

THE EFFECTIVENESS OF THE ROLE OF *AD HOC* JUDGES IN CORRUPTION ERADICATION IN CENTRAL JAVA

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ABSTRACT

Based on the investigation conducted by the Judicial Commission, it was revealed that the chief of the panel of the judges refused to conduct a discussion with the other three judges. All the seven members of the Judicial Commission concluded that the chief of the panel of judges had violated the means of judicature. Kresna Menon was suspected for not taking the opportunity to discuss the diverse opinions among the panel of judges. According to the groundwork explained in the background of the study on the role of ad hoc judges in the verdict of corruption case, the researchers formulated the statements of the problem in this research as: 1. How is the role of the ad hoc judges in adjudicating the corruption case in Semarang Corruption Court? 2. How is the effectiveness of the ad hoc judges in adjudicating the corruption case in Semarang Corruption Court? The result of this research shows that the ad hoc judges share similar roles with the other judges in Indonesian criminal jurisdiction, especially in dealing with the corruption eradication. Among the duties of the ad hoc judges are accepting the lawsuit given by KPN, carrying on their duty in a panel of judges, adjudicating the lawsuit, as well as investigating, adjudicating, deciding and ratifying the verdict. Ad hoc judges also have the equal rights in the tribunal if they are involved in the process of investigating and appraising the evidences and witnesses to uncover the truth. The same system prevails in the court. The most prominent role of the ad hoc judges is giving suggestion to the career judges concerning the unsuitable cases in the court as the guidelines for the panel of the judges in dealing with the cases based on the facts in the court. However, if the suggestions are not accepted, the ad hoc judges cannot insist for further suggestions because the ad hoc judges only have the authority to investigate and adjudicate the cases using a method of discussion. Considering their function as the balance power among the other judges, the ad hoc judges are basically very helpful in corruption eradication. Their roles can also be considered as effective. During their presence in the Semarang Corruption Court between 2010 until 2014, the ad hoc judges had shown effective performance in the court. The case handling became more cautious, possibly because the ad hoc judges had more vision in the corruption eradication itself. Based on the results of the research, it is suggested to place the legal apparatus in a neutral position and absolve them from any political commitment, generate both internal and external control in judicature institutions, and encourage judicial responsibility and accountability in order to improve humanist, dignified, and equitable services.

Key Words: Corruption Eradication, Role of *Ad hoc* Judges

A. Background of the Study

In the Law No. 30/2002 on Corruption Eradication Commission, the existence of ad hoc judge aims to win the voting in the panel of judges in case of voting must be conducted among the panel of judges. The details of the statement is contained in Article 58 (2): "The appraisal of a corruption case as outlined in (1) shall be conducted by a panel of five judges, composing of two District Court judges of relevant district and three ad hoc judges.", Article 59 (2): "The appraisal of a case as outlined in (1) shall be performed by a panel of five judges composing of two High Court judges who are relevant to the case and three ad hoc judges.", and Article 60 (2): "The appraisal of a case as outlined in (1) shall be performed by a panel of five judges composing of two Supreme Justices and three ad hoc judges."

Law No. 46/2009 on Corruption Court states different view towards the statement. Related to the composition of the panel of judges, the Chief of the Corruption Court has the authority to determine the composition according to the requisite of the case. It is obvious in Article 26 (3): "The act of determining the number of and the composition of the panel of judges as outlined in (1) and (2) shall be done by each Chief of the Corruption Court or the Chief of the Supreme Court according to the level and means of the investigation of each case." Based on the previous statements, the position of the ad hoc judges is getting more unclear before both laws. In one hand, the law assures the composition of the panel of judges occupied by the ad hoc judges. On the other hand, the second law states that the decision about the case is returned to the Chief of the Corruption Court. The statements has generated an equivocal concept of the importance of the ad hoc judges in the Corruption Court. It raised an essential question: what is the exact role and the position of the ad hoc judges?

The equivocal composition determined by Law No. 46/2009 on Corruption Court and the perplexing Supreme Court's regulation related to the importance of the roles of the ad hoc judges in investigating a case and providing suggestion according to their expertise in the verdict of the relevant case. It is supported by Supreme Court' Regulation No. 1/2010 on the Organizational Structure of the Committee and Panel of Judges and Transparency in the Corruption Court. Article 11 (4) of the regulation states: "The Chief of the panel of judges of the Corruption Court is one of the career judges who is selected to investigate, adjudicate and judge the corruption case." According to the article, the ad hoc judges are not eligible to

become the chief of the panel of judges and it is definite because it has been ruled in the Supreme Court's Regulation. The initial function of the ad hoc judges is to generate transformation in the court and in the process of criminal court, in this case, the Corruption Court. However, the law results on the perplexity of the existence of ad hoc judges as the members of the panel of judges whose authority are not merely required in the process of the decision making. It works the other way if the ad hoc judges become the Chief of the Panel of Judges.

Based on the investigation of Judicial Commission, it was revealed that the chief of the panel of judges refused to conduct a discussion with the other three judges. All the seven members of Judicial Commission concluded that the chief of the panel of judges had violated the means of judicature. Kresna Menon was suspected for not taking the opportunity to discuss the diverse opinions among the panel of judges.

B. Research Problems

According to the groundwork explained in the background of the study about the role of the ad hoc judges in the verdict of corruption case, the writer formulated the statements of problem as follows:

1. How is the role of the ad hoc judges in adjudicating the corruption case in Semarang Corruption Court?
2. How is the effectiveness of the ad hoc judges in adjudicating the corruption case in Semarang Corruption Court?

C. Review of the Related Literature

1. Law Effectiveness

Soerjono Soekanto stated that the major problem of the law effectiveness was located on the elements which influenced it. The influential elements of law effectiveness are:

- a. The legal factor itself, i.e. the content of the law itself. A better law will increase the probability of success of its enforcement. On the contrary, a bad law will lead to the difficulty in its enforcement.
- b. Law upholder factor, i.e. the institutions which construct or implement law. The law upholder is one of the factors which determine the process of law enforcement including the law enforcement institution and the lawmakers. The institutions which are directly related to the process of law enforcement are the police force, court, judges, legal advisors, and custody. Those institutions play significant roles in constructing the success of law enforcement in the society.
- c. Infrastructure or facilities factor to support law enforcement. Without the supporting infrastructure or facilities, the law enforcement would be impossible to be conducted properly. The infrastructure or facilities include educated and skilled human resources, good organization as well as sufficient instruments and finance.
- d. Social factor, i.e. the environment in which the law is implemented. The social factor also has a strong influence towards the law enforcement mainly because law enforcement is derived from the society and aims to attain tranquility in the relevant society.
- e. Cultural factor, i.e. as the result of intention based human's work, creation, and sense as a basis of the prevailing law, which are considered as an abstract conception about what is good and bad.

2. Ad Hoc Judges in Indonesia

Ad hoc judges who have special expertise in understanding and comprehending the corruption case make them highly required in the court. The grounded will towards the assumption can be viewed from the Draft Bill of Corruption Court and the Law of Corruption Court itself. Ad hoc judges as the balancing instrument make the panel of judges also consist of other than the career judges

3. Eradication of Corruption in Indonesia

In other words, a preventive system and law socialization to the society about the indications and harm of corruption must be implemented in addition to repressive efforts. The law becomes the scape goat whereas the institutions which uphold the law themselves are lack of knowledge in legal issues, morality and mentality. A Dutch legal expert, Taverne, stated: "*Geef me goede rechters, goede officieren van justitie, goede Rechters Commisarissen en goede ambtenaren, en ik zal met een slecht Wetboek van strafprocesrecht het goede bereiken.*" (Hamzah, 2005:82) which means "give me good judges, good prosecutors, good commissioner judges, and good police officer, then I will turn a bad law into a good one." The lack of proper accountability system in the state administrative organization, and judicial actions cause the arousal of misapplication of authority which results on corruption lawsuits. In order to resolve the problem, the government has done a number of efforts such as reforming the performance management and responsibility, maintaining governmental strategic and operational planning, and measuring and managing the performance of the government focusing on the measuring of the outcomes, benefits, and impacts. Thus it is expected that the struggles in eradicating and preventing the corruption lawsuits can be done more effectively. It is better to prevent than to revise. The chance for corruptive traits to burgeon must be eliminated. It demands active participation of the stakeholders of corruption eradication, namely governmental apparatus, corporate world and the society. The red line between the implementation of performance-based management with corruption eradication is the creation of efficiency, effectiveness, and accountability of the result-oriented deployment of the resources. Therefore, the commitment and consistency of all institutions, state apparatus, corporate world and the society is required (Sjahrudin Rasul, Pro Justitia: Journal of Law, The Implementation of Performance-Based Management in Corruption Eradication).

Hence the authority of law upholder (career judges and ad hoc judges) is required in the attempt to eradicate corruption.

D. Objectives of the Study

The objectives of this study are stated as follows:

1. To describe the roles of ad hoc judges in adjudicating the corruption case in Semarang Corruption Court
2. To analyze the effectiveness of ad hoc judges in Semarang Corruption Court

E. Significance of the Study

This research is expected to provide significances as follows:

1. To contribute to the development of jurisprudence, specifically in law of crime as well as anything relevant to the roles of ad hoc judges in the verdict of corruption case in Indonesia.
2. To motivate and to give suggestions to those who are interested in conducting a research about ad hoc judges in general, specifically about the ad hoc judges of the Corruption Court
3. To give contribution of critical thoughts on the importance of the roles of ad hoc judges in decision making that it becomes a reference and pillar in corruption eradication.

F. Research Methodologies

Method of Approach

According to Romi Harnitijo, socio-juridical approach is an approach which does not see law as a normative system which is autonomous. Instead, it is constructed as social institution which is realistically connected to the other social variables (Harnitijo, 1994:34). Based on this assumption, law is studied as a causal variable which affects every aspects of social life.

Data Sources

Data source is the sources from which the data is collected. The data in this research is collected from the following sources:

1. Primary data

Primary data is a data which is collected directly from the objects of the study or the resource persons. The primary data is used as the eminent data in this research. The data was deployed from the respondents including ad hoc judges of Semarang Corruption Court, career judges of Semarang Corruption Court, legal advisors, and experts in criminal law from Faculty of Law Diponegoro University.

2. Secondary data

Secondary data is the data which is collected from legal documents. This data is acquired through the review of the literature relevant to the object of the study, the experts' premises, research report, thesis, dissertation, and law (Ali, 2009:18). The secondary data is used to support the primary data in this research.

Method of Data Collection

According to Ronny Hanitijo, technique of data collection consists of interview, observation, and literature review (Hanitijo, 1990:51). The techniques of data collection used in this research are:

1. Literature and documents review

Method of literature review is done by conducting research on the literature sourced from the law, books, legal documents, publications and research reports. Method of documents review is an activity of reviewing the documents relevant to the previous lawsuits which had been administered in the location of the research.

2. Interview

The persons being interviewed in this research were the ad hoc judges of Semarang Corruption Court., Career Judges of Semarang Corruption Court, legal advisors, and Criminal Law experts in Central Java province.

Data validity

Grounded on Moloeng's theory, the writer compared the primary data acquired in the area of location of the research with the secondary data from the field observation and literature review. This system included:

1. The comparison between the results of the observation and interview on ad hoc and career judges in the Corruption Court about the roles and the effectiveness of ad hoc judges in corruption eradication.
2. The comparison between the results of observation and interview on ad hoc judges of the Corruption Court and Public Prosecutor about the roles and the effectiveness of ad hoc judges in corruption eradication.
3. The comparison between the result of the observation and interview on ad hoc judges of the Corruption Court with Legal Advisor about the roles and the effectiveness of ad hoc judges in corruption eradication.
4. The comparison between the result of the observation and interview on ad hoc judges of the Corruption Court with the society about the roles of ad hoc judges in corruption eradication.

Method of Analysis

Qualitative analysis is used as the method of analysis in this research. The data analysis was conducted to simplify the tabulated data in order to make it easier to comprehend. Qualitative analysis method is a research method which produces analytical descriptive data. Analytical descriptive data is the data which is directly acquired from the testimonies and behavior of the respondents which are studied and verified as an integral unit. The data is systematically composed in form of this research report.

G. Research Results and Discussion

1. The Role of Ad Hoc Judges in Indonesian Judicature

Law No. 46/2009 on Corruption Court expected the validity of the Corruption Court in each capital city and city/district who's judicial was included in the judicial area of the court. Semarang Corruption Court was operated based on the Decree of Indonesian Supreme Court Number: 191/KMA/SK/XII/2010 along with Bandung and Surabaya Corruption Court.

According to Article 5, 6, and 7 of Law No. 46/2009, the Corruption Court was the only court which had the authority to investigate, adjudicate, and administer justice to the lawsuits of corruption, money laundering resulted from corruption, and other criminal lawsuits which were legally considered as corruption lawsuits to which the Corruption Court had the additional authority to investigate, adjudicate and administer justice to Indonesian citizens involved in corruption abroad. As what is stated in Article 10 of Law No. 46/2009 on Corruption Court and Article 11 of Law No. 48/2009 on Judicial Power, ad hoc judges were judges whose duty and function was to investigate, adjudicate and administer justice to corruption lawsuits.

There is no particular duty for ad hoc judges aside from what had been outlined in the law. The assumption was stated by Robert Pasaribu, S.H., M.H. (interviewed in the office of Semarang Corruption Court judges on September 17, 2014). Similar opinion were stated by Sininta Yuliansih Sibarange, S.H., M.H. (interviewed in Semarang Corruption Court on September 24, 2014 at 09.15 a.m.), and Semarang ADVOCAD, Supardi Sukamto, S.H. (interviewed in Sosrohadinegoro's Office of Attorney, Semarang, on September 10, 2014). Yuliansih added that the role of ad hoc judges at the present time was to give suggestion and comprehensive study towards career judges to support validity in the court investigations which was assumed to be more apparent with the help of ad hoc judges. However, their skill was not practically appropriate with the relevant lawsuits because the ad hoc judges were unable to properly select and classify the lawsuits. Due to a number of inappropriateness between their work experience and the adjudicated lawsuits, ad hoc judges were suggested to continue their study of higher degree in law.

Prof. Andi Hamza stated that both career and ad hoc judges dealing with the mechanism of criminal law, especially the corruption lawsuit, had to master both evidence and criminal law.

Considering their position, both Sukamto and Sibarange agreed that ad hoc judges also had to be capable of playing their roles in optimally attaining their goals. The same opinion was presented by Robert Pasaribu, S.H., M.H., an ad hoc judge of Semarang Corruption Court (interviewed in the office of Semarang Corruption Court judges on September 17, 2014).

At the moment when Supreme Court offered a vacancy for the position of Court Corruption ad hoc judges, both in the first and second stage of selection, most of the applicants did not meet the requirements set for the position. Media were reporting that due to the lack of qualified applicants, the Supreme Court decided to extend the selection process.

Moreover, Sibarange added that the educational background relevance of the ad hoc judges were significantly influential to the applicants and the administered lawsuits. The steady decrease of the applicants for ad hoc judges was the impact of the prosperity of ad hoc judges which was not properly fulfiller. It was evidently proven by the absence of ad hoc judges in Semarang Corruption Court on February 2, 2011. They intentionally left to the Supreme Court voicing their demand of honorary, housing, transportation, and security allowance which had not been paid since they were inaugurated on December 17, 2010 (Suara Merdeka, p.12, February 8, 2011).

As a matter of fact, the Supreme Court acknowledged their necessity of new prospective for the position of ad hoc judges to reform the tribunal system, especially in corruption eradication. This responsibility was no longer utterly given to the career judges due to the notorious mentality of the law upholders whose integrity and dedication were supposedly on corruption eradication.

Aside from working experience, for the selected applicants who would directly become judges, the selection and eligibility of ad hoc judges was basically equal to those of career judges. The selection for ad hoc judges was conducted transparently and was open for those who were eligible according to the Supreme Court Regulation No. 4/2009 on Ad Hoc Judges Selection Procedure for Corruption Court, High Court, and Supreme Court. The Supreme Court would give a training to the selected applicants immediately upon their acceptance as ad hoc judges.

Ad hoc judges with special expertise in understanding and comprehending corruption lawsuits were highly required according to Law No. 46/2009 on Corruption Court. Ad hoc judges functioned as the balancing instrument in the panel of judges for it no longer consists of only the career judges.

If the ad hoc judges aimed to generate public trust to the court, the survey result indicator showed that the formation of ad hoc judges was the answer of the existing problem. In the survey conducted in 2007 and 2008, 60 – 70 % of the respondents were unsatisfied with the performance of the existing judges (Kompas, p.24, August 24, 2007). Sibarange stated that the recruitment process of the ad hoc judges was conducted in a certain mechanism.

Based on the notion, the existence of ad hoc judges had not changed the society's paradigm that corruption problem was not yet resolved. Although they had not performed optimally, according to Sukamto and Sibarange, the ad hoc judges had proportionately functioned compared to the career judges. Thus ad hoc judges and career judges shared a number of similarities. The assumption was stated by Suyadi, S.H. (interviewed in the office of Semarang Corruption Court judges on September 3, 2014 at 13.30 p.m.).

Furthermore, there were several factors which had not functioned properly in the court. It was noted that the judges in the court had not been facilitated with sufficient space and opportunity in carrying out their judicial responsibilities to dig the values and conventions which lived and developed in the society at the period on which the verdict was decided. The problem got worse when the ad hoc judges in each Corruption Court were not the natives of the area they were assigned. As

an illustration, Satjipto Rahardjo had ever praised civil verdict made by Supreme Justice Prof. Asikin Kusumah Atmadja in Kedung Ombo case which was later nullified by the Supreme Court: (1) a judge had to dig over the prevailing law in the society (Soemardjan, 1983:606); (2) legal efforts were taken as the result of dissatisfactions towards the judgment; (3) the productivity of the court to decide qualified verdicts descended due to the problems of the system.

The concept of ad hoc judges in Corruption Court was hardly expected to affect the escalation of public trust in criminal tribunal. According to Luhut MP Pangaribuan, ad hoc judges in the court of human rights, corruption, and fishery were the duplication of career judges (Kompas, February 2, 2009, column 1).

2. The Effectiveness of Ad Hoc Judges in Semarang Corruption Court

A state institution called justice power was required in order to enforce the prevailing judicial ordinance. Justice power was practically implemented by the state judicature institutions through the judges. Conceptually, the essence and importance of law enforcement laid on the act of harmonizing the relationship between the values verified in the steady principles and establishing attitude and behavior as a series of the last stage of values verification to maintain as well as to preserve tranquility and socialization.

The justice seekers (*Justiciabellen*) surely expected the lawsuits delivered before the court to be adjudicated by professional judges who had high moral integrity in order to produce verdicts which contain not only the aspect legal security but also the dimension of moral justice, legal justice, and social justice as expected by the society.

Therefore, Indonesian law enforcement “requires the presence of justice envisioned law upholder as outlined in Indonesian traditional law ideas known as ‘ratu adil’ (queen of justice) or in Greek, the concept of philosophic king declared by Plato thousand years ago” (Fuady, 2003:53).

In its instruction No. KMA/015/INST/VI/1998, the Supreme Court instructed the judges to strengthen their professionalism in establishing qualified judicature which produced verdicts containing *ethos* (integrity), *pathos* (eminent consideration), *philosophic* (sense of justice), *sociological* (the existence of cultural values in the society), and *logos* (logic) in order to become autonomous ad hoc judges (Arto, 2006:98). In the ideal order, to expected judgment could be attained by upholding justice and law in the society. Gustav Radbruch stated that an ideal judgment should cover three elements: (1) justice (*Gerechtigkeit*), (2) legal security (*Rechtsicherheit*), and (3) significance (*Zweckmassigkeit*). Those three elements should be proportionally considered and accommodated (Mertokusumo, 2004:15).

In judge’s framework of freedom to adjust the power of the judgment, the judge was able to move in such a way that was legally permitted to impose the judgment. The effectiveness could be concluded from the significance of the judgment to the society.

Both Pasaribu and Suyadi agreed that from the perspective of sentence pronouncing, ad hoc judges were not yet influential for most people because they resembled to the career judges. Sukanto added that the ad hoc judges were still rigid in adjudicating the lawsuits. Hence, Suyadi stated, ad hoc judges often imposed a heavier verdict than the career judges. Dealing with the position, however, Sibarange stated that ad hoc judges were solely regarded as ad hoc judges.

Article 58 of Law No. 30/2002 on Corruption Eradication Commission stated:

- (1) A corruption case must be appraised and decided on by the Corruption Court within ninety working days since the case was first delivered to the desk of the Corruption Court.
- (2) The appraisal of a corruption case as outlined in (1) shall be conducted by a panel of five judges, composing of two District Court judges or the relevant district and three ad hoc judges.

Whereas Article 26 of Law No. 46/200 on Corruption Court stated:

- (1) The investigation, adjudication and verdict decision of a corruption case must be conducted by a panel of judges consisting of uneven number of no less than three and no more than five judges, including Career Judges and ad hoc Judges.
- (2) To the extent that the panel of judges as outlined in (1) consists of five judges, the ratio of the composition is 3:2 and if it consists of three judges, the ratio of the composition is 2:1.
- (3) The act of determining the number and composition of the panel of judges as outlined in (1) and (2) is returned to the chief of each court or the Chief of Supreme Justice according to the case investigation level and interest.
- (4) The provision related to the criteria in determining the number and composition of the panel of judges in investigating, adjudicating, and deciding a verdict of corruption case as outlined in (3) is ruled under the Supreme Court Regulation.

Suyadi stated that ad hoc judges had to actively participate in deciding a verdict so that the result would fulfill the means of justice, legal security, and significance. Both of the laws showed an apparent difference of the composition of the panel of judges. However, Article 53 – 62 of Chapter VII on tribunal investigation of Law No. 30/2002 on Corruption Eradication Commission had been officially annulled.

The writer noted the inequality in recent composition of the panel of judges which consisted of three judges, only one of which was an ad hoc judge. This composition led to ineffectiveness of the roles of the ad hoc judge for he/she would not be able to win the voting among the panel of judges. This transformation was made because the ad hoc judges were considered

to be lack of comprehension towards legal issues, especially in tribunal mechanism. Sukamto argued that this reason, however, could not be set as the quality measurement of ad hoc judges.

H. CONCLUSION AND RECOMMENDATION

CONCLUSION

1. Ad hoc judges share the similar roles with other judges in Indonesian criminal jurisdiction, especially dealing with the corruption eradication. The duty of ad hoc judges are to accept the lawsuits given by KPN, to conduct their duty in a panel of judges, to adjudicate the lawsuit, to investigate, adjudicate, decide and ratify the verdict. Ad hoc judges also have the equal rights in the tribunal if they are involved in the process of investigating and appraising the evidences and witnesses to uncover the truth. The same system prevails in the case of adjudication.
2. Ad hoc judges in Semarang Corruption Court had shown their effectiveness for having been working for four years from 2010 – 2014. During those four years, the ad hoc judges had performed their working experience, especially in adjusting it to their duty in the tribunals.

RECOMMENDATION

1. The government should place the legal apparatus in a neutral position and absolve them from political commitment.
2. Both internal and external control is required in judicature institutions.
3. The government should encourage judicial responsibility and accountability in order to improve humanist, dignified, and equitable public services.

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