

LEGAL IMPLICATIONS OF REGULATORY PROVISIONS ARTICLE 10 VERSE (5) LAW NO. 46 OF 2009 CONCERNING THE CORRUPTION CRIMINAL COURT

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Abstract

The corruption criminal court is an institution that is given the authority to examine and decide corruption cases. The purpose of this study was to determine the juridical implications of the principle of the independence of the judicial power. This study uses a normative approach with quantitative analysis. The existence of a corruption court established on judicial power states that a special court can only be formed by a separate law. Then the corruption court is an institution that has the authority to examine and decide corruption cases. In its implementation, the composition of judges in the corruption court is divided into two, namely career judges and ad hoc judges. In its implementation, there are several things in the legislation that are contrary to the principle of independence of judicial power and violate the principle of freedom of judicial power, especially for ad hoc judges in the criminal court of corruption.

Keywords: *Corruption, Corruption Criminal Court, Independence of judicial power.*

A. INTRODUCTION

The court is an institution that has important authority in a country, the court is not merely a body to judge but as an abstract form of providing justice. According to Sudikno Mertokusumo, justice here is related to the task of the court or judge in providing justice, justice given to the person

concerned or concretely to those asking for justice.¹ Therefore, in a country there must be an institution that guarantees a sense of justice called a court institution, a court is an institution that will ensure that law enforcement will run according to the rule of law or not (Rahardjo, 2016). As for the form of rule of law in a country which later becomes an important element of a country to become a modern democracy.

In law enforcement practice, courts in Indonesia carry out an integrated function, represented by judges.² In the Big Indonesian Dictionary, a judge is defined as a person who adjudicates a case (court or court), a decision which cannot be contested. In the provisions of Article 19 of Law No. 48 of 2009 concerning Judicial Power, judges are defined as: "judges are judges at the Supreme Court and judges in the judiciary under it in the general court, religious courts, military courts, state administrative courts and judges in special courts who are in the environment. the court environment ". While in the provisions of Article 12 of Law No. 2 of 1986 as per Law No. 4 of 2004 as amended by Law No. 49 of 2009 on the General Court declared the judge to be: "an official who performs the duties of judicial power".³

Richard A Posner and T Kronman define a judge as a rational administrator and social engineer who then gradually becomes a lawyer statesman when he is appointed as a supreme court judge.⁴ According to Suteki, judges are a profession that has the function and role of taking responsibility for presenting justice (bringing justice to the people) and truth (searching for the truth).⁵ In carrying out its functions and duties, judges are also "the seat of justice where the facts represented in court will be presented, the panel of judges gives decisions on the basis of evidence that is (considered) convincing (indisputable) and then (after deliberate to find an agreement) wisely prepare the verdict".⁶

The court is an institution that implements the constitution, protects human rights and guarantees fair and democratic procedures.⁷ All of these

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- 1 Sjachran Basah, *Mengenal Peradilan di Indonesia*, Raja Grafindo Persada, Jakarta, 1995, page. 9
 - 2 Mohammad Daud Ali, *Pengantar Ilmu Hukum dan tata Hukum Islam di Indonesia*, PT Raja Grafindo Persada, Jakarta, 2005, page. 278
 - 3 Bagir Manan, *Kekuasaan Kehakiman Republik Indonesia*, LPPM Unisba, Bandung, 1995, page. 17
 - 4 The Bangalore Draft Code of Judicial Conduct 2001, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justice held at the Peace Palace, *The Hague*, November 25-26, 2002
 - 5 Suteki, *Masa Depan Hukum Progresif*, Thafamedia, Yogyakarta, 2016, page. 68
 - 6 Mardjono Reksodiputro, *Komisi Yudisial : Wewenang Dalam Rangka Menegakan Kehormatan Hakim Dan Keluhuran Martabat Serta Menjaga Perilaku Hakim Di Indonesia (membentuk Kembali Peradilan Indonesia-Suatu Pengamatan Yuridis-Sosial)*, Dalam : *Komisi Yudisial Republik Indonesia, Bunga Rampai Refleksi Satu Tahun Komisi Yudisial Republik Indonesia*, Sekretariat Jendral Komisi Yudisial Republik Indonesia, Jakarta, 2006, page.38.
 - 7 Rumadan, Ismail, Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakan Keadilan Bagi Terwujudnya Perdamaian, *Jurnal Rechtsvinding*, Volume 6, Nomor 1, April 2017

functions place the position of the judge as a legal maker who judges based on the decisions he makes.

Judges are given the task of making decisions in cases or conflicts that are faced with them, determining matters such as legal relations, the legal value of behavior, and the legal position of the parties involved in the case.⁸

In connection with the position of judges, in the provisions of Article 24 paragraph (1) of the 1945 Constitution it states: "Judicial power is an independent power to administer the judiciary to uphold law and justice", then in paragraph (2) it is stated that: "Judicial power is exercised by a The Supreme Court and the judiciary bodies that are under it in the environment of general courts, religious courts, military courts, state administrative courts and by a Constitutional Court".⁹

For the implementation of the provisions of the article above, Law No. 48 of 2009 concerning Judicial Power as a legal protection for the enactment of other laws governing the administration of judicial power, namely in:¹⁰

1. Law No. 7 of 1989 on Religious Court of Justice.
2. Law No. 31 of 1997 concerning Military Court of Justice.
3. Law No. 3 of 2009 on the Supreme Court.
4. Law No. 8 of 2004 concerning General Courts.
5. Law No. 9 of 2004 concerning State Administrative Courts.
6. Law No. 24 of 2005 concerning the Constitutional Court of Justice.

The Corruption Court is a special court located in the area of the general court and the only court that has the authority to try corruption cases where the prosecution is carried out by the public prosecutor, based on the provisions of Law No. 46 of 2009 Regarding the Corruption Crime Court, this court is a form of a special court established within the general court.¹¹ The main objective of the establishment of the Corruption Crime Court is the government's determination to eradicate corruption, namely by the appointment of ad hoc judges at the Corruption Crime Court starting from 2002 with Law No. 30 Regarding the Corruption Eradication Commission and renewed by Law No. 46 of 2009 concerning the Corruption Crime Court.¹²

Initially the Corruption Crime Court was a court established under the provisions of article 35 of Law No. 30 of 2002 concerning the Corruption Eradication Commission (KPK) and also based on the decision of the Constitutional Court No: 012-016-019 / PUU-IV / 2006 dated 19 December 2006, where in its consideration the Constitutional Court's decision is in line with Law No.4 of 2004 concerning judicial power and states that a special court can only be established by a separate law, therefore the regulation of

8 Rifai, Ahmad, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2010, page. 25

9 Indonesian Constitution 1945

10 Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2005, page. 237

11 M. Akil Mochtar, *Memberantas Korupsi*, Penerbit Q- Communication, Jakarta, 2006, page. 3

12 Ibid.

the court for criminal acts of corruption must be regulated in a separate law.¹³

In Law No. 46 of 2009 Regarding the Corruption Crime Court, it regulates corruption court judges consisting of career judges and ad hoc judges, for ad hoc judges themselves where the requirements for election and appointment are different from judges in general, the existence of ad hoc judges is needed because their expertise is in line with the complexity of corruption cases, including the *modus operandi*, proof, and the scope of corruption, including finance and banking, taxation, capital markets, government procurement of goods and services.¹⁴ With the existence of ad hoc judges in the Corruption Crime Court, it is hoped that their roles can be referred to as "ambassadors for change", referred to as "ambassadors for change" because previously court institutions no longer had the trust of the public, so with the existence of ad hoc judges, judicial institutions could be trusted again by the community who seeking justice, especially in the criminal act of corruption.¹⁵

The position of the ad hoc judge at the corruption court is regulated in the provisions of Article 10 point (5) of Law No. 46/2009 concerning the Corruption Criminal Court states: "ad hoc judges as referred to in paragraph (4) are for a term of 5 (five). years and can be reappointed for 1 (one) term of office ", with the provisions of this article, the term of office of ad hoc judge for corruption is determined for 5 years and can be reappointed for 1 (one) time. In the provisions of this Article, the period of office for ad hoc judges in corruption courts is regulated. The period of tenure of ad hoc judges is in principle contrary to the universal principle applicable to judges, namely the principle of judicial power dependency. Therefore, the provisions of this article are those that have a position as norm delegate discretion or have exceeded the basic regulations, namely Law No. 48 of 2009 concerning Judicial Power as a legal protection against the enactment of other laws regulating the administration of judicial power.¹⁶

Apart from contradicting the principle of judge independence, the provisions of this article regarding the period of office are also against the principle of fair legal certainty and equal treatment before the law, especially for ad hoc judges in the criminal court of corruption. In the provisions of this article, it is clear that the position of ad hoc judges for corruption and medical discrimination is the position of corruption judges from career judges, whereas in principle there is no difference in regulating ad hoc judges and career judges in the provisions of the law on judicial power. Therefore, the differentiation of positions and discrimination against

13 Ermansjah Djaja, *Memberantas Korupsi Bersama KPK : Kajian Yuridis Normatif UU No.31 Tahun 1999 junto UU No.20 Tahun 2001 Versi UU No.30 Tahun 2002*, Jakarta, Sinar Grafika, 2009, page.360.

14 Komisi Pemberantasan Korupsi, *Memahami Untuk Membasmi*, Buku Saku Untuk Memahami Tindak Pidana Korupsi, KPK, Jakarta, 2006, page.35

15 Ibid.,

16 Lilik Mulyadi, *Tindak Pidana Korupsi (Tinjauan khusus terhadap proses penyidikan, penuntutan, peradilan serta upaya hukumnya menurut Undang Undang Nomor 31 Tahun 1999)*, PT.Citra Aditya Bakti, Bandung, 2000

ad hoc judges of corruption will cause demotivation in relation to not giving guarantees of freedom and equality as a form of state appreciation to ad hoc judges of Corruption in carrying out their duties.

Whereas the provisions of this article, if examined philosophically, at least have a logical fallacy in interpreting the meaning and meaning of the adhoc word itself, the wrong interpretation of the ad hoc word is a form of illogical reasoning with wrong premises caused by drawing invalid conclusions on the premise-forming arguments (adhoc word) itself. The logical fallacy, namely: In the provisions of Article 36 of the UNCAC which is a convention against corruption, it is stated: "each state party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or specialized persons. in combating corruption through law enforcement. such a body or bodies or person shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the state party, to be able to carry out their fuction effectively and without any undue (influence) (pressure). Such person or staff of such body or bodies should have the appropriate training ang resources to carry out their tasks ”.

Whereas in this convention it is expressly stated that every country is obliged, in accordance with the basic principles of its legal system, to ensure the existence of an entity or bodies or persons with a specialization to combat corruption through law enforcement, agencies or bodies or persons. these must be granted the necessary freedoms, in accordance with the basic principles of the legal system of the participating countries, in order to carry out their functions effectively without the due influence / pressure. certain persons or staff of the agency or agency have adequate training and resources to carry out their duties. In this provision it states that in the process of overcoming corruption, each country must have a body or person with special expertise, it can be concluded that this body or person with special expertise is a permanent body, not an ad hoc or temporary to deal with criminal acts of corruption.

Other arrangements are also regulated in the provisions of Law No. 48 of 2009 concerning judicial power as legal protection against the enactment of other laws governing the implementation of judicial power, there is no single provision in the article that regulates the period of office of judges for judges who are within the Supreme Court or in the Constitutional Court.

From this provision it can be interpreted that there is no difference in the process of appointment and ratification between ad hoc judges of corruption and career judges, because the recruitment and appointment mechanisms are the same as the same mechanisms between ad hoc judges of corruption and career judges. Thus, it can be concluded that ad hoc judges are permanent judges who have the same position as career judges. Therefore, the provision on the period of tenure of ad hoc judges in the criminal court of corruption is an interpretation of the article which does not guarantee independence for judges, because it causes discrimination in treatment related to the appointment and retirement of ad hoc judges and

career judges. in the criminal act of corruption, there is no difference in treatment between ad hoc judges and career judges.

The provisions for regulating the period of office of ad hoc judges for corruption make ad hoc judges of corruption in a situation of uncertainty and inequality in their term of office and term of dismissal, therefore it is necessary to have an institutional arrangement for ad hoc judges for corruption as a form of independent judicial power. With the elimination of discrimination for ad hoc judges of corruption into a profession that has technical competence, civic virtue and practical wisdom, the elimination of discrimination will also provide the ability to resolve complex and grave legal problems in the field of corruption crime disputes. So that ad hoc judges of corruption have a civic virtue (social moral) character where they will become judges who are sensitive to global interests reflected in their decisions that find conflicts between values and interests that can be harmonized as practical problem solvers, where the judge will have contains love for the country and a sense of patriotism that determines the position and glory of the judiciary.¹⁷ This study aims to find juridical implications for the enforcement of Article 10 paragraph (5) of Law no. 46 of 2009 concerning the Corruption Crime Court and its implications for the principle of independence of judicial power on the provisions of Article 10 Paragraph (5) of Law No. 46 of 2009 concerning the Corruption Crime Court.

B. RESEARCH METHODS

This research is a legal research using the socio-normative approach. The data used are primary data and secondary data which were analyzed using quantitative analysis.

C. RESULT AND DISCUSSION

1. Juridical Implications for the Enforcement of Article 10 Paragraph (5) of Law No. 46 of 2009 concerning the Corruption Criminal Court.

In the judicial process, judges are guaranteed by a principle known as the principle of independence, judicial independence is part of the judicial power which is mandated by judges constitutionally as the organizer of judicial power. The form of guarantee for judicial power is to guarantee the independence of the judicial power free from interference by other state powers, and freedom from coercion, directives or recommendations that come from extra-judicial, except in matters regulated by law. The independence of judges is the main prerequisite for the realization of the ideals of a rule of law which is an important matter as well as a prerequisite for upholding law and justice in a country. Independence here is defined as the independence of judges either individually or institutionally from various kinds of influences from outside the judge in the form of interventions that affect directly or

17 Quirk, William J and Briewell, R. Randal, *Transaction Publisher New Brunswick*, Judicial Dictatorship, 1997, page. 129

indirectly, can be in the form of persuasion, pressure, coercion, threats or retaliation for political interests, or certain economies from anyone, with rewards or promises in the form of office benefits, economic benefits and other forms.

The independence of the judiciary is an implementation of the 2002 Bangalore Principles which states:

- a. Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial, A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
- b. Impartiality is essential to the proper discharge of the judicial office, it applies not only to the decision it self but also to the process by which the decision is made
- c. Integrity is essential to the proper discharge of the judicial office
- d. Propriety, and the appearance of propriety are essential to the performance of all of the activities of a judge
- e. Ensuring equality of treatment to all before the court is essential to the performance of the judicial office
- f. Competence and diligence are prerequisites to the performance of judicial office
- g. Regarding the independence of the judicial power, Sadli Isra quoted Simon Setreton as saying that the independence of the judicial power is divided into two, namely personal independence and substantive independence. Both of these aims to avoid influences both internal and external, both politically and economically. At this point the judge is only carrying out his function to be guided by statutory regulations. Therefore independence is divided into:¹⁸
 - 1) Substantive independence (independence in deciding cases)
 - 2) Personal independence (independence in job and position guarantees)
 - 3) Internal independence (Independence from superiors or colleagues)
 - 4) Collective independence (independence of court participation, including determining court budget)

Absolute provisions regarding the independence of judges only focus on one point, namely relating to independence in deciding cases, but other than that what is no less important is related to the independence of judges in terms of job security and the position of judges. With regard to job guarantees and the position of judges by Chief justice McLachlin as quoted by Bagir Manan, a long or unlimited tenure is seen as one of the essential conditions for ensuring the independence of judicial power, in many countries (such as England, Canada, the Netherlands) the tenure of judges is during good behavior

18 Wadji, Farid, *Independensi Dan Akuntabilitas Peradilan, Komisi Yudisial Republik Indonesia, Meluruskan Arah Manajemen Kekuasaan Kehakiman*, Sekretarian Jenderal Komisi Yudisial Republik Indonesia, Jakarta, 2018, page.32

(for good behavior). In Canada, the definition of "during good behavior" is up to the age of 75 years and can only be dismissed by the governor general upon a parliamentary resolution (senate and house of commons). Likewise in the United States, justices and judges under him hold positions "during good behavior" but have the right to ask for retirement when they reach 70 years of age. In Germany, judges are appointed for life, but the law can regulate the retirement age.¹⁹

The guarantee of employment and the position of judges is one form of guaranteeing the principle of independence of judicial power. If the guarantee of employment and the position of judges is limited, it will result in disruption of the independence of the judges themselves as executors of judicial power. This condition can lead to intervention or irregularities in filling the position of judge.

In connection with the guarantee of work and the judiciary has been guaranteed in the Beijing Statement Of Principles of The Independence Of The Judiciary of 1995 which states:

- a. Art. 18 : Judges have security of tenure.
- b. Art. 19 : its recognised that, in some countries, the tenure of judges is subject to confirm from time to time by vote or the people or other formal procedures.
- c. Art 20 : however, it is recommended that all judges exercising the same jurisdiction be appointed for a period to expire upon the attainment of a particular age.
- d. Art 21 : Judge tenure must not be altered to the disadvantage of the judge during his or her term of office.

Then it is also regulated in the New Delhi Code Of Minimum Standards Of Judicial Independence in 1982 which states the need for a guarantee period of the term of the judge with a long term, it is regulated in Article 22:

- a. Judicial appointment should generally be for life, subject to removal for cause and compulsory retirement, at an age fixed by law and date of appointment
- b. Retirement age shall not be reduced for existing judge

Whereas the guarantee of employment and tenure for judges is part of the existence of an independent judicial power, Bagir Manan later emphasized that in carrying out the function of an independent power, 3 main conditions are needed in guaranteeing an independent judicial power, namely: (Manan, 2014)

- a. guaranteed tenure for judges;
- b. Financial guarantee;
- c. Independent administrative guarantee;

19 Manan, Bagir, *Prasyarat Kemerdekaan Kekuasaan Kehakiman*, Varia Peradilan Majalah Hukum Tahun XXX No. 348 November 2014.

Based on these provisions, there is a guarantee for the job and position of judges as part of the principle of judge independence which is an absolute principle for judges. However, in practice there can be found legal provisions that can threaten and reduce the principle of judge independence, as for the provisions contained in the provisions of Article 10 point (5) of Law Number 46 Year 2009 concerning Corruption Crime Court, That stated: "ad hoc judge as referred to in paragraph (4) for a term of office of 5 (five) years and can be reappointed for 1 (one) term of office ", Whereas the phrase in this article indicates that there is a period of office of ad hoc judge Corruption for 5 years and can be reappointed for 1 (one) term, this provision is very detrimental because it contradicts the principle of independence of the judicial power.

Because as regulated in Law no. 48 of 2009 which is an amendment to Law No. 14 of 1970 as a law protecting judicial power in Indonesia. State that there is nothing in the provisions governing the term of office of judges who are in the court environment under the Supreme Court of the Republic of Indonesia. Whereas with regard to the period of tenure of ad hoc judges in the criminal court of corruption, it is clearly contrary to the principle of independence of judicial power, which can threaten the freedom of judges and cause serious problems, namely problems in the system of appointment and dismissal of ad hoc judges at the Corruption Criminal Court.

Whereas the provisions of this article clearly provide career uncertainty for ad hoc judges of corruption, even though to make the selection to become ad hoc judges in a corruption court it is carried out with a complicated and time-consuming process. The pattern of recruitment of corruption court judges is carried out with a very strict process from all participants with various professional backgrounds. This selection pattern was also overseen by the President, the Judicial Commission of the Republic of Indonesia, by the House of Representatives (DPR) and also by the Supreme Court of the Republic of Indonesia. It should be noted that this recruitment pattern is also no different from the career law recruitment pattern, so it can be ascertained that the period of office of the ad hoc judge at the corruption court does not provide protection and legal equality for ad hoc judges in the corruption court (corruption).

2. Implications for the principle of independence of judicial power on the provisions of Article 10 Paragraph (5) of Law No. 46 of 2009 concerning the Corruption Crime Court

The judiciary in its role is demanded to carry out the role of upholding justice as fairly as possible for the community, to carry out these duties then judges are required to examine, try and decide cases that must be protected by their profession with independent and free power by the state from various interventions both from outside. or from

within the scope of the judiciary.²⁰ The attitude of independence or independence from judicial power is a "fortress" of the judge from any intervention or influence from interested parties, so that judicial power in this case the judiciary can carry out its functions power properly.²¹

According to Mahfud MD, the independence of the judicial power is one of the characteristics of a democratic country, where the state must guarantee the existence of a judicial institution that is free from other powers and does not take sides. One of the conditions for a country to be declared a democracy based on law is the existence of an independent and impartial judicial power. This is an important aspect in a country, regardless of the form of the state system or government of a country, the principle of independence and impartiality is something that must be guaranteed in a constitutional democracy.²²

Judicial power is related to the implementation of a judiciary with a series of processes to try someone who is declared to have violated statutory regulations, the understanding of judicial power in Indonesia is understood as the freedom of judges to judge a case. Contextually, the freedom of judicial power has three essences, namely:

- a. Judges are only subject to law and justice.
- b. No one, including the government, can determine or direct the decisions that will be taken.
- c. There should be no personal consequences (to judges) in carrying out their judicial functions.

According to Djohansyah, judicial power is interpreted as the independence of judges in carrying out an impartial judiciary, solely based on facts and law, without limitation, influence of persuasion, pressure or intervention, directly or indirectly from parties or and / or any reason for the purpose of justice based on Pancasila.²³ In its implementation, the power of the judiciary falls into two definitions, namely as personal independence and substantive independence, namely:

- a. Personal independence as matters relating to the individual judge which includes sufficient income or salary, term of office determined by law, immunity from civil prosecution, immunity to testimony about the consequences of a decision made and court control over dismissal.
- b. Substantive independence as independence is related to the content of decisions where the judge must give judgment based on common sense and existing laws and facts.

20 Dworkin, Ronald, *Talking Right Seriously*, Gerald Duckworth&Co, London, 1977

21 Manan, Bagir, *Prasyarat Kemerdekaan Kekuasaan Kehakiman*, Varia Peradilan Majalah Hukum Tahun XXX No. 348 November 2014, page. 35

22 Mahfud MD, *Membangun Politik Hukum Konstitusi*, Pustaka LP3ES, Jakarta, 2002, page. 25

23 Djohansyah. J, *Reformasi Mahkamah Agung Menuju Independensi Kekuasaan Kehakiman*, Kesaint Blanck, Bekasi, 2008, page.15

Based on the above provisions, the guarantee of a judge's tenure is an absolute matter for judges who are guaranteed by the principle of independence of judicial power. So the provisions of Article 10 Paragraph (5) of Law No. 46 of 1999 concerning the Corruption Crime Court which regulates the period of tenure of ad hoc judges in the criminal court of corruption is something that is contrary to the principle of independence of judicial power. Whereas the term of office of ad hoc judges in the criminal court of corruption is contrary to the 1959 Convention on Discrimination (Employment and Position), the Convention means that discrimination on any basis is not allowed in obtaining employment and position, in this convention it is stated that what is meant by discrimination in jobs and positions are:

- a. Any differences, exceptions on the basis of race, color, sex, religion, political belief, nationality or origin in society that result in the loss or reduction of equal opportunity or equal treatment in employment or position;
- b. Differences, exclusions or choices in certain jobs based on specific requirements for a particular job will not be considered discrimination;
- c. For the purposes of this Convention, the term employment or position includes access to certain jobs and positions and terms and conditions of employment;

Whereas the term of office of ad hoc judges in the criminal court of corruption shows discriminatory treatment in relation to item 2 concerning Discrimination (Occupation and Position) of 1959, so that the provisions of Article 10 paragraph (5) of Law No. 47 of 2009 concerning the Corruption Crime Court has the potential to interfere with the principle of independence of judges, especially ad hoc judges in the corruption court. Whereas it has the potential to conflict with Discrimination (Occupation and Position) in 1959, then article 10 paragraph (5) of the corruption court law is contrary to the principle of equality in law and government and violates the right to work and a decent life based on the provisions of the article. 27 paragraph (1) and paragraph (2) of the 1945 Constitution, the provisions of this article indicate that there are acts that are very discriminatory for ad hoc judges in the criminal court of corruption and are contrary to the principle of independent judicial power for judges.

Whereas in relation to the position of ad hoc judges and career judges in corruption court cases, there is no single legal provision that differentiates the position of ad hoc judges and career judges in the settlement of cases of criminal acts of corruption. To achieve the position as ad hoc judge in corruption court, ad hoc judges also undergo recruitment and appointment through the same procedures as career judges. Adhoc judges in the corruption court also undergo selection and education for judges like career judges in general, so there is no

difference with regard to selection and recruitment and education between ad hoc judges and career judges in corruption courts.

Whereas then the position of status as a judge, ad hoc judge at the criminal court of corruption is also a member of the Indonesian Judge Association (IKAHI) which is proof of the legality of ad hoc judges who are judges whose position is the same as career judges in general so that there is no difference in status between ad hoc judges and career judge. Whereas ad hoc judges in the criminal act of corruption are also selected, selected and also supervised to be the object of examination by the Judicial Commission (KY) as part of the supervision of judges throughout Indonesia, thus ad hoc judges of corruption are judges who have the same position. the same as career judges in general.

Therefore, the meaning of the provisions of Article 10 paragraph (5) of Law No. 46 of 2009 concerning the Corruption Crime Court clearly violates the principle of fair legal certainty and equal treatment before the law (equality before the law), especially to ad hoc judges in the corruption court. Whereas the positions of ad hoc judges and career judges in the criminal offense court of corruption should be equal in order to avoid differences and avoid unequal positions before the law between ad hoc judges and career judges, because in fact ad hoc judges and career judges in corruption court both have authority and have the competence as a judge who examines and decides cases of criminal acts of corruption.

Whereas violations of the principle of fair legal certainty and equal treatment before the law (equality before the law) make ad hoc judges in the criminal court of corruption in the area of uncertainty and inequality (unequal) in serving:

- a. The disturbance of the judge's independence in carrying out his profession;
- b. Career uncertainty, especially the retirement period for ad hoc career judges in the corruption court;
- c. An ad hoc judges will experience early retirement at a productive age;
- d. An ad hoc judges will lose their careers due to the attainment of a very young retirement age, so that there is no certainty of careers for ad hoc judges in the corruption court;
- e. Differences in income and income between ad hoc judges and career judges in corruption courts;
- f. Differences in treatment and facilities between ad hoc judges and career judges in corruption courts;
- g. Disturbing the continuity of examination of cases of criminal acts of corruption because the tenure of ad hoc judges is limited by the period of office.

D. CONCLUSION

The existence of a corruption court established by law states that a special court can only be established by a separate law. Then with the

passing of the Law on the Corruption Crime Court, the corruption court is the institution that has the authority to examine and decide corruption cases. In its implementation, the composition of judges in the corruption court is divided into two, namely career judges and ad hoc judges. The position of Judge ah hoc in the criminal act of corruption in the implementation is contrary to the principle of independence of judicial power and violates the principle of freedom of judicial power, especially for ad hic judges in the corruption court.

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