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**RECONSTRUCTION OF THE REGULATION GOVERNING AD HOC JUDGES
IN THE INDUSTRIAL RELATIONS COURT OF INDONESIA**

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ABSTRACT

This article examines the current construction of ad hoc judges within the Industrial Relations Court (PHI) and the resulting challenges impacting the settlement of industrial relations disputes. The primary objective of this analysis is to identify the legal problems associated with the present framework regulating ad hoc PHI judges and to propose solutions that mitigate these weaknesses. Utilizing a normative qualitative research methodology, this study relies on secondary data, employing both a statutory and conceptual approach to comprehension. Findings suggest that the existing construction of ad hoc PHI judges may compromise the objectivity of their decisions. This potential for bias can adversely affect fair conflict resolution, undermining trust in the judicial process. In light of these findings, the article advocates for a comprehensive reconstruction of the regulatory framework governing ad hoc judges. This would involve legislative reforms aimed at enhancing the performance and quality of PHI ad hoc judges. Such reforms could include stricter selection criteria, ongoing training programs, and mechanisms for accountability to ensure that these judges can make impartial and informed decisions. Ultimately, by addressing the identified legal shortcomings and implementing the proposed solutions, the integrity of the industrial relations dispute resolution process can be significantly improved. This approach not only aims to safeguard justice and fairness in industrial relations but also enhances the overall efficacy of the legal system in Indonesia. The insights underscore the urgent need for legislative action to foster a robust and unbiased framework for ad hoc PHI judges, ensuring equitable outcomes for all parties involved in industrial disputes.

Keywords: Ad hoc judge; Court; industrial relation; Reconstruction, Indonesia

INTRODUCTION

The judiciary functions is to maintain the balance of power and to protect the rights of individuals and society. This institution is to enforce the law through the judicial function, and justice. It protects the society and the state and controls the executive and legislative powers in the form of judicial review and other forms of control. The existence of the Executive, Legislative and Judicial Institutions based on the principle of "checks and balances" is stated in the 1945 Constitution, but steps of improvement are still needed, especially the regulation of clear limitations of power and authority of the three state institutions.¹

The court as a modern judicial institution functions to create a sense of justice and legal certainty and benefit. It's just that realizing a judge's decision based on legal certainty, justice, and benefit is indeed not easy, let alone the demands of justice, because the concept of justice in a judge's decision is not easy to find a benchmark.² Justice in the utilitarian, libertarian and liberalism-egalitarian³ approaches is basically a principle that must be met in the judiciary. Likewise with legal certainty which is associated with the idea that law is a provision that has been formally established (positivism), in this context Montesquieu stated that the judge's task is solely as a mouthpiece for the law while Paul Johann Anselm Von Veuerbach with the same thought formulated the principle of *nullum crimen, nulla poena sine praevia lege poenali*.⁴ The provision of benefits by court decisions is based on usefulness or benefit. This benefit is considered as one of the main goals to be achieved by the law, driven by the utilitarian school of thought or utilitarianism, which is defined as happiness, so that whether the law is useful or not depends on whether the law gives happiness to humans or not.⁵

¹ Ahmad Yani, "Sistem Pemerintahan Indonesia: Pendekatan Teori Dan Praktek Konstitusi Undang-Undang Dasar 1945," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2018): 119–35, <https://core.ac.uk/download/pdf/268381418.pdf>.

² Fence M. Wantu, "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 25, no. 2 (March 29, 2014): 205, <https://doi.org/10.22146/jmh.16092>.

³ Andi Tarigan, *Tumpuan Keadilan Rawls* (Jakarta: PT Gramedia Pustaka Utama, 2018).

⁴ E. Fernando M Manullang, *Legisme, Legalitas Dan Kepastian Hukum* (Jakarta: Kencana, 2017).

⁵ Ibnu Artadi, "Hukum: Antara Nilai-Nilai Kepastian, Kemanfaatan Dan Keadilan," *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat* 4, no. 1 (2006): 67–80, <https://jurnal.untagsmg.ac.id/index.php/hdm/article/view/362/415>.

The Industrial Relations Court (PHI) as one of the specialized courts under the general judiciary is inseparable from the objectives of legal certainty, justice, and utility. The logical consequence is that in carrying out its functions, every decision issued by PHI must also reflecting these three principles. For this reason, based on the thoughts about the legal system put forward by Lawrence Friedman, the legal substance, legal structure, and legal culture subsystems⁶ must be fulfilled properly.

The main purpose of the issuance of the PPHI Law is to accommodate the resolution of individual industrial relations conflicts, conflicts between trade unions and break the chain of settlement of previous industrial relations disputes that were too long. Meanwhile, the reason for the existence of ad hoc judges from elements of trade unions and employer organizations is due to the application of the principle of balance. The purpose of the establishment of PHI has not been fully achieved. In various evaluations, several crucial problems and technical issues were found that directly or indirectly contributed to these objectives not being achieved. As stated by Sherly,⁷ several procedural law problems that arise still cannot be fully resolved such as the problem of conciliation and arbitration, cassation on termination of employment with a claim value of less than one hundred and fifty million, lawsuits that are not accepted, execution, and the synchronization between layoffs and bankruptcy.

PHI has also not been able to perform its functions perfectly. Various shortcomings from the aspects of institutions, infra structure and human resources still need to be improved. From the perspective of institutions justice in resolving industrial relations disputes is still difficult to achieve due to the weaknesses of the PPHI Law, both in terms of substance, structure and legal culture.⁸

One aspect that requires most attention to PHI is the ad hoc judge. The legislator placed ad hoc judges in the composition of the panel of judges at PHI with the

⁶ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (January 11, 2018): 148–63, <https://doi.org/10.35586/v4i2.244>.

⁷ Sherly Ayuna Putri Sherly, Agus Mulya Karsona, and Revi Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum," *Jurnal Bina Mulia Hukum* 5, no. 2 (March 31, 2021): 310–27, <https://doi.org/10.23920/jbmh.v5i2.307>.

⁸ Helwan Kasra, "Kritik Terhadap Sistem Penyelesaian Perselisihan Hubungan Industrial Di Indonesia : Studi UU No 2 Tahun 2004 Tentang Penyelesaian Perselisihan Hubungan Industrial Perspektif Teori Sistem Hukum," *SOL JUSTICIA* 5, no. 1 (June 30, 2022): 97–112, <https://doi.org/10.54816/sj.v5i1.484>.

intention that the panel of judges be filled with judges who have detailed knowledge and experience of industrial relations. From this perspective, the legislator's decision was correct. The quality of judges' knowledge of industrial relations settlements will be directly proportional to the quality of the decisions issued. The position of the Ad Hoc Judge in the Industrial Relations Court is very important because Industrial Relations Disputes are not general matters but are specific matters, so that the Ad Hoc Judge is someone who is experienced in the field of industrial relations, even a trial cannot be carried out without the presence of the Ad Hoc Judge.⁹ In fact, the quality of judges' decisions is not solely based on the knowledge of the judges. There are many factors that affect the quality of judges' decisions, such as career judges. The question of integrity and impartiality is the main thing. The impartiality of judges is strongly influenced by internal factors in the form of the judge's own personality and external factors in the form of external influences either from among the parties to the dispute or other parties related to the case being handled by the judge. Ad hoc judges at PHI, from the beginning, have emotional ties or at least organizational historical ties that further reduce the impartiality of the judge. Ad hoc judges are morally bound to the organization that proposes them, resulting in different perspectives from other members of the panel of judges and the assumption that the Ad-hoc Judges represent their proposers, resulting in confusion about the status and position of Ad-hoc PHI Judges as part of judges in the Supreme Court institution.¹⁰ From another perspective, this will harm the ideal idea of free, impartial and clean judicial system because the judges may be controlled by the parties from where judges are represented at the first place. Additionally, the judges are also possible to be dismissed by the party of his or her representation.¹¹

⁹ Maya J. R Rumambi, "Kedudukan Hakim Ad Hoc Dalam Penyelesaian Perselisihan Hubungan Industrial Berdasarkan Undang-Undang Nomor 2 Tahun 2004," *Lex et Societatis* 3, no. 2 (2015): 88–102, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/7318>.

¹⁰ Helen Levana Thedjakusuma and Christina NM Tobing, "Analisis Sikap Independen Dan Imparsial Hakim Ad-Hoc Dalam Menangani Perselisihan Hubungan Industrial," *Law Pro Justitia* 6, no. 1 (2020): 73–85, <https://ejournal-medan.uph.edu/lpj/article/view/625>.

¹¹ Muhammad Ishar Helmi and Riko Hendra Pilo, "Independensi Hakim Ad-Hoc Pada Lingkungan Peradilan Hubungan Industrial," *Jurnal Hukum Dan Peradilan* 6, no. 2 (July 31, 2017): 233–58, <https://doi.org/10.25216/jhp.6.2.2017.233-258>.

On the other hand, the prohibition of concurrent positions of ad hoc judges limits candidates who have the qualifications as judges because those who have a good understanding of industrial relations come from civil servants, campus circles, lawyers, administrators of trade unions/labor; or unions or employers' organizations who were previously active as members of regional/central labor dispute settlement committees.¹² This limitation has resulted in PHI not obtaining good human resources because high quality resources have been absorbed in various institutions so that those who take part in the selection to become ad hoc judges are people who simply have a close relationship with the proposing institution or job seekers. The research shows that the presence of ad hoc judges in these specialized courts is ineffective. Understanding of the procedural law of the court is one of the main factors in this ineffectiveness.¹³

Several studies have showed the imperfections of ad hoc judges at PHI. The problems of impartiality, lack of knowledge and experience of judges, ethics and culture of respect for decisions and the balance of the number of ad hoc judges in each PHI.¹⁴ Study also found that there was a tendency for the application of general civil procedural law instead of specific procedural on industrial dispute settlement. The shortcomings and conceptual vagueness of the UUPPHI, allowances for ad hoc judges that are sometimes late in coming down, as well as the impartiality and structural challenges of ad hoc judges that are not yet completed.¹⁵

The case of Ad Hoc PHI Judge of Medan District Court Reported Alleged Bribery to KY¹⁶ and the case of ad hoc PHI judge Imas Dianasari who was caught red-handed by the Corruption Eradication Commission (KPK)¹⁷ are clear illustrations that the issue

¹² Suhandi, "Karakteristik Penyelesaian Perselisihan Hubungan Industrial Melalui Pengadilan Hubungan Industrial," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 22, no. 1 (2017): 80-98, <https://www.neliti.com/publications/527542/karakteristik-penyelesaian-perselisihan-hubungan-industrial-melalui-pengadilan-h>.

¹³ Sherly, Mulya Karsona, and Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum."

¹⁴ Supono, "Asas Imparsialitas Hakim Adhoc Pengadilan Hubungan Industrial (Phi) Dalam Putusan Yang Objektif Dan Adil" (UNPAS BANDUNG, 2019), <http://repository.unpas.ac.id/45330/>.

¹⁵ Tata Wijayanta Wijayanta and Ari Hernawan, "Studi Evaluatif Peran Hakim Ad Hoc Dalam Penyelesaian Perselisihan Hubungan Industrial Di Pengadilan Hubungan Industrial Yogyakarta," *Yustisia Jurnal Hukum* 3, no. 1 (January 1, 2014): 5-15, <https://doi.org/10.20961/yustisia.v3i1.10102>.

¹⁶ Harianstar, "Oknum Hakim Ad Hoc PHI PN Medan Dilaporkan Dugaan Suap Ke KY," *Harianstar.Com*, 2024, <https://harianstar.com/hukum/oknum-hakim-ad-hoc-phi-pn-medan-dilaporkan-dugaan-suap-ke-ky/>.

¹⁷ Nurul Huda, "Kasus Hakim Imas Dianasari - Diskriminasi Gaji Jadi Persoalan Utama," *Indonesia Corruption Watch*, 2011, <https://antikorupsi.org/id/article/kasus-hakim-imas-dianasari-diskriminasi-gaji-jadi-persoalan-utama>.

of independence and impartiality can become fragile due to various factors such as salary, intervention from outside parties and a variety of other factors.

In general, various recommendations from the research results have been submitted. (Mashari said that, Institutional change requires improvements including: improving the one-roof system; developing transparent and accountable judicial management; recruitment of Judges; retirement age limit for Judges; Career and Non-Career Judges; the importance of institutionalizing decision examination; and strengthening the supervisory function of the Judicial Commission. In addition, judges must have integrity and professionalism to give legal justice for justice seekers, especially workers. The sensitivity of Industrial Relations Court judges to labor issues is needed to create conditions and support from all stakeholders, including the state in providing welfare attention to judges.¹⁸

This study focus on: first, how the recruitment and position of ad hoc judges at the industrial relations court is regulated and its consequences in case settlement?; Second, how to regulate the recruitment and position of ad hoc judges at the industrial relations court to eliminate its weaknesses.

RESEARCH METHOD

This study is a normative study, which is interpreted as one type of legal research methodology that bases its analysis on applicable laws and regulations that are relevant to the legal issues that are the focus of the research¹⁹. This research uses primary data from interviews with members of the Ad Hoc PHI judge recruitment team and secondary data consisting of primary legal materials in the form of regulations and secondary legal materials, namely reference books and scientific articles from various journals. this secondary legal material is used to facilitate understanding of primary legal sources. Primary legal materials were selected not only materials directly related to the regulation of Ad Hoc PHI judges but also various regulations related to ad hoc judges although not

¹⁸ Mashari, "Membangun Sistem Peradilan Hubungan Industrial Yang Berwibawa," *Jurnal Ilmiah Dunia Hukum* 1, no. 1 (2016): 113–30, <https://jurnal.untagsmg.ac.id/index.php/duniahukum/article/view/611>.

¹⁹ Komelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

related to industrial relations issues. The aim was to compare ad hoc judges between PHI and other specialised courts to clarify the position of ad hoc PHI judges. Secondary legal materials were also determined based on their relevance to the research theme as well as the ideal concept of judges outside Indonesia. The aim was to find the ideal position of Ad Hoc judges.

⁵ The approach used is a statutory approach and conceptual approach. The statutory approach is to examine regulations governing ad hoc judges at PHI and judges in general. The conceptual approach starts from opinions and doctrines that develop from various studies in legal science.²⁰ From these two approaches, researchers will find the relevance of the facts in the legislation and its implementation with legal concepts that have been put forward by previous researchers and legal experts. The findings of the relevance will give rise to ideas to improve the conditions of the provisions governing ad hoc PHI judges so as to give birth to legal notions, legal concepts, and legal principles relevant to the issue at hand. An understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issue at hand.²¹

RESEARCH OUTCOME AND DISCUSSION

1. The role of Ad Hoc Judges in Industrial Relations Court

In general, the party that examines and decides in court is the judge. judges are required to carry out their obligations in accordance with judicial principles. Judges are also required to have integrity, ability and sufficient knowledge. These demands arise because judges are faced with all parties seeking justice. Justice decided by the judge may not be accepted by all parties. Therefore, objective justice is needed that arises from the judges examining the case. Handayani²² argues that the sense of

²⁰ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78, <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601/0>.

²¹ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta : Kencana Prenada Media Group , 2017).

²² Handayani Handayani, Johannes Satya Pirma, and Kiki Kiki, "Peranan Filsafat Hukum Dalam Mewujudkan Keadilan," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 2, no. 2 (October 17, 2018): 720–25, <https://doi.org/10.24912/jmishumsen.v2i2.2572>.

justice formulated by judges refers to the notions of standard rules that can be understood by the public and have the opportunity to be lived, because the sense of justice is the 'pillar' of the concepts of 'the rule of law'. The judge is the symbol and bulwark of the law if there is a gap in the sense of justice. If the judge's sense of justice and the public's sense of justice do not occur, the greater the indifference to the law, because the implementation of the law avoids anarchy.

Not only about justice, in fact with various legal systems and paradigms, judges are also required to provide legal certainty and expediency. Basically, law enforcement can be started by paying attention to the role of law enforcers. The main key in understanding good law enforcement is an understanding of the principles therein. This is also the case with judges in enforcing the law under the principles of justice, legal certainty and expediency through the judiciary.²³

Justice can be achieved by focusing on substantive justice, maintaining neutrality and considering the socio-legal background of the parties to the case.²⁴ In achieving legal certainty, it is important to maintain legality and legitimacy and to refer to doctrine and precedent, as well as the benefit or utility of the judge decision which must not harm the society. Law must be effective. Utilitarianism as a legal school of thought in philosophy has given birth to various regulations that exist in the world. All of this is inseparable from the main objective of this school of thought.²⁵

In certain cases, judges will be able to easily place the three legal paradigms in one decision, but what is more often found is that they are faced with cases that are difficult to combine. This position makes judges required to have high skills, knowledge and integrity. According to Ismail Rumadan²⁶ to maintain and realise a

²³ Rommy Haryono Djojarahardjo, "Mewujudkan Aspek Keadilan Dalam Putusan Hakim Di Peradilan Perdata," *Jurnal Media Hukum Dan Peradilan*, 2019, 88–100, https://repository.ubaya.ac.id/35512/1/Rommy%20Haryono%20Djojarahardjo_MEWUJUDKAN%20ASPEK%20KEADILAN%20DALAM%20PUTUSAN%20HAKIM.pdf.

²⁴ M Syamsudin, "Keadilan Prosedural Dan Substantif Dalam Putusan Sengketa Tanah Magersari," *Jurnal Yudisial* 7, no. 1 (2014): 18–33, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/91>.

²⁵ Zainal B. Septiansyah and Muhammad Ghalib, "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia," *Ijtihad* 34, no. 1 (April 4, 2019): 27–34, <https://doi.org/10.15548/ijt.v34i1.3>.

²⁶ Ismail Rumadan, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (May 29, 2017): 69–87, <https://doi.org/10.33331/rechtsvinding.v6i1.128>.

fair judge's decision and get a peaceful response from justice seekers, there are two important aspects that must be implemented, namely law enforcement procedures or procedural justice and the results of the law enforcement itself namely substantive justice. In its implementation, law is well enforced when judges have adequate knowledge of substantive law and procedural law and consistency in carrying out their functions, in other words judges must have knowledge, ability and integrity.

To obtain judges who have these three qualifications, the recruitment mechanism, both normatively through regulations and the recruitment practice itself, is highly dependent on the party responsible for recruitment.

Along with the dynamics and development of the situation and conditions, it is not uncommon for judges to be faced with difficult or dilemmatic situations such as the gap between the law and the sense of justice, external and internal pressures, the complexity between cases and evidence, the dilemma of public and individual interests, cases that are very technical and complex such as a very specific legal basis that requires special understanding or interpretation, conflicts of interest, judges who are directly or indirectly involved emotionally, socially, politically²⁷ or personally with the parties, the inability of judges to handle cases with a heavy burden and so on.

Difficult situations can be resolved with various steps such as presenting experts to be heard, requesting *amicus Curiae*,²⁸ conducting in-depth legal research, conducting flexible legal interpretations²⁹ all of which solutions do not have much binding power. Therefore *ad hoc* judges existence is the solution in the examination process and decision making. *Ad hoc* judges are needed in the judicial system to handle special cases or certain situations that require expertise, independence, and different approach from that of permanent judges. The presence of *ad hoc* judges will at least complement existing deficiencies such as providing Special Expertise,

²⁷ Sahar Abi-Hassan et al., "The Ideologies of Organized Interests and *Amicus Curiae* Briefs: Large-Scale, Social Network Imputation of Ideal Points," *Political Analysis* 31, no. 3 (July 26, 2023): 396–413, <https://doi.org/10.1017/pan.2022.34>.

²⁸ Abi-Hassan et al.

²⁹ Muhammad Syarifuddin, "Legal Heuristic Approach in Judicial Practice," *Lex Publica* 8, no. 2 (July 30, 2021): 1–13, <https://doi.org/10.58829/lp.8.2.2021.1-13>.

minimizing conflicts of interest to increase public trust and maintaining independence and neutrality. Technically, ad hoc judges also facilitate the resolution of cases with a very large number so that ordinary judges in court are overwhelmed in handling cases. Even in several areas, along with other reasons, not only are ad hoc judges presented but also special courts are created by involving ad hoc judges with a term of office for a certain period.

Urgent emergency cases or sensitive cases where strong public attention is considered, then it needs judge independence, and the effective and efficient solution is to use ad hoc judges. From this, in several certain situations, both incidental and short and medium term, ad hoc judges are indeed very much needed. Of all the situations and conditions of the court that require ad hoc judges, the main reason is to maintain or even increase the independence, neutrality and objectivity of the court. The implications of ad hoc judges for the judicial power are to strengthen the role and function of the judicial power in enforcing the law in Indonesia.³⁰

2. Construction of ad hoc PHI Judges

a. PHI ad hoc judge selection

There are two main constructions of ad hoc PHI judges regulated in Law Number 2 Year 2004 concerning Industrial Relations Dispute Resolution (UUPPHI), first is the appointment procedure in Article 63 paragraph (2) which constructs ad hoc judges from elements of trade unions and employers' organizations and can be terminated by the proposing organization as stipulated in Article 67 paragraph (1) of UUPPHI. Although coming from elements of trade unions and employers' organizations, ad hoc judges do not have to be administrators or members of trade unions or employers' organizations. At the level of judges at the cassation level, there are also many people from academia and practitioners who are not administrators or members of trade unions and employers' organizations.

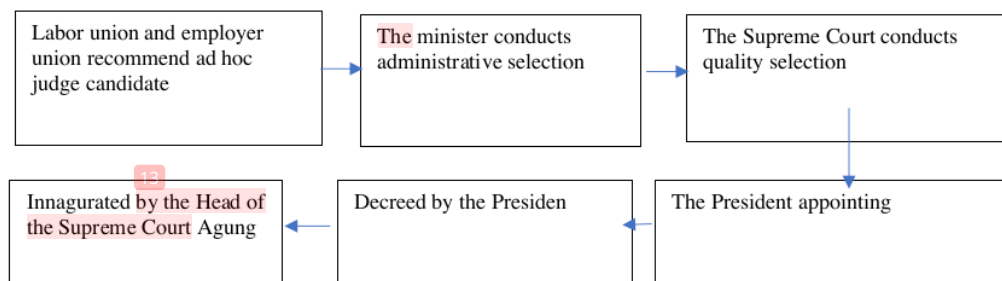
Second, based on the Constitutional Court Decision No. 49/PUU-XIV/2016, the term of office for ad hoc judges is 5 years and can be reappointed for the next term. This

³⁰ Nurdin Ismail, *Etika Pemerintahan: Norma, Konsep, Dan Praktek Bagi Penyelenggara Pemerintahan* (Yogyakarta: Lintang Rasi Aksara Books, 2017).

Constitutional Court decision gives ad hoc judges a semi-permanent position as career judges, although the requirement to obtain approval from elements of trade unions and employers' organizations is still needed.

Regarding human resources, Article 59 of the UUPPHI orders the establishment of PHI in every city and regency, especially in industrially dense areas, in addition to the order to establish PHI in every province. Consequently, a large number of ad hoc judges are needed, besides the requirement to recruit judges every five years. Although ad hoc judges can be reappointed in the next period, the process will involve trade unions and employers' organizations with all their dynamics. Good performing ad hoc judges may not necessarily be reappointed by trade unions or employers' organizations. The selection mechanism for ad hoc judges based on Government Regulation No. 41 year 2004 as amended by Government Regulation No. 26 year 2019 can be briefly described in the following chart:

Figure 1. Diagram of the PHI ad hoc judge selection mechanism



Source: Secondary data processed in 2024

The selection basically goes through three stages. First, each trade unions and employers' organizations recommend its "representative" to be selected administratively by the Minister and later quality selection is conducted by the Supreme Court. Of the three stages of selection, it is the first selection that has the highest problem. The selection by trade unions and employers' organizations tends to be subjective, although judges must still have standard of competencies. The ability to communicate with the management of the two elements is a must for candidates. Thus, candidates who will apply to become judges, even though they have high quality, but

do not have closeness with these two elements, the possibility of being proposed as a judge is very small.

This is in contrast to the selection at the Ministerial and Supreme Court level, where the element of objectivity is quite big. This is because the government does not have the same subjective interests as trade unions and employers' organizations. The parameters used to select candidates also tend to be normative. This mechanism also limits the government's ability to select highly qualified candidates because from the outset the government's nomination is limited by the trade unions and employers' organizations, leaving the government with no choice but to select candidates nominated by these two elements with the qualities possessed by each candidate.

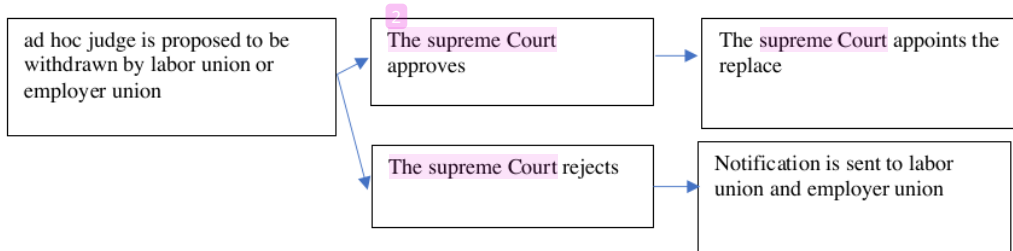
According to Sugeng Santoso³¹ in practice, the Supreme Court's need for ad hoc PHI judges is often not responded quickly by the relevant ministries. When following up the request by conducting recruitment, the announcement stage is very short so that only parties who have access to information are well informed, especially trade unions and employers' organizations. This close relationship resulted in only certain parties with access to information being able to participate in the recruitment process. Likewise, in terms of ability, the majority of candidates for ad hoc judges have a background in the management of trade unions or employers' organizations (Apindo) and do not have a legal background. Their knowledge is more about the practice or implementation of labour relations while the formal legal aspects of PHI are still very lacking.

Some candidates have an incorrect understanding of ad hoc judges. The understanding that an ad hoc judge is a judge as in a court of law whose duty is to uphold justice and not a judge who represents elements of the trade union or Apindo whose role is to protect the interests of workers or employers, has not been fully owned by ad hoc judge candidates. In addition to proposing, labor unions and employer organizations have the right to withdraw their nominated ad hoc judges. Article 12 of Government Regulation No. 41/2004 stipulates that although the withdrawal of judges

³¹ Santoso, Sugeng. "Anggota Tim Rekrutmen MA Untuk Hakim Ad Hoc PHI." 2024

is the right of the proposing organization, this does not mean that it can withdraw judges at any time and under any circumstances. Withdrawal of judges may or may not be approved based on the circumstances. The withdrawal mechanism can be summarized in the following chart:

Figure 2. *Diagram of proposals for candidates for PHI ad hoc judges*



Source: Secondary data processed in 2024

b. Term of office for ad hoc judges

The term of office for ad hoc judges is 5 years and can then be re-elected. This provision has the consequence that ad hoc judges can be appointed multiple times after the expiry of their previous term of office and thus have the opportunity to become judges until the age limit set by the regulations, just like career judges. Because the term of office can be up to the age limit of the judge, it is inaccurate to call this judge an ad hoc judge.

On the other hand, it is also possible for ad hoc judges to serve for only five years, and even with the right of trade unions and employers organizations to recall judges at their suggestion, the term of office can be shortened to less than 5 years.

In other courts there are also ad hoc judges with a different configuration from PHI. In the Tax Court the ad hoc judge is only used in one case until the case is settled. If the case has been examined and settled, the person appointed as an ad hoc judge will return to his/her original profession which is not a judge. Article 9 paragraph (2) of Law Number 14 Year 2002 on Tax Court states that 'In examining and deciding certain Tax Dispute cases that require special expertise, the Chairman may appoint Ad Hoc Judges as Member Judges.'

In the examination of human rights cases, there are three ad hoc judges. The term of office for ad hoc judges at the Human Rights Court is five years. Article 28 paragraph (3) of law number 26 Year 2000 on Human Right Court stipulates that ad hoc judges are

appointed for 5 (five) years and can be reappointed for 1 (one) term of office, thus in the human rights court ad hoc judges can serve two terms or ten years.

In the Corruption Court, Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Corruption Court jo. Constitutional Court Decision Number 85/PUU-XVIII/2020 which stipulates that ad hoc judges are appointed for a term of 5 years and can be reappointed for 1 term without re-selection as long as they still meet the requirements of the legislation, and can be appointed for the next 5-year term by first following the re-selection process in accordance with applicable laws and regulations, while for ad hoc judges at the high court and the Supreme Court the term of office is 5 years and can be reappointed for one term. Ad hoc judges at the Corruption Court have different terms of office between the courts of first instance, appeal and cassation.

In the Fisheries Court, the tenure of ad hoc judges is not regulated in Law Number 31 Year 2004 concerning Fisheries. The law only regulates the composition of the panel of judges at the Fisheries Court while the term of office of ad hoc judges is regulated in Government Regulation Number 24 of 2006 concerning Procedures for Appointment and Dismissal of Ad Hoc Judges of the Fisheries Court. Article 8 paragraph (2) of the Government Regulation stipulates that the term of office of Ad Hoc Judges is for a period of 5 (five) years and may be reappointed for 1 (one) term.

In the Commercial Court, Article 302 paragraph (3) of Law No. 37 year 2004 on Bankruptcy stipulates that by Presidential Decree on the proposal of the Chief Justice of the Supreme Court, a person with expertise may be appointed as an ad hoc judge, either at the court of first instance, cassation, or judicial review. This provision is different from other specialised courts where ad hoc judges are only incidental to the case being examined.

Of all the ad hoc judges in the specialized courts, the longest possible term of office is for ad hoc judges in the Industrial Relations Court. The term of office for these ad hoc judges can be like a career judge while the shortest term of office is for ad hoc judges in the Commercial Court and Tax Court.

Table 1. Term of office of ad hoc judges of special courts

Pengadilan	Hub. industrial	HAM Pasal 28	TIPIKOR ¹⁹	Pajak	Niaga	Perikanan
First level	5 years can be re-elected	5 years can be reappointed for one term of office	5 years can be reappointed for one term of office without re-selection and can be appointed for one term of office and can be appointed for five years with re-selection	Once in a while	Once in a while	5 (five) years and can be reappointed for 1 (one) term of office.
appeal		5 years can be reappointed for one term of office	5 years can be reappointed for one term of office			
cassation	5 years can be re-elected		5 years can be reappointed for one term of office			

Source: Secondary data processed in 2024

¹³
a. Ad hoc judge status

The Industrial Relations Court has ad hoc judges who are nominated by workers organizations and employers' organizations. Workers organizations and employers organizations are the bodies of disputing parties that have an interest in the defense of their members. These two organizations are the main stakeholders in industrial relations.

According to the UUPPHI, ad hoc judges of industrial relations courts are drawn from elements of trade unions and employers' organizations and in examining and deciding industrial relations cases act as member judges while the presiding judge is a career judge. The consideration of ad hoc judges not being the head of the panel is the potential for impartiality. Apart from this, their knowledge of procedural law is also not as great as that of career judges. This is also applied in several countries as stated by Corby that Germany, England and France apply ad hoc judges who are also at the suggestion of trade unions and employers' organizations³²

From the aspect of objects in the procedural law in the Industrial Relations Court, the parties that have the greatest potential for conflict are workers and employers. Both have

³² Susan Corby et al., "Lay and Professional Judges in Europe's Labour Courts: Does the Professional Judge Dominate?," *Industrial Law Journal* 49, no. 2 (April 30, 2020): 231–57, <https://doi.org/10.1093/indlaw/dwz012>.

a close relationship in industrial relations but on the other hand their interests are very different. This difference is a factor in the magnitude of the potential industrial relations conflict. There are four types of industrial relations conflicts, of which three types are conflicts between workers and employers, namely conflicts over rights, interests and termination of employment, and conflicts between trade unions, namely disputes between trade unions in one company. None of the industrial relations disputes involved parties other than workers, trade unions, employers and enterprise organizations. This means that every party to a dispute in the industrial relations court always involves workers and employers and/or their organizations.

The existence of ad hoc judges in industrial relations courts who come from the disputing parties is unusual. The potential for impartiality is very high, coupled with the authority possessed by the proposing employers' organizations and trade unions to withdraw or propose the dismissal of ad hoc judges from their representation. This authority seems to be a tool that can be used to hold the ad hoc judge hostage in order to accommodate their interests.

In comparison to other special courts such as the Human Rights Court, the organisations that have an interest in the protection of human rights are the National Human Rights Commission and other organisations concerned with the protection of human rights. However, the appointment of ad hoc judges does not require nominations from these organisations. The same applies to ad hoc judges in the Fisheries Court, Corruption Court, Commercial Court and Tax Court, although ad hoc judges are still required, none of these special courts require proposals from institutions or organisations that are their stake holders. From this it can be concluded that the only ad hoc judge in the specialised courts under the District Court and the Administrative Court is the Industrial Relations Court, while all of the specialised courts have the same stakeholders. This shows that there is something special about the Industrial Relations Court, while this specialisation creates problems.

Broadly speaking, the construction of PHI ad hoc judges can be described in the following matrix:

Table 2. *Construction of ad hoc judges at PHI*

No.	Aspec	Excess	lack
1	Recruitment procedures	Involving many parties/institutions so that the selection process becomes stricter	The involvement of labor unions and Apindo as institutions that propose and defend the interests of the parties to the case tends to result in ad hoc judges who are not independent.
2	Mastery of procedural law	Have knowledge of material law	Formal legal understanding is very lacking
	Mastery of material law	Have knowledge of material law	Formal legal understanding is very lacking
3	integrity	Depends on the personal ad hoc judge	Potentially influenced by the proposing institution
4	impartiality	Depends on the personal ad hoc judge	Potentially influenced by the proposing institution
5	Balance of votes of the panel of judges	Originating from two conflicting organizations	Potentially influenced by the proposing institution
6	Length of service	Long term positions will further mature the judge	The longer the term of office, the greater the potential for dependency on the proposing institution.
7	income	Meeting the needs	The lowest among ad hoc judges of special courts

Source: *Secondary data processed in 2024*

3. Reconstruction of Ad Hoc PHI Judge

PHI ad hoc judges whose existence is highly dependent on employers organizations and trade unions do need serious attention. The strong impression that ad hoc PHI judges are not easy to be impartial cannot be avoided. The absolute authority to propose the appointment and even withdrawal of ad hoc PHI judges by trade unions and employers organizations is an effective tool for control.

The argument that ad hoc PHI judges are utilized is in order to provide protection for employers with proposals from employers organizations and workers with proposals from trade unions on the one hand can provide positive value and vice versa on the other hand will also have a negative impact.

In general, to get career judges, let alone ad hoc judges, who have good integrity, at least, there must be conditions that support the improvement of integrity. A good understanding of ethics, an environment free from intervention, adequate income, a clear

term of office and last but not least a systemic recruitment process that is neutral and transparent are very important factors.

The function of ethics is basically to maintain the dignity of the judicial profession. Judges' knowledge, understanding and behavioural alignment on ethics will be significantly affected. The broader effect is that well-implemented ethical values will also increase public trust in the judiciary. Appleby³³ argues that in recent years there has been a trend towards independent and more transparent ethical regulation for sitting judges, which is said to promote public confidence in the judicial institution, and reflect a move towards accountability and transparency as judicial values. For career judges, this ethical value has been introduced and applied since the recruitment of judges so that the judges will always interact with the ethical value and its application as long as they carry out the profession of judges. the longer a judge carries out their profession, the more they will understand this value. This is different from ad hoc judges who become judges 'suddenly' where they have to understand ethical values 'suddenly' as well. Therefore, a special mechanism is needed to provide understanding as well as application of ethical values so that ad hoc judges have the same behaviour as career judges. The placement of ad hoc judges as members of the panel of judges is actually appropriate, but if they do not have high integrity then there is a possibility that they can influence the unwanted decision.

In terms of income, ad-hoc judges earn less than career judges.³⁴ This difference, although there is no direct causality with the quality of ad hoc judges, still affects the performance of judges, especially when the workload is relatively the same but with different incomes.

Based on Presidential Regulation No. 5/2013 in appendix 2, the allowance for PHI ad hoc judges excluding state house facilities, transportation, health insurance, security in carrying out duties, official travel expenses and reward money is Rp17,500,000 for PHI at the first level and Rp32,500,000 for the cassation level. When viewed from the aspect of living needs, this amount is relatively sufficient. However, the integrity of judges is

³³ Gabrielle Appleby and Alysia Blackham, "The Shadow Of The Court: The Growing Imperative To Reform Ethical Regulation Of Former Judges," *International and Comparative Law Quarterly* 67, no. 3 (July 28, 2018): 505-46, <https://doi.org/10.1017/S0020589318000143>.

³⁴ Kiki Adelia and Andri Kurniawan, "Permasalahan Rekrutmen Hakim Ad-Hoc Pengadilan Hubungan Industrial," *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 4, no. 1 (2020): 56-63, <https://jim.usk.ac.id/kenegaraan/article/view/17944>.

not always measured by the adequacy of income to meet the needs of life alone. Many other factors influence it. The relative adequacy of life ultimately depends on the judge's lifestyle.

However, the fact is that the average income of judges is relatively small compared to the workload. Directly or indirectly, this will affect the performance of judges. The action of judges urging the revision of Presidential Regulation No. 5 year 2013³⁵ is evidence that their salaries are generally inadequate. The various cases of bribery of ad hoc PHI judges³⁶ and the clamour to increase judges' salaries are like the visible tip of an iceberg. Meanwhile, the big problem remains unresolved. When the income of ad hoc judges is low, with the high level of workload of judges, the potential to treat the settlement of cases subjectively is very likely to occur.

As a comparison based on Presidential Regulation No. 5 of 2013 on Financial Rights and Facilities of Ad Hoc Judges and Presidential Regulation No. 42 of 2023 on Amendments to Presidential Regulation No. 5 of 2013 on Financial Rights and Facilities of Ad Hoc Judges, the allowances of ad hoc judges in several special courts can be described as follows:

Table 3. *ad hoc judge's income*

Corruption Court (TIPIKOR)	Allowance
First instance court	Rp20.500.000
Appellate court	Rp25.000.000
Court of cassation	Rp40.000.000
PHI Court	
First instance court	Rp17.500.000
Court of cassation	Rp32.500.000
Human right court	
First instance court	Rp24.000.000
Appellate court	Rp29.280.000
Court of cassation	Rp35.722.000
Fisheries court	
First instance court	Rp17.500.00

Source: Secondary data processed in 2024

³⁵ Berita Kota News, "Forum Solidaritas Hakim Adhoc Tipikor & PHI Desak Revisi Pepres 5 Tahun 2013," *Beritakotanews. Com*, 2024, <https://beritakotanews.id/forum-solidaritas-hakim-adhoc-tipikor-phi-desak-revisi-pepres-5-tahun-2013/>.

³⁶ Harianstar, "Oknum Hakim Ad Hoc PHI PN Medan Dilaporkan Dugaan Suap Ke KY."

Among other specialised courts, PHI ad hoc judges together with fisheries courts receive the smallest allowances both at the first level and the cassation level so that compared to career judges, PHI ad hoc judges receive lower income as well as compared to the allowances of ad hoc judges in other specialised courts are also in a low position. So if it is then asked whether the different income affects the integrity of judges, then more or less there will be the potential to influence.

Based on the decision of the Constitutional Court number 49/PUU-XIV/2016, the term of office of PHI ad hoc judges both at the first level and cassation is five years and after that they can be re-elected. This provision provides an opportunity for someone to become an ad hoc judge with the same term of office as a career judge, albeit with a different mechanism. So what needs to be known is what the actual function of ad hoc judges in PHI is if it turns out that the conditions are substantively like career judges. In summary, the current construction of ad hon PHI judges can be stated as follows:

- 1) The involvement of trade unions and Apindo as institutions proposing the appointment and dismissal of PHI ad hoc judges tends to produce ad hoc judges who are not independent. This is not the case with ad hoc judges in other specialised courts. They are recruited directly without any recommendation from any organisation.
- 2) The obligation to nominate candidates for PHI ad hoc judges from trade unions and APINDO hampers the recruitment process to obtain judges with quality, integrity and impartiality.
- 3) The recruitment process of ad hoc PHI judges is still too long, starting from the selection through workers' organisations and employers' organisations to the ministry in charge of manpower to the Supreme Court where the selection institutions have considerable authority. The involvement of this ministry is also only found in the recruitment of Ad Hoc PHI judges while the recruitment of ad hoc judges in other specialised courts is carried out directly by the Supreme Court.
- 4) Most PHI ad hoc judges have a strong background in material law on labour relations.

- 5) Most PHI ad hoc judges do not have a strong background in procedural law at PHI.
- 6) The income of Ad Hoc PHI judges is the smallest among other special court ad hoc judges with the potential to be deducted by the proposing organisation as a form of their contribution to the proposing organisation.
- 7) The longer the position of ad hoc judges, the greater the potential for dependence on the proposing organisation.

From this construction, in order to obtain ad hoc judges who have knowledge, capacity and integrity, it is necessary to change the construction (reconstruction), which in principle is to eliminate various weaknesses so that the function of ad hoc judges is truly effective and efficient. Some of the main thoughts on the construction are:

- 1) The requirement to nominate candidates for ad hoc judges by trade unions and APINDO should be removed.
- 2) The necessity of recruitment of ad hoc judge candidates by the ministry is eliminated.
- 3) Recruitment of ad hoc judges shall be selected by the Supreme Court
- 4) The periodic term of office for ad hoc judges shall be ten years for one term.
- 5) The salary of ad hoc judges shall be equalised with that of career judges.

CONCLUSION

The recruitment process of ad hoc judges in Indonesia's Industrial Relations Court is plagued by several issues. The involvement of multiple parties, including trade unions, employers' organizations, and the Ministry of Labour, affects the independence of ad hoc judges. This multi-stage selection process can lead to biased decision-making, as ad hoc judges may be influenced by the interests of the parties involved. Furthermore, the differences in working period and remuneration between ad hoc judges and career judges, as well as other specialized courts, create a perception of inequality.

The current regulation gives significant authority to trade unions and employers' organizations in the recruitment and dismissal of ad hoc judges, potentially allowing

them to manipulate the performance of these judges. Additionally, the involvement of the Ministry of Labour in the selection process prolongs the recruitment process and prioritizes government interests over fairness and impartiality.

To address these issues, the reconstruction of the regulation governing ad hoc judges is necessary. This can be achieved by amending the Law and its implementing regulations to eliminate the role of trade unions and employers' organizations in the recruitment process. The Ministry of Labour's involvement in the selection process should also be reduced.

The proposed reconstruction also involves regulating the uniformity of tenure and remuneration for ad hoc judges across all courts, taking into account regional differences and cost of living scales. This ensures that ad hoc judges are fairly compensated and have a comparable working period to other judges. Furthermore, the Supreme Court should formulate clear selection mechanisms and materials to ensure that ad hoc judges have the necessary knowledge, capacity, and integrity to perform their duties effectively. The reconstruction of the regulation governing ad hoc judges aims to improve the fairness, impartiality, and effectiveness of the Industrial Relations Court. By addressing the existing weaknesses, we can create a more robust and reliable judicial system in Indonesia.

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