well as the Chairperson, Deputy Chairperson and Judges of all Justice Bodies"*. The status of the judge as a state official is reaffirmed in Art 2 on State Official Law of 1999 states that one of the state administrators is judge (Syahuri, 2014: 3-5).

This provision is specifically excluded from *ad hoc* judges (Constitutional Court Decision No 32/PUU-XII/2014: 111-112). By guaranteed judge status as state official based on the idea that judges are personnel who carry out power of judiciary and not executive. By civil servants as judge's status its very possible to intervene on their independency because the structural, psychological, and character of the corps and bureaucracy carries and demands certain ties (Mahfud, 2010: 103). The independence of judges in the rule of law (or *rechtstaat*) is absolutely terms. This is in accordance with The International Commission of Juris principles on independence of judge.

Based on described above, there are several consequences. *First*, on recruitment pattern, education, career, rank, term of office, and fulfillment of the rights and facilities of judges as state officials. *Second*, state officials have a term of office, for example five years and can be reelected for one period. However, in fact the period of this term cannot be applied to judges in Indonesia. This is due to the position of the judge not recognizing periodicity, but career and retirement. In addition, state officials also do not recognize rank system. However, like civil servants, judges have ranks or groups. In fact, the rank of judge follows the rank of civil servant. Similarly, the salary structure. In terms of recruitment and education of judge candidates, there are consequences to becoming more complicated. Typically, state officials are selected through the selection process of other institutions, general elections, or appointments. In fact, so far, the pattern of recruitment of judges is almost similar to civil servants, although it has its own procedures, namely through the candidate civil servant selection process and education for judge candidates. As a result, in 2010, the Chief Justice of the Supreme Court issued a Decree of the Chief of the Supreme Court No: 169/KMA/SK/X/2010 concerning Implementation of the Education Program and Integrated Training for Judge Candidates.

Institutional and Personal Reform on Accountability Sector

In addition to defining judicial independence and incorporated itu many legal policies, another direction of judicial reform means defining judicial accountability, especially in terms of open justice. Before reformation era, almost all types of information that existed and managed by the courts were closed. In some cases, the court rejected the request of civil society to access court decision. The court seemed afraid to show the decision they made. In addition, other information which also difficult to access is the judge's track record, court service fees, court budget, and others. It has become common behavior. This kind of closure can only be opened through "gift" or "insider

assistance". You can imagine how access to clogged information contributes to unclean behavior in the judicial administration. in the past, court were considered do not understand that open justice principles were not only seen from trials that were open to the public but also documents relating to the judicial process or acces to justice. The meaning of open court is reduced by act of court on that era. The conclusion was in the past (new order) The court did not understand the principle of an open justice principle that was universally applicable (Spigelman, 2006: 147). Copies of court decisions and other information are not easy things to obtain at that time. Various stories arise about the difficulty of obtaining a copy of the court's decision. Starting from academic groups such as students, civil society groups, and other community feels the bitterness of the situation. The court argued that a copy of the court decions could only be given to litigants. Furthermore, the court argued that a number of decisions were confidential so that they could not be accessed by the public (Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia, 2014: 31-32). It is difficult to get a copy of the court decision intertwined with obscurity and even the absence of information about the mechanism of this matter. For those who want a copy of the decisions, they will be faced with a request for money from a court employee so that a copy of the decision can be given or to be given quickly (Indonesia Corruption Watch, 2010: 144). In addition, the refusal to provide other public information makes the judiciary a bunker of the meaning of "secrecy" (Assegaf & Katarina, 2005: 23). The closure of the court has the potential to trigger a variety of other irregularities. For example, the interaction between lawyers and judges in the practice of bribery. For lawyers who have direct contact with judges, the issue can be made easier because lawyers can negotiate the decisions that will be handed down without paying attention to the prosecutor's demands.

Some cases prove that even if the prosecutor demands the maximum, the judge can free the defendant. Unlike the case with a lawyer who does not have direct contact with a judge, a third party is required to contact the judge. Usually, the role of third parties is more practical and safer for the clerks. The initiative came together between the judge and the lawyer, but it can also be from the clerks himself (Isra, 2008: 9). Another example, the practice of judicial corruption concerns a copy of the court decision on corruption case. Copies of court decision on corruption cases that have permanent legal force (*inkracht*) is high economic value. The trick is to slow down (delay) submit the copy to the executor. For corruptors, the late copy not only slows down the execution but also opens the opportunity to escape. It is not impossible, some of the

corruptors who escaped were helped by slowing down submiting process of executor.

The picture of this closure certainly makes people wonder, why courts snatch away public information rights beside provide and protect it. By Blocking public access to information is undeniably fertilizing the practice of closed policy-making processes, for example in terms of promotion and transfer of judges (Mansyur, 2014: 89). At that time (even to date) it is unknown whether the criteria or requirements of a judge get promotion and transfer. The promotion and mutations at that time was very vulnerable to subjectivity which led to nepotism (Assegaf, 2011: 66). Oversight decisions are a form of requesting responsibility to the judge and a means to control on probability over the abuse. However, the obstruction of public access to court decisions led to a lack of supervision the decision. Because of difficulty to access court decisions, it is not surprising the decision-based on teaching process and legal discourse were difficult (Assegaf & Katarina, 2005: 91). In the end, Liza Fahira concluded several reasons that caused difficulties in accessing information in court, among other: *First*, basically the culture of closure was still strong in the judiciary. In such cultures, even open-minded people tend to be afraid of opening information that should be open to the public; *Second*, there are intentions of certain officials in the court, including judges, to cover up information, both to avoid public attention to the mistakes or negative practices they have committed, to be able to extort information requesters or because of other motives; *Third,* there are weaknesses in legislation which led to open interpretation to certain information may not be open to the public (Fahrihah, 2014: 35).

After Amendment the 1945 Constitution, judicial reform agenda desired another movement to defining judicial accountability not only focusing on judicial jndependence sector. In line with this, openness jusctice principles was realized by some judges, especially by the Chief of Supreme Court, Bagir Manan. The Chief Justice continuously emphasized openness in the court and called on judges and court officials to uphold openness (Manan, 2005: 11). The next step was taken through Blue Print Book of 2003 on Supreme Court Reform Agenda. In the Blueprint there was a recommendation for DPR, President and the Supreme Court shall make rule that grant easier access court information, including court decisions. This was also recommended by Bagir Manan as Chief of Supreme Court; Toton Suprapto and Marianna Sutadi as Junior Chief Justice; and Supreme Court Judge, Abdul Rahman Saleh (Fahrihah, 2014: 36). One main indicator of success on the Blueprint is forming "rules grant people to have easier access on court decisions." Eventhough Supreme Court Act of 2004

was passed about four months after the ratification of Constitutional Court Act of 2003, but Supreme Court Act of 2004 does not include responsibility and accountability section in the clause. In Chapter III Part Two Art 12 until Art 14 Constitutional Court Act of 2003 is explicitly determined: *First*, the Constitutional Court is responsible for regulating organization, personnel, administration, and finance in accordance with the principles of good and clean governance; *Second*, the Constitutional Court is obliged to publicly announce periodic reports concerning: (a) applications that are registered, inspected and decided; (b) financial management and other administrative tasks. The report is published in periodic news which published by the Constitutional Court; and *Third*, people has access to obtain the Constitutional Court Decisions. But, Supreme Court argue that even without inclusion certain norms in Supreme Court Act of 2003, it doesn't mean there is no effort to improve the performance. For example, the Supreme Court has set vision and mission, namely "Realizing the rule of law through judiciary that is independent, effective, efficient and obtains public trust, professionalism and provides legal services that are quality, ethical, affordable and low cost for the community and able to answer calls public service" (Mansyur, 2014: 89).

As a form of follow-up, the Chief Justice formed a Framer Team for the Chief Justice Decree concerning implemented open justice principles, which then resulted Chief Justice Supreme Court Decree No. 144/KMA/SK/VIII/2007 concerning Information Disclosure in the Court. In the drafting process, the most tough debate occurred was the issue of transparency in court decisions. The Supreme Court, especially the Chief Justice, saw that the court's decision was their livelihood and image, so there was resistance to the proposal which put court decisions have to be Published by the court (Prasidi, 2010: 179-180). Furthermore, there is a paradigm that the publication of court decisions is an additional criminal sanction form which stipulated in Art 10 Criminal Code. In addition, there is another issue which related to Judges Intellectual Property Rights, if it has to be published. Some Supreme Court Judges considered the decision they produced had intellectual property rights so it should not to be published. In the end, court decisions remain in the category of "information that the court must announce". In fact, the Decree stipulates that the decisions on District Courts and Appellate Courts that have not been legally binding in certain cases are included in that category. Other issues that have been debated are the session agenda, personal information excluded from the verdict, and the method of providing information.

In the end, the Chief Justice Supreme Court Decree has set new standards for managing information and public services. the Chief Justice

Supreme Court Decree also initiated a fundamental change in the development of the bureaucracy in the judiciary. Meanwhile, Public Information Disclosure Act of 2008 is claimed to be the key to opening the gate towards a significant change for upgrading performance of public services and aims to facilitate public access and transparency, including bureaucracy in judiciary. The Chief Justice Supreme Court Decree was a breakthrough and meaningful inheritance of the Chief Justice of the Supreme Court, Bagir Manan. This breakthrough is one of the recommendations on Blue Print Book of 2003 on Supreme Court Reform Agenda. The recommendation is that court decisions can be accessed by the public, for the benefit of learning and as a comparison or data for internal court circles. There are many general principles which accommodated on The Decree (Art 2 Chief Justice of Supreme Court Decree No. 144/KMA/SK/VIII/2007 concerning Information disclosure in the Court), among other: *First*, *Maximum Access Limited Exemption – MALE*, which requires majority information managed by the court to be open and set an exception to cover up information which is only for the greater public interest, privacy, and the commercial interests of a person or legal entity: *Second*, no reason needed if someone requests public or court information. *Third*, Organizing access to information with cheap, fast, accurate and timely; *Forth*, Providing complete and correct information; *Fifth*, proactive to information which related to the court which is important to be known by the public; *Sixth*, provided administrative sanctions for parties that intentionally obstruct or hinder public access to information in court; and *seventh*, provided a simple objections and appeals mechanism for parties who feel their rights to obtain information in the court are not fulfilled.

In 2011, The Supreme Court made some adjustments with reforming the decree by forming Chief Justice of Supreme Court Decree No 1-144/KMA/SK/I/2011 concerning the Guidelines of Information Service at the Court. Through the new Decree, coordination of implementation public services for open justice more optimized. The Decree stated that information service has two procedure, among other (1) general procedures and (2) special procedures. The main difference is if the general procedure start with application for information is submitted indirectly while the special procedure *vice versa*. The Principal Officers must be at the Supreme Court and the four Courts Chamber for implementation this service, so the chart of desk job as follows:

Tabel 3. Information Service Management at Supreme Court and Below

Manager	First level court/Appelate Court		Supreme Court
	General/	Religious/	

	Administ rative Court	**Military Court**	
Manager of Information & Documentation	Court Leaders	Court Leader	Case : Supreme Court Clerks Non Case: Secretary of Supreme Court
Information and Documentation Management Officer	Clerks/Secretary	Case: Clerks/ Head of Clerks Non Case: Secretary/ Head of Deep Court Administration	Officer at Supreme Court: Head Bureau of Law & Public Relations, Administrative Affairs Agency Work Unit : Every Director General/ Head of Body
Information Officer	Junior Clerks/ other employee appointed by the Chief of Court	Junior Clerks/ other employee appointed by the Chief of Court	Administration Body: Subdivision of Data & Services Information Directorat General: Head of Subdivision of Documentation & Information Research, Development and Education Agency: Head of Sub-Department of Administration
Information Person in Charge	Leadership unit at the echelon level IV	Leadership unit at the echelon level IV	Leadership unit at the echelon level IV

In addition, after establishment Public Service Act of 2009, the Chief Justice Supreme Court issued another Decree No. 026/KMA/SK/II/2012 concerning Standard Judicial Services as the basis for each work unit in all judicial bodies in providing services to the public. Court Service Standards consist of case and non-court services. Court service standards also mandate establishment of service standards for smaller work units to be adjusted to their respective characteristics, for example, geographical conditions and case characteristics. In general, the Service Standards in the Court include: Court Administrative Services, Legal Aid Services, Complaint Services and Information Request Services. Therefore, the issuance of Public Service Act of 2009 and the Chief Justice of Supreme Court Decree No. 026/KMA/SK/II/2012 establishes regulations regarding efforts to implement open justice principles in another part of defining judicial acountability in Indonesia

Conclusion

As a consequence of constitutional guaranteed on judicial independence in the third amendment, judicial reform agenda carried out with two types policy, among other (1) institutional guarantee of judicial independence and (2) personal guarantee independence of judicial independence. Relating to institutional guarantees are included in several policies, namely (i) one roof system and room system in the Supreme Court, (ii) Establishment of special courts, and (iii) institutionalization of judicial review on perpetrators of judicial power. While personal guarantees are poured on policies (i) reforming the filling and dismissal of judges and (ii) structuring the status of judges. whereas, Accountability of judicial power is divided into two patterns, namely (1) institutional accountability and (2) personal accountability. The pouring institutional accountability is reflected in the regulation of information disclosure in the judiciary initiated by the judiciary's own power as well as legislation which indirectly encourages the personal accountability of judges for all their activities in the technical domain of the judiciary.

However, as a recommendation, that the legislators need to make comprehensive changes relating to the Law relating to Judicial Power such as the Judicial Power Law, the Supreme Court Law, the Constitutional Court Law, the Judicial Law under the Supreme Court, including the Judicial Commission Law. These changes are intended to organize the upstream and downstream sides of the judicial power. The upstream side as intended is related to the filling and structuring of jurisdiction especially with regard to special courts. Meanwhile, the downstream side is related to supervision and dismissal mechanism

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