

Personal Judicial Self-Governance Di Indonesia (Analisis Konsepsi Rekrutmen Hakim Pasca Satu Atap) = Personal Judicial Self-Governance In Indonesia (The Analysis of Judge Appointment Concept After One Roof System)

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Abstrak

Rekrutmen Hakim merupakan basis independensi kekuasaan kehakiman. Penelitian ini bermaksud menjawab permasalahan terkait konstruksi rekrutmen hakim di Indonesia, bagaimana implementasi setelah rekrutmen menjadi kewenangan satu atap, dan bagaimanakah rekrutmen hakim ideal untuk ketatanegaraan Indonesia. Penelitian ini dilaksanakan dengan metode yuridis normatif melalui studi literatur, dengan perbandingan Negara Belanda, Perancis, Italia, Jepang dan India. Hasil Penelitian menunjukkan bahwa Konstruksi rekrutmen hakim Indonesia dibangun dari pergeseran rekrutmen oleh kementerian kehakiman menjadi model rekrutmen oleh Mahkamah Agung dengan sistem satu atap. Selanjutnya pasca amandemen rekrutmen hakim dijalankan dengan model Komisi Yudisial. Implementasi rekrutmen hakim di Indonesia masih belum sejalan dengan konsepsi Judicial Self governance, dimana rekrutmen masih belum terstandarisasi baik dari sisi pelaku, metode dan persyaratan. Rekrutmen hakim agung menggunakan metode appointment by judicial commission meskipun kewenangan DPR telah dianulir MK, namun metode cooperative appointment masih terus dijalankan dengan metode double fit and proper test. Rekrutmen hakim tingkat pertama dilaksanakan dengan metode recruitment by political institution dengan sub model Ministry, meskipun pasca putusan MK diperintahkan untuk dilakukan secara judicial self appointment namun nyatanya MA menyerahkan proses kepada Menpan-BKN yang notabene eksekutif. Sedangkan untuk hakim adhoc dan hakim pajak, potensial dengan intervensi eksekutif dalam pelaksanaan rekrutmennya. Sebagai bentuk ideal yang ditawarkan adalah rekrutmen hakim dengan metode appointed by judicial commission dengan model single body appointment, idealitas model rekrutmen terletak pada asas-asas rekrutmen yang transparan, akuntabel, partisipatif dan obyektif dengan sinergi antara Mahkamah Agung dan Komisi Yudisial. Saran penelitian, pengaturan rekrutmen hakim perlu diatur dalam konstitusi kita, standarisasi tersebut termasuk dalam konsistensi personal judicial self-governance dengan berpegang pada Independensi dan efektifitas administrasi peradilan.

.....The selection of Judges is the basis of judicial independence. This research was designed to exercise, the construction of judge appointment process in Indonesia, How the recruitment of judge was implemented under the one roof system and answering the ideal model of judge appointment in Indonesia. This was normative juridic research, conducted by literature study, and comparative study to Netherland, France, Italy, Japan, and India. The conclusions show that the construction of Judicial Appointment in Indonesia was shifted from Ministry of Justice to Judicial self-Appointment by the one roof system enactment. The construction shifting continuous to “appointment by Judicial council/commission model” after the amendment. The implementation of the judge appointment process was not suitable to the principles of Judicial Self-governance, since the subject, method and requirement were not standardized. The judge appointment was Implemented as follow, Supreme court judge appointment was using the “appointment by judicial commission model” even though Legislative involvement were annulled by the supreme court, but

the cooperative appointment is still being practiced with the double fit and proper test method. The Implementation of first instance judge appointment was conducted ala recruitment by political institution, in sub-Ministry model, this model was against the constitutional court decision since it should be held by “judicial self-appointment” since judicial commission involvement was unconstitutional, but supreme court was given the authority to state apparatus ministry and state civil servant Body (Menpan-BKN) instead. While the appointment of ad hoc judges and tax judges were potentially open the interference by the executive. The study proposed the appointment by judicial commission with the single body appointment model as the ideal model. The ideal appointment method needs to rely on the core principles of appointment which are transparent, accountable, participative, and objective, this also need Supreme Court dan Judicial Commission synergy. The study suggests that our constitution needs to arrange the Judge appointment mechanism, this also includes the personal judicial self-governance based on independence and effectiveness of the judiciary.