



Paradox of Personnel Management Between Judges and Non-Judges Within the Supreme Court of The Republic of Indonesia

Hamdani Zalukhu^{1*}, Lilawaty Ginting²

Master of Law, Universitas Muhammadiyah Sumatera Utara, Medan, Sumatera Utara, 20238, Indonesia

frequency054@gmail.com , lilawatiginting@umsu.ac.id

Corresponding Author: Hamdani Zalukhu: Email: frequency054@gmail.com

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ABSTRACT

The one roof system within the Supreme Court is a constitutional mandate intended to ensure judicial independence. However, in practice, a sharp paradox emerges in personnel management between judges as state officials and non-judge employees as Civil State Apparatus (ASN). This study analyzes the juridical implications of regulatory dualism between the Judicial Power Law and the ASN Law, as well as its impact on the effectiveness of judicial organizations. Using a normative juridical research method with statutory and conceptual approaches, this study examines institutional malfunction through Hans Kelsen's hierarchy of norms theory and Lon L. Fuller's theory of legal morality. The findings indicate a normative conflict that causes the Supreme Court to lose absolute autonomy over its supporting personnel due to executive bureaucratic standardization. Philosophically, if judges are considered the "soul" and non-judges the "body" of the judiciary, the current dualistic management system causes organic paralysis where the "body" cannot move in harmony with the technical needs of the judicial "soul." This legal status disparity creates loyalty dissonance and welfare inequality that hinder professionalism. As a reconstructive solution, this study proposes the urgency of establishing a "Judicial Civil Service" regime.

INTRODUCTION

The one roof system within the Supreme Court is a constitutional mandate aimed at guaranteeing the absolute independence of judicial power. Article 24 paragraph (1) of the 1945 Constitution in conjunction with Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power affirms that judicial power is an independent authority to administer justice in order to uphold law and justice.

In reality, however, there is management fragmentation that creates a governance paradox. Judges are positioned as state officials under Article 19 of Law Number 48 of 2009, while non-judge apparatus such as clerks, secretaries, and administrative staff fall under the general bureaucratic regime regulated by Law Number 20 of 2023 concerning the Civil State Apparatus.

This difference in legal regimes creates dual standards. Judges are subject to judicial professional norms, while non-judges are bound by general national ASN competency and performance management standards. As a result, institutional disharmony and inefficiency emerge within judicial services.

RESEARCH METHOD

This study employs a normative-juridical legal research method (doctrinal research), namely research that examines law as a comprehensive and coherent system of norms. This study focuses on efforts to synchronize legal frameworks in order to overcome the regulatory dichotomy in personnel management within the Supreme Court.

Research Approach

To comprehensively examine the issue, three main approaches are employed:

1. Statutory Approach: This approach is used to analyze the inconsistency between the Judicial Power Law (as the basis of judicial independence) and the Civil State Apparatus Law (ASN Law) (as the basis of the general bureaucratic system).
2. Conceptual Approach: This approach is used to examine the doctrine of judicial independence as well as the organizational concept of the "Soul and Body" in order to develop a new understanding of judicial integrity.
3. Analytical Approach: This approach is used to critically analyze the legal meanings contained in the terms "State Officials" and "Civil State Apparatus (ASN)" within the judicial ecosystem.

Sources of Legal Materials

This study relies on secondary data consisting of:

- Primary Legal Materials: These include the 1945 Constitution of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, and Law Number 20 of 2023 concerning the Civil State Apparatus.

- **Secondary Legal Materials:** These consist of legal literature, reputable journals, and research findings related to the one roof system and public sector human resource management.

Techniques for Collecting and Analyzing Legal Materials

Legal materials were collected through library research techniques by conducting classification and verification of relevant legal documents. Furthermore, the legal materials were analyzed qualitatively using a deductive method. The reasoning process began with the general principle of judicial independence as the Grand Theory, which was then confronted with the reality of the personnel management paradox (*das Sein*), in order to produce a conclusion in the form of a reconstruction of an ideal management model (*ius constituendum*).

RESULTS AND DISCUSSION

A. Juridical Implications of Regulatory Dualism on the Independence of One Roof Management: Analysis of Norm Synchronization

The existence of the Supreme Court as the apex of judicial power is constitutionally guaranteed in its independence. However, this independence faces serious challenges when confronted with dualistic personnel regulations. On the one hand, there is the mandate of Law Number 48 of 2009 concerning Judicial Power, which seeks administrative independence, while on the other hand, Law Number 20 of 2023 concerning the Civil State Apparatus (ASN Law) draws non-judge personnel into the orbit of the executive bureaucracy. The juridical implications of this condition are not merely administrative issues, but rather touch upon the essence of the separation of powers.

In examining this phenomenon, Hans Kelsen's concept of *Stufentheorie* or the theory of the hierarchy of norms becomes highly relevant. Kelsen states that a legal system is a hierarchy of norms in which the validity of a norm depends on a higher norm. Vertically, Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia serves as the *Grundnorm* for judicial independence in Indonesia. From this basic norm emerged Article 21 paragraph (1) of Law Number 48 of 2009, which states that:

"The organization, administration, and financial affairs of the Supreme Court and the judicial bodies under it shall be under the authority of the Supreme Court."

Normatively, this provision constitutes a "juridical shield" that should free the Supreme Court from all forms of administrative intervention by other institutions. Based on the principle of *lex specialis derogat legi generali*, regulations concerning personnel management within judicial institutions should be specific and autonomous. However, the enactment of the latest ASN Law has created irregularities within Kelsen's hierarchy of norms. The ASN Law positions itself as a general regulation that crosses the boundaries of branches of power (executive, legislative, and judicial) without providing exceptions for the special characteristics of judicial power. This has resulted in normative

fragmentation in which the Supreme Court possesses a divided administrative “roof.”

In practical reality, this regulatory dualism gives rise to implications that contradict the spirit of one roof integration. The researcher found that the management of non-judge human resources within the Supreme Court remains highly dependent on the policies of the Ministry of Administrative and Bureaucratic Reform (KemenPAN-RB) and the National Civil Service Agency (BKN).

This phenomenon can be observed in several crucial aspects:

- **Recruitment and Staffing Formation:** The determination of the number and qualifications of judicial technical personnel (such as Substitute Clerks or Bailiffs) must obtain executive approval. This frequently creates an imbalance between the number of incoming cases and the availability of supporting human resources.

- **Merit System and Performance Evaluation:** ASN performance standards within the judicial environment are equated with ASN standards in sectoral ministries. This is inconsistent with Lon L. Fuller’s doctrine of congruence, which holds that legal rules should align with their functional objectives. Court staff are required to fulfill bureaucratic administrative targets, which often conflict with sudden and dynamic judicial technical needs.

- **Discipline and Transfer:** The authority of the Supreme Court to carry out strategic personnel transfers in order to maintain integrity is often constrained by rigid national regulations concerning ASN career patterns.

If further analyzed using H.L.A. Hart’s theory regarding secondary rules (rules governing rules), the Supreme Court is currently experiencing a crisis of authority in establishing its own internal regulations.

The inability of the Supreme Court to independently regulate non-judge personnel has resulted in the emergence of “dual loyalty” among judicial apparatus. Administratively, non-judge staff are loyal to executive regulations (ASN), yet functionally they are required to comply with judicial instructions (Judges).

The most alarming juridical implication is the occurrence of an Involution of Autonomy. The Supreme Court appears independent externally, yet internally it is administratively fragile. The failure to synchronize the norms between the Judicial Power Law and the ASN Law causes the one roof principle to become merely a physical slogan (the unification of buildings), while failing to achieve the unification of managerial spirit. Without full autonomy over its personnel, the judicial independence of the Supreme Court will always remain under the shadow of executive administrative constraints.

B. The Paradox of the Management of State Officials and Civil State Apparatus (ASN): An Analysis of Institutional Malfunction within the Judicial Organism

In the discourse of legal sociology and judicial organizational theory, the Supreme Court cannot merely be viewed as an office building, but rather as a living organism. Philosophically, Judges are the “Soul” of judicial power; they are the holders of the constitutional mandate to deliver justice through judicial decisions. However, the soul cannot function without the “Body,” namely non-judge apparatus (Clerks, Secretaries, technical staff, and administrative staff) who prepare trial instruments, manage case files, and execute judicial decisions.

Institutional malfunction occurs when this “Soul” and “Body” are controlled by two different centers of command. Based on Article 19 of Law Number 48 of 2009, Judges possess the legal status of State Officials, which theoretically grants them high autonomy and protection. In contrast, supporting apparatus are subject to Law Number 20 of 2023 concerning the Civil State Apparatus (ASN), which is oriented toward bureaucratic loyalty and executive standardization. This paradox creates a gap (disparity) that goes beyond mere administrative issues and instead affects the psychological stability of the organization.

Normatively, if we refer to Lon L. Fuller’s principle of the Internal Morality of Law, one of the requirements of good law is the existence of consistency and congruence between declared rules and official actions. Within the judicial ecosystem, congruence means that all supporting elements (non-judges) must move in harmony with the primary objectives of judicial power.

Ideally, the one roof management system should ensure that the “Body” (ASN) is specifically designed to serve the needs of the “Soul” (Judiciary). However, the general nature of ASN standards (one size fits all) often fails to capture the essence of judicial duties. For example, the ASN code of ethics, which emphasizes compliance with bureaucratic hierarchy, frequently conflicts with the need for technical independence in the courtroom, where Clerks must comply with procedural law rather than merely follow the orders of administrative superiors.

In empirical reality, the difference in status between State Officials and ASN gives rise to three major forms of malfunction:

1. **Organizational Identity Dissonance:** Non-judge apparatus often feel as though they exist on the “periphery” of the one roof system. Although they work within the judicial environment, their welfare policies, promotions, and career development are determined by executive institutions (KemenPAN-RB/BKN). This creates the perception that they are “outsiders” assigned to the Supreme Court, resulting in a low sense of belonging toward the sacred mission of the judiciary.
2. **Welfare Disparity and Social Jealousy:** The striking difference between judicial position allowances and ASN performance allowances is often

disproportionate to the overlapping workloads they bear. This malfunction occurs when supporting staff (the “Body”) experience work demotivation because they feel that their responsibility in maintaining case integrity is as burdensome as that of Judges (the “Soul”), yet they receive unequal state appreciation.

3. Technical-Judicial Barriers: Due to rigid ASN standardization, employee recruitment often produces staff with general administrative competence rather than specialized legal competence. This malfunction results in the slow acceleration of case resolution because the “Soul” (Judges) is not supported by a “Body” (Staff) that possesses the same level of legal understanding.

The implication of this paradox is the emergence of a Disoriented Bureaucracy. When the body is driven by different bureaucratic instructions (the ASN regime) than the will of the soul (the Judicial regime), the judicial organism experiences functional paralysis. The Supreme Court becomes trapped in a duality of loyalties: Judges struggle to maintain the dignity of independence, while ASN personnel struggle to fulfill national administrative targets for performance evaluations.

Theoretically, this malfunction proves that Indonesia’s one roof system remains administrative-mechanical and has not yet reached the organic-substantive stage. If this condition is allowed to continue, the independence of judicial power will always be held hostage by the limited capacity and loyalty dissonance of its supporting apparatus. The unification of management is not merely a matter of unifying budgets, but of unifying the “frequency” between soul and body within a single legal identity.

C. Reconstruction of an Integrative Personnel Management Model: Towards the Transformation of the Judicial Civil Service (Judicial ASN)

After examining the conflict of norms in the first discussion and the organic malfunction in the second discussion, it becomes clear that partial solutions are no longer sufficient. A reconstructive step is required to reunite the “soul” and the “body” of the judiciary. The primary focus of this reconstruction is to sever the Supreme Court’s administrative dependence on the executive regime by creating a specific new entity, namely the Judicial Civil Service (Judicial ASN).

Normatively, this reconstruction is grounded in H.L.A. Hart’s theory of secondary rules, particularly the rules of change. Hart argued that an advanced legal system must possess mechanisms for altering primary rules in order to remain relevant to institutional needs. In this context, the Supreme Court requires attributive authority to establish its own personnel regulations without being constrained by the general policies of KemenPAN-RB or BKN.

A fully independent judiciary requires the existence of a single Rule of Recognition. This means that all apparatus working under the authority of the Supreme Court, both Judges and non-Judges, should recognize a single highest authority in matters of career development, namely the Chief Justice of the

Supreme Court. The Judicial ASN model represents the embodiment of judicial autonomy in which supporting personnel are separated from the ASN regime of “government bureaucracy” and transferred into the regime of “judicial bureaucracy.”

In the proposed reality (proposed *das Sein*), this integrative management model must include three pillars of transformation:

1. Transformation of Official Employment Status (Judicial ASN): Non-judge apparatus within the Supreme Court would no longer be referred to as generic ASN, but rather as Judicial ASN. This distinction is not merely semantic, but carries implications for recruitment patterns conducted independently by the Supreme Court with high standards of legal competence. This is intended to ensure that the judicial “Body” possesses intellectual quality and integrity equal to that of the “Soul” (Judges).
2. Unification of Salary and Career Systems (Judicial Merit System): This reconstruction proposes an integrated salary scheme. Although there are differences in grades between State Officials and ASN personnel, the basis of calculation should exist within a single independent judicial salary system (Judicial Salary Commission). This would eliminate social jealousy and strengthen the apparatus’ singular loyalty to the judicial institution.
3. Strengthening Technical Functional Positions: Encouraging the positions of Clerks, Bailiffs, and Case Analysts as functional positions possessing technical independence. Under this model, their careers would not be determined by bureaucratic administrative proximity, but rather by their contributions in supporting case resolution.

The legal implication of establishing this Judicial ASN model is the creation of a Substantive One Roof System. Juridically, the Supreme Court would possess full sovereignty to mitigate integrity risks. If an apparatus commits ethical or legal violations, the Supreme Court could take disciplinary action swiftly without the need to coordinate with executive institutions (BKN/KemenPAN-RB), in accordance with the principle of a self-regulatory body.

Philosophically, this reconstruction ends the paradox between the “Soul” and the “Body.” With the status of Judicial ASN, supporting apparatus would no longer be driven by executive bureaucratic instructions that are foreign to judicial values, but rather by a single directive aimed at upholding justice.

CONCLUSIONS

This study concludes that the one roof system within the Supreme Court remains trapped in a regulatory paradox that results in systemic institutional malfunction. The juridical implications arising from the dualism between the Judicial Power Law and the ASN Law have triggered normative disharmony from the perspective of Hans Kelsen’s *Stufentheorie*, in which the administrative independence of the judiciary is degraded by executive bureaucratic standardization. This condition creates a sharp dichotomy of status between Judges as the “soul” of the judiciary and ASN personnel as the “body” of the judiciary, which in reality often experience loyalty disorientation and functional

inequality. Without the existence of integrative management unification, judicial independence will remain merely pseudo-independent because the administrative “body” is not designed to support the specific needs of the judicial “soul,” making the principle of absolute judicial independence difficult to achieve.

SUGGESTIONS

As a reconstructive measure, the Government and the House of Representatives need to immediately harmonize regulations through the establishment of a “Judicial ASN” regime that separates the management of judicial apparatus from the general executive bureaucratic system. The Supreme Court must be granted full attributive authority to independently manage its human resources, including recruitment, career development, and welfare systems that are aligned with the characteristics of judicial positions. The acceleration of the enactment of the Judicial Office Bill or revisions to the Judicial Power Law becomes crucial in order to provide legitimacy for a substantive one roof management model, thereby creating synchronization between functional and administrative elements for the preservation of a truly independent and dignified judicial power in the future.

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