

# Integrity as the Unlimited Reflection from Judge Behavior in Indonesia<sup>1</sup>

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## Abstract

Low integrity only keeps the judge as an easily target for the accusation that strategic issues always lie behind the splendid of law mafia and also the occurrence of *judicial corruption* where the estuary often remains in court house. It is true that judge' low integrity, as shown by unfair verdict, is a determinant factor to the failure of the judge to have moral integrity, intellectual integrity and social integrity while all of them are required to enforce law and justness through the decision.

Paper focuses on discussing the integrity of the judge as an unlimited reflection of their behavior. It is called so because the decision of the judge is always a historical treatise of human civilization on the earth in the untold future.

The setting of this paper departs from the integrity as a main requirement for the establishment of *guidance* in understanding judge behavior. This guidance may help the judge appointment model to produce judge with integrity (with ethic and consciousness). Justice Reform can begin by delivering the judge with integrity. Paper attempts to formulate standards or norms of moral integrity, intellectual integrity and social integrity required among the judges when Justice Reform must be considered.

**Keywords:** Integrity, Judge, Justice Reform

## I. BACKGROUND

The justification of justness is only acquired from, and can only be depended on, justice organization. It is the only national institution which is given legal authority to manifest justness. Indeed, justness is an attribute inherently adhered into a national institution, and therefore, this institution is called justice organization. Such justification is a mandatory task as a reasonable effect for the adoption of law state.

Judge<sup>2</sup> is a national officer who has obligation and constitutional authority to manifest justness. Therefore, main orientation of a judge is how justness is manifested and perceived by all citizens. Judge<sup>3</sup> is also a citizen but selecting themselves as "a justness maker" on the behalf of God on the earth. Therefore, justness is manifested through or remains on the hand and head of the judge. Also, judge appointment shall ensure that the main goal of law state, which is to bring justness to all citizens of Indonesia, will be achieved.

Good law is invented.<sup>4</sup> Essentially, law is a matter of justness. Therefore, justness is only invented in the society. Indeed, justness cannot be made by the ruling group although they represent the people but still hides behind their power symbol to exercise their right of making the law based on the constitution. Good law must retain justness values universally admitted by the society.

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<sup>1</sup> Summary of Research entitled Looking for Judges with Integrity in Indonesia for Justice Reform.

<sup>2</sup> Wildan Suyuthi Mustofa says that the judge has a heavy but noble task to determine law and justness for the people. It is heavy task because they are only human with natural weakness but given *privilege* by state for God interest to determine the truth and mistake and the right and wrong of someone deed, and even to stipulate whether someone is life or dead. It is noble task because a judge may show the light of rightness and justness to people. See Wildan Suyuthi Mustofa, 2013. *Kode Etik Hakim*. Jakarta, Kencana Prenadamedia Group, page 91.

<sup>3</sup> Judicial Commission of Republic of Indonesia, in its annual report of judge verdict researches in 2011, declares that the judge has a heavy duty but the judge is still a human or a biological creature with psychological right to be afraid, brave, honest, slipped, wrong and other unfavorable condition. The judge is still adhered with their relatives, family and environment. See Komisi Judisial RI, 2011. *Penerapan and Penemuan Hukum dalam Putusan Hakim*, Jakarta, Page 9.

<sup>4</sup> Sudikno Mertokusumo says that law invention is complex because it involves answering the claim and delivering the decision. A momentum of law invention is after an event is concretely proved or when the law underlying the event is sought or discovered. See Sudikno Mertokusumo, 2009, *Penemuan Hukum Sebuah Pengantar*. Yogyakarta, Liberty, Page 80.

Law cannot be made by law maker (legislative) unless it passes through law invention process in the society. Law making is different from law invention.<sup>1</sup> The concept of law invention may involve law making, but law making is not surely including law invention. Law is a universal value but also abstract value because it is not a thing that can be easily modified and immediately formed. Although the law is abstract value, it lives within action, speech, and thought of human as the member of society.

The essence of just law is the balance between right and obligation of all citizens. The judge, with their authority, may “distort” this balance. Obtaining justness is a universal right of citizen. This statement is consistent to Jack Donnelly<sup>2</sup>, who states that human right is owned by human because of their human nature. Human being owns human right not because it is given by the society or based on their dignity as human.

The judge is a human with “privilege” because they have right and obligation to secure the right of other human based on their dignity and prestige. Thereby, good judge is a guarantee to manifest the right and obligation of human. A sword held by Themis Goddess represents that justness must be enforced “sharply” without excuse. The covered eye symbolizes the judge as a human with “privilege” in the world or hereafter.

The society<sup>3</sup> often conceptualizes that law is attributed to Judge and Judicial. For them, law and justness are Judge and Judicial. Empirical experience of law unjustness is targeted against Judge and Judicial. The organizing of judicial institution is only a merely compliance to the textual formality of law state, but not touching the contextual aspect. Civilization is under great threat when justness values in the society shall be extinct due to unjustness behavior of the judge during their decision making.

Good judge is to be made. Good judge is not merely found in the society. Good judge is made through a system which is transparent, accountable and democratic. A system to produce the judge must deliver the judge with integrity. Only the judge with the integrity is who can do Justice Reform. The judge is a very noble profession with a privilege position.

A system of judge production must deliver the judge with standard, normative and integrity as required for Justice Reform to enforce law and justness favorably. Judge appointment model and system keep the judge to have standard or norm of moral integrity, intellectual integrity and social integrity. Not every one can be the judge. Only those with privilege are who can be the judge. By the hand of good judge, good law is invented.<sup>4</sup> Good law is complying with value and sense of justness respected universally by every human. The value and sense of justness is only manifested by good judge based on proper judge appointment model and system.

Considering several reasoning above, the paper focuses on the importance of judge integrity to their behavior in deciding the case. Judge integrity is reflecting their unlimited behavior in the enforcement of law and justness. The urgent setting of judge integrity may be related to the issue behind judge appointment whether the judge with integrity is delivered as the justness maker on God interest in the world.

## II. DISCUSSION

### A. Justice Power and Judge Integrity in Indonesia Context

Justice Organization is a very important agency because it is a main pillar of law state, either in law state concept at Continental Europe (*Rechts Staat*) or law state concept at Anglo Saxon

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<sup>1</sup> According to Bambang Sutiyoso, law invention is a process to develop the law by the subject or the actor of law invention by applying common law regulation against events based on certain norms or methods justified by law science, such as interpretation, reasoning (*redenering*), exposition (law construction), and others. See Bambang Sutiyoso, 2009. *Metode Penemuan Hukum*. Yogyakarta, UII Press. Page 30.

<sup>2</sup> Knut D. Asplund, et al, 2008; *Hak Asasi Manusia*; 11: PUSHAM-UII, Yogyakarta

<sup>3</sup> According to Ahmad Rifai, law enforcement in Indonesia is confusing, and it is admitted not only by persons in law field, but also most Indonesian people and even international communities. See Ahmad Rifai, 2010. *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*. Jakarta. Sinar Grafika Offset. Page 35.

<sup>4</sup> Philipus M. Hadjon and Tatiek Sri Djatmiati declare that neither judge nor lawyer argues from emptiness. Law argumentation always starts from positive law. Positive law is a closed or static condition but it represents an advancing development. See Philipus M. Hadjon and Tatiek Sri Djatmiati, 2014. *Argumentasi Hukum, Langkah-Langkah Legal Problem Solving dan Penyusunan Legal Opinion*. Yogyakarta. Gajah Mada University Press. Page 17.

(*Rule of Law*), or even at law state which is constitutional democratic. A. Mukti Arto<sup>1</sup> reviews the importance of Justice Organization from three theories:

“First, constitutional theory explains that the power of State must be restrained and limited to secure human right. Second, democracy theory asserts that a democratic life always remains within law state. In the law state, Justice Power is the enforcer of democracy. Third, based on law state theory, the existence of Justice Organization is a main feature and the root of law state. The absence of Justice Organization is the impossibility of law state”.

The importance of Justice Organization in a certain nation is always framed for the enforcement of law. Basically, law must be enforced. However, law enforcement is problematic. A prominent issue is that the law enforcer consists of advocate, police, attorney and judge who have different “interpretation” from the law within legislation. The law is becoming a confused thread especially when the society is suspicious to the law process. Worse, law experts give their response and view convincingly by insisting that their opinion is right.

In other hand, human right is absolute and irrevocable in whatsoever condition. Human right is an integral part of human essence. Human nature is as the best or the most perfect God creature in the world. It is underlined by Knut D. Asplund<sup>2</sup> by saying that human right is universal and irrevocable (*inalienable*).

From the ancient Rome age to the modernity, law science is updated with the emergence of issues. In this modern era, some schools of law are emerging such as positivism, critical law study, socio-legality, and progressive law. All of them appear on stage to answer law problem during their heyday. Law is not only a something written in the legislation text or a matter of certainty, but law is a sense of justness, usefulness and rightness. Different views from law experts only show the nakedness of law.

The following statements may underline the strategic position of the judge in the judicial for the enforcement of law and justness:

R. Dworking says that *judges are its princes of law's empire*. According to J.P Dawson, judge is a leading and respectable member of the society. Moreover, JR. Spencer asserts that the decision given by the judicial resembles “God will” or “*the judgment was that of God*”. Next, Roeslan Saleh suggests that the work of the judge is a struggle against humanity. In discussing economic deprivation in Indonesia, Charles Himawan has reported that the decision of the judicial is like *legal lighthouse* for economic actors.<sup>3</sup>

A noble mission brought by the judge has lead the constitution (Article 25 Verse (1) National Constitution) and some legislations (Act No. 4 of 2004 jo Act No. 48 of 2009 about Justice Power and Act No. 14/1985 jo Act No. 5 of 2004 jo Act No. 49 of 2009 about Supreme Court) to put a strong law base for judge independence.

Indeed, the judge is expected to be a true fortress of law enforcer to the seeker of justness. Judge shall be professional, with morality and high integrity to reflect the law with justness, usefulness and certainty. Integrity is a catalyst or a driving motor for judge behavior throughout human civilization.

However, law enforcement nowadays only produces “astray justice”, and it means the failure of justness seeking from its whole aspects.<sup>4</sup> Moreover, astray justice is so prominent in Indonesia due to the failure of law enforcement, the incompetence or less willingness of law enforcer, and the rampant of law “broker”. In saying about a problematic law enforcement, especially to the judge, Mahfud MD<sup>5</sup> has said that through their hidden with less possibility for legal proving, the judge starts to build astray justice, or borrowing the term suggested by Gerhart Hermann, the judge themselves kills the justice. It is undeniable that the judge is a central position in the law enforcement.

It must be understood that the highlights and critics of the society against system and practice of law enforcement in the justice field are pointed toward the scope of duty of the judge.

<sup>1</sup> A. Mukti Arto. *Konsepsi Ideal Mahkamah Agung*. Yogyakarta. Pustaka Pelajar, 2001. Page 19.

<sup>2</sup> Knut D. Asplund, et al, *Hak Asasi Manusia*, 2008, 11, Yogyakarta, PUSHAM-UII.

<sup>3</sup> Adi Sulistyono. *Pengembangan Kemampuan Hakim Melalui Perspektif Sosiologis. Paper submitted to Workshop of Judge Competence Development*. In cooperation with Judicial Commission of Indonesia, High Court, Faculty of Law, University of Sam Ratulangi, 22-23 October, Manado.

<sup>4</sup> Amir Syamsuddin, 2008. *Integritas Penegak Hukum, Jaksa, Polisi dan Pengacara*. Jakarta, Kompas., Page 10.

<sup>5</sup> Mahfud MD, 2007. *Hukum Tak Kunjung Tegak*. Bandung. Citra Aditya Bhakti. Page 85.

All judges in the Indonesia shall be those who acknowledge the truth and give the decision with truth which will be useful for the society. Therefore, the judge is not only deciding the case, but also giving justness. Kusnu Goesniadhie S<sup>1</sup> admits that:

“the judge is the best selected person, who is educated in the strict education process and sharpened to improve their skill. The judge is boiled into multi-dimension experience in various fields and subjected to mental processing continuously to produce a personality with good integrity, uneasy to temptation of wealthy, power, and other world sins”.

A judge with integrity can be obtained by reforming the process of judge recruitment. Jimly Ashidiqy explains that:

The selection process of the judge in Indonesia must be reformed. Selecting the judge in similar way to the selection of civil servant or company staff is not relevant anymore nowadays. Judge candidate is not strictly sorted and the recent recruitment pattern is often providing long tenure for judge position.<sup>2</sup>

In recruitment process of judge candidate, *Komisi Yudisial* (Judicial Commission) adopts some principles such as (1) principle of objectivity, meaning that recruitment process must be objective and has clear parameter; (2) principle of transparency, meaning that all phases in recruitment process, starting from early phase to graduate phase, are conducted in transparent way. The transparency also means that all criteria and selection processes are understood and accessed easily by all candidates and all members of the society; (3) principle of accountability, meaning that recruitment process uses methods and techniques that can be accountable; (4) principle of competence, meaning that main requirement of a judge candidate is high competence in law field; and (5) principle of fairness and cleanliness, meaning that all candidates must pass similar process and obtain similar treatment when they meet administrative condition or pass other phases.

The law principles stated in “*The Bangalore Principles of Judicial Conduct*” are the product of a high level session at *The Peace Palace, The Hague, Netherlands*, attended by the Judges from countries which are the member of specific pioneers in United Nations (*The Bangalore Principles of Judicial Conduct*, November 25 and 26, 2002). Indeed, *The Bangalore Principles of Judicial Conduct* has mentioned that the presence of a competent, independent and neutral Justice Organization to protect human right is affirmed by the fact that the application of this right always depends on a reliable implementation of justness. A competent, independent and neutral Justice Organization is very important if the judicial insists of enforcing the legislations and regulations.

In addition to reforming the judge recruitment pattern, Judge Special School may be founded as proposed by Benjamin Mangkoedilaga<sup>3</sup> through his statement that:

“Indonesia must have a special or permanent institution, called “Sekolah Nasional Pendidikan Hakim”, which becomes a boiling crater of judge candidates for their position in Justice Organization. This institution will build up the instinct and proud of the judge... “

## **B. Integrity as Reflection of Judge Behavior and Reflection of Law and Justness in Indonesia**

Law and justness are manifested through the hand of judges. Terms of law and justness are often made opposite to each other to give adequate room for the discussion in academic way of positivistic school (positive law) and critical progressive school (justness) to develop the meeting-point from various viewpoints.

Law and justness cannot be opposite because in essence, law is about justness. In pragmatic viewpoint, the opposition is justified through empirical reviews when law in reality (*law in context*) is compared to law in norm or legislation (*law in text*).

According to M. Hatta Ali<sup>4</sup>:

“The judicial cannot deny from examining, hearing, and deciding the submitted case by excusing that the law is absent or unclearly defined, but the judicial must examine and decide the case by anticipating that there is no such legislation that can explain whole human life. Conflicts and cases shall be solved and therefore, law base must be identified. The Judge is always subjected to concrete events. Therefore, despite incomplete and unclear law bases, the Judge must look for the exit path

<sup>1</sup> Kusnu Goesniadhie, *Prinsip Pengawasan Independensi Hakim*, in [www.wisnuwardana.ac.id](http://www.wisnuwardana.ac.id), October 10, 2009

<sup>2</sup> Rifqi. [www.wordpress.com/2009/02/11/merobah-pola-seleksi-hakim](http://www.wordpress.com/2009/02/11/merobah-pola-seleksi-hakim).

<sup>3</sup> <http://www.koran-jakarta.com/berita-detail.php?id=37132>.

<sup>4</sup> Komisi Yudisial, 2010, *Bunga Rampai Komisi Yudisial dan Reformasi Peradilan*. Jakarta, Page 86.

through law invention (*rechtsvinding*). An important step in law invention is how to seek out or to find out the law for concrete event”.

Structural and cultural problem in judge human resource is an underlying problem in the enforcement of law and justness.

Bismar Siregar<sup>1</sup> has said that:

Human resource of law enforcer in *common law country* is always critical and analytical. Legislation is not the dead price for justness but the decision of judge is a parameter to assess whether legislation is applicable to the society. Judicial decision is also not absolutely to be followed if a judge has considered that a decision is not consistent to the interest of society. Judge can then make new decision with strong argument.

Judge is a determinant person to the manifestation of justness. It is said so because the actuality of law is the decision of the Judge. Law is not merely a formulation of sentences arranged by the judge in their decision. Those with executorial nature are the decisions of the Judge, not the formulation of articles in legislation. The interpretation and capacity of the judge to interpret the formulated articles in legislation are concrete evidence and manifestation of the signification of a law state.

As said by M. Busyro Moqoddas<sup>2</sup>:

Judge shall formulate decision by giving their attention to the right and obligation and the juridical responsibility of the defendant and the offended, and also to the social right of the society, especially the low income citizen who often becomes the victim of slow killing by the corruptor because their wellbeing is arbitrarily seized away. Ideal decision is only a dream if law institution, including the judicial, is not sterile from problems of social unjustness and biased morality of substantive law. Judicial must be a social institution with sensitivity to the dynamic of the society which is often filled with senses of justness, people defense, and nation wellbeing with conscience.

Justice Mafia is an ironic slogan given to Justice Organization. Even, the practice of Justice Mafia is admitted by Supreme Judge for Supreme Court of Indonesia Republic, Artijo Alkostar<sup>3</sup>, through statement that “For those who disbelieve the presence of Justice Mafia, they can send their case into the Judicial!”

As stated by Barda Nawai Arif<sup>4</sup>, law enforcement practice is not using the related science but only producing phenomena of envelop culture, Justice Mafia culture, and case mafia, which can weaken the scientific culture in law enforcement. As clarified by Sutandyo Wignjosubroto<sup>5</sup>, positivists try to defend their position by stating that the national life is only properly restructured if objectivity and independence of legislation are maintained by law enforcer personnel. Such positivists’ thought and strategy have been formalized into a more explicit formulation.

Based on this view, a judge plays a very important role in making certain whether the law is just or unjust through their decision. Therefore, judge decision will be used as base or jurisprudence by other judge in deciding a similar case.

Luhut MP<sup>6</sup> explains that:

Jurisprudence is a result of a case after consideration and decision. The decision with law invention and law making is called jurisprudence. Law invention by the judge must be based on law doctrine and therefore, it is expected that the judicial will answer the questions of law beyond what are stated in the legislation, especially in dealing with the dispute of concrete laws.

According to Satjipto Raharjo<sup>7</sup>, discussing the law in the organizational context is talking about personal problem, personal behavior, organizational facility and organizational culture. Topo Santoso<sup>8</sup> adds that organizational culture is closely related to the professionalism of human within the organization. In law enforcement context, professionalism is a determinant factor to manifest justness.

<sup>1</sup> Komisi Yudisial, 2010. *Komisi Yudisial dan Reformasi Peradilan*. Jakarta, Page 169.

<sup>2</sup> Eko Riyadi, edition 2011. *Wajah Hakim dalam Putusan Studi Atas Putusan Hakim Berdimensi HAM*. Yogyakarta. PUSHAM-UII-NCHR, University of Oslo, Norwegia: vii.

<sup>3</sup> Ibid. Page 1.

<sup>4</sup> Komisi Yudisial, 2009. *Bunga Rampai Potret Penegakan Hukum di Indonesia*, Jakarta. Page 208-209.

<sup>5</sup> Ibid. Page 236-237.

<sup>6</sup> Ibid. Page 349.

<sup>7</sup> Satjipto Raharjo, 2009. *Penegakan Hukum Suatu Tinjauan Sosiologis*. Yogyakarta. Genta Publishing, Page 14.

<sup>8</sup> Komisi Yudisial, 2009. Page 363-364.

Great concern against poor performed law enforcer is expressed by Febri Diansyah<sup>1</sup> who states that:

We are surrounded by tripod corruption oligarchy. Law enforcement and Justice Reform are hijacked. Corruptive power is built on corrupt political structure of oligarchy. It means that power is only held by few smiling thieves who, ironically, have nice connection to business imperial, law enforcer and law making agency.

One cause of low quality of judge is that judge appointment system is still incapable to produce the judge with a competence to reform the enforcement of law and justness in the judicial. A monitoring agency founded by Constitution, called Judicial Commission, also fails to prevent the fraud and also feels weak to produce the judge with credibility and integrity. Based on constitution, Judicial Commission is authorized to propose the candidate of Supreme Judge through selection model. So far, it is difficult to distinguish whether Supreme Judge selected by Judicial Commission has better performance than that beyond Judicial Commission's selection.

Similar concern is also suggested by Chatamarasyid<sup>2</sup> who states that: The efficiency of recruitment process for Supreme Judge is becoming problematic when the process has to select whether the candidate is from the career judges or those without judge background. The honor of a judge is on the decision because judge decision resembles a crown on judge's head. Main task of the justice is to enforce justness and it is like to restructure the law stage to accommodate new conflicts between justness seekers. This phenomenon is supported by John Roosa<sup>3</sup> in his opinion that a law process to solve PKI problem during New Order is like To Restructure The Stage for Collision.

Selecting the judge is then only about physic rather than psychology. Moral integrity and intellectual integrity are overwhelmed by transactional process between judge candidate and steering committee of judge selection. Formality becomes a main prerequisite and a primary determinant to ensure whether judge candidate is acceptable or not. Judicial is like a long and great theater stage which preserves the nature of greedy among the rulers.

According to Haley<sup>4</sup>, law is a frame for the action and also a concrete guide. Based on this opinion, law is designed and made with a main goal as the guide of behavior and deed in the life of society and nation. Judge decision is the true law because judge decision shall be a fundamental guide for dispute resolution. Also, judge decision must be a base to restructure the life of society from chaos into order (*centrifugal*) or from irregularity into regularity. Therefore, judge decision symbolizes the respect and authority of Justice Organization (*centripetal*) such that at peak, judge decision is the manifest of integrity as the unlimited reflection of judge behavior.

As said by Hans Kelsen<sup>5</sup>, law as science is a matter of social technique, not morality. The goal of a law system is to stimulate human with certain technique such that human will do something in accordance with that stated by law regulation.

Hans Kelsen's opinion is rather different from what Haley has said. Kelsen is concerning with the restructuring of human life into orderliness because the essence of law is orderliness. Being ordered, every individual will respect and appreciate each other, and oversee, in ordered way, the right and obligation of each other. For Kelsen, the essence of morality is the substance of orderliness itself, not the symbols of grandiosity. Morality brings along orderliness and orderliness surely sends the message of morality.

Furthermore, Hans Kelsen<sup>6</sup> asserts that justness criteria, including criterion of rightness, do not depend on the frequency of justification of the truth.

Kelsen finally emphasizes that the invention of law and justness is not counted from the number of legislations and decisions made, but it is about how the decision can meet justness criteria.

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<sup>1</sup> Komisi Yudisial, 2009. Page 405.

<sup>2</sup> Komisi Yudisial, 2009. Page 453.

<sup>3</sup> Read about John Roosa, 2008. *Dalih Pembunuhan Massal, G30S, and Kudeta Suharto*. ISSI-HASTA MITRA. Page 258.

<sup>4</sup> Haley, John Owen. *Authority Without Power, Law and the Japanese Paradox*. Oxford. Oxford University Press.

<sup>5</sup> Hans Kelsen, 1992. *Introduction to the Problems of Legal Theory: A Translation of the First Edition of the *Reine Rechtslehre* or *Pure Theory of Law**. Translated by: Bonnie Litschewski Paulson and Stanley L. Paulson. Oxford: Clarendon Press. Page 18.

<sup>6</sup> Quoted by Jimly Ashidiqy and M. Ali Syafa'at, 2006. *Teori Hans Kelsen Tentang Hukum*. Konstitusi Press. Page 18.

Satjipto Raharjo<sup>1</sup> suggests that law exists to be deliberative. Good judge is not because they only obey the legislation but they can deliberate the case with the related parties.

As said by Satjipto, the essence of law is a social technique, and it is closely related to the term “deliberation”. It aligns with Kelsen opinion. Indonesian, added by Satjipto, often perceives that what means by social technique is deliberation. Satjipto insists that good judge is whose decision is not always becoming into a formal jurisprudence. The essence of law itself is not located at whether it is complete or not when the judge quotes articles of legislation as the base of their decision. Satjipto prefers decision making by the judge through trial in judicial, not from the result of individual decision.

Satjipto is supported by Daniels S. Lev. According to Lev<sup>2</sup>, deliberation (*conciliation*) is a main characteristic of law culture in Indonesia.

Lev understands that law manner of Indonesian is by deliberation. Genuine law of Indonesia is invented through deliberation and not through a formal organization founded by State. Judge is a commander to invent the law in the society. Therefore, main task of the judge is to invent the law and justness from deliberation between the related parties.

A firm statement is given by Mac Galanter<sup>3</sup>, who states that:

“*Judicial is a society in which actors with different amount of wealth and power are constantly in competitive or partially cooperative relationship in which they have opposing interest*”.

Galanter attempts to keep the judge aware that judicial is a formal institution not only with prerogative right to determine and to manifest justness, but also be able to secure the right of individuals from different background, culture, custom, ideology, political affiliation, wealth and economic ownership, and others. In this context, judicial is required to be independent and impartial and also respecting *fairness*.

Integrity is the unlimited reflection of judge behavior. Law is the reflection of society behavior (*anthropological document*). *The Mirror Theory* proposed by Tamanaha<sup>4</sup> states that Micronesia law is a transplantation in which United States law is applied to this Islands State. In other words, *Micronesia law is transplanted in its entirety from United States such that their customs and values can hardly been more different from United States’ legal system and its norms*.

Tamanaha’s opinion applies epistemological base (philosophy) which means that the judge who makes decision shall explore important values adopted by the society. A modern law made by the State seems becoming a source of trouble on the eye of society because this modern law is made by the ruling political elites of the State. Indeed, modern law made by the State is only securing the right of the state ruler and preserving their power. Modern law made by the State is definitely not the law invented in the society.

As said by Jimly Ashidhiqy and M. Ali Syafa’at<sup>5</sup>, justness is not a matter of human deed, but it is about signification and value beyond human rationality. Justness is not a realm of rationality but a realm of sense. Justness is not a numeric measure and therefore, cannot be quantified. Justness is a quality of human deed based on sense of just. Therefore, justness is a realm of sense and also conscience. The conscience is an unlimited reflection of God nature, and therefore, anything based on conscience must be just and proper. If deed and decision are based on human conscience, both will be just.

Judge is also human being, but they are selected and thus, not a lay person. Being the selected human, the judge shall have conscience sensitivity. It is consistent to the perception that judge decision shall be transcendental and prophetic, meaning that judge decision must be on the Behalf of Justness based on One Supreme God. It seems that magical religious values are very important to be used in the development of a norm for law decision and law construction to help law invention in judge decision.

Similar opinion is given by Mrs. Komariah Emong S<sup>6</sup> who states that:

<sup>1</sup> Satjipto Raharjo, 2008. *Negara Hukum Yang Membahagiakan Rakyatnya*. Genta Press. Page 44.

<sup>2</sup> Ibid. Page 34.

<sup>3</sup> Ibid. Page 50.

<sup>4</sup> Tamanaha, Brian Z. 2006. *A General Jurisprudence of Law and Society*. Oxford. Oxford University Press.

<sup>5</sup> Jimly Ashidhiqy and M. Ali Syafa’at, 2006. *Teori Hans Kelsen Tentang Hukum*. Jakarta. Konstitusi Press. Page 21-23.

<sup>6</sup> Mrs. KOMariah Emong Spardjaja, 2002. *Ajaran Sifat Melawan Hukum Material Dalam Hukum Pidana Indonesia: Studi Kasus Tentang Penerapan dan Perkembangannya Dalam Yurisprudensi*. Bandung. PT. Alumni. Page 57.

Judge as the enforcer of law and justness is not finding justness only in legislation, but they also cannot denied from applying the legislation.

Furthermore, Mrs. Komariah<sup>1</sup> explains that:

Judge consideration is a base for judicial decision. A fixed jurisprudence is an answer to the failure of legislative (legislation maker) to explain the aim of legislation draft, especially when legislation draft is required to reflect justness. Pursuant to Mrs. Komariah's opinion, it seems that judge decision shall meet appropriate norm.

Mochtar Kusumaatmaja<sup>2</sup> has said that:

Although legislation is a main technique to implement the rejuvenation of law, it seems that the renewal of norms and principles and the invention of direction or material for norm renewal may use other law sources as the supplement, including the decision of Justice Organization (jurisprudence) and the writing of the leading law scholar.

Mochtar prioritizes the aspects of law rejuvenation. Judge decision is only one aspect of law rejuvenation.

Similar opinion is also suggested by Kudzaifah Dimiyati and Kelik Wardiono<sup>3</sup> who say that:

Any ideas proposed by law expert are inseparable from the reality of law culture in Indonesia. What had been said by Dimiyati and Kelik is seemingly supporting Tamanaha, Satjipto and Lev. If it is explained through the perspective of judge integrity as the unlimited reflection of judge behavior, it can be said that judge decision with justness is that based on the culture of Indonesia society. Indeed, the culture of Indonesia society has reflected justness values which become a base of deed and behavior.

In relative with how the judge can make decision, Adi Sulistyono<sup>4</sup> asserts that:

Under the perspective of judge, making a decision or a verdict is not difficult task. However, this routine can mislead the judge to disregard normative standard required in the decision making. It may be evident in law consideration by the judge assembly before they make a decision.

More clearly, Adi<sup>5</sup> adds that a decision with better quality and reflecting justnes

Adi's opinion is giving a concrete illustration of the qualification of a judge with integrity in making their decision. However, this opinion is not explaining how can judge decision be said as just.

Sudijono Sastroadmodjo<sup>6</sup> suggests that main elements in progressive law model are (1) pro-citizen ideology, (2) freedom goal, (3) empowerment function, (4) justness type of social justness; and (5) discretionary methodology.

Sudijono's opinion is a reliable to be used as a consideration base by the judge in making their decision. By meeting the criteria and elements of progressive law, judge decision is relatively in parallel with the expectation of the society and their sense of justness.

This opinion is supported by Absori<sup>7</sup> who states that:

Law is implemented only in responsive way if a judge or a law enforcing officer can use the analysis tool by not only considering formal law argumentation because decision making and law signification are inseparable from its relation with the political issue and the aspiration of the society.

According to M. Zaid Nisar<sup>8</sup>, law invention and law making processes are two sides of a coin. Both involve conducting law analysis against a concrete event, using syllogism and executing

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<sup>1</sup> Ibid. Page 61.

<sup>2</sup> Opcit. Page 61.

<sup>3</sup> Kudzaifah and Kelik Wardiono, 2005. *Dinamika Pemikiran Hukum: Orientasi dan Karakteristik Pemikiran Expertise Hukum Indonesia*. Journal of Law Science. Vol. 8. No. 2, September of 2005. Page 141. Faculty of Law, University of Muhammadiyah Surakarta.

<sup>4</sup> Adi Sulistyono, *Menggapai Mutiara Keadilan: Membangun Pengadilan Yang Independen Dengan Paradigma Moral*. Journal of Law Science. Vol. 8. No. 2, September of 2005. Faculty of Law, University of Muhammadiyah Surakarta. Page 163.

<sup>5</sup> Ibid. Page 164.

<sup>6</sup> Sudijono Sastroadmodjo, *Konfigurasi Hukum Progresif*. Journal of Law Science. Vol. 8, No. 2, September 2005. Page 187. Faculty of Law. University of Muhammadiyah Surakarta.

<sup>7</sup> Absori. *Penegakan Hukum dan Citra Lembaga Pengadilan Pada Era Reformasi*. Journal of Law Science. Vol. 8. No. 1, March of 2005. Page 121-122. Faculty of Law, University of Muhammadiyah Surakarta.

<sup>8</sup> M. Zaid Nisar. *Peran Hakim Agung Dalam Penemuan Hukum(Rechtsvinding) dan Penciptaan Hukum (Rechtscheppend) pada Era Reformasi dan Transformasi*. Journal of Law Science. AMANNA GAPPA, Vol.114, No. 3, September 2006, Page 212. Faculty of Law, University of Hasanuddin Makassar.



deductive analysis onto interpretations and teachings. Difficulty rate of these processes is observed from the practicality of law invention because the essence of law invention remains within the concrete cases dealt by the law.

Moreover, Nisar<sup>1</sup> adds that judge decision is constitutive by nature, and therefore, judge decision is called as law making. It means that judge decision is not only based on what is stated in legislation. Judge shall not be the mouth of legislation. Judge must be active person or even exit from the true meaning of legislation. Judge can seek for other law hidden in the national culture or find out law values lived within the society using various analysis instruments available.

Nisar's opinion confirms the previous opinions stating that judge cannot be arbitrary in making their decision. Judge is a representative of God in the world and therefore, their decision shall be just to indicate a transcendental justness.

### C. Empiricism of Judge Integrity in Their Decision Within Indonesia Context

Judge privilege may be seen from the substance of their decision. The substance of judge decision reflects judge integrity.

As said by Satjipto Raharjo<sup>2</sup>:

There are two types of judge. First, in making their decision, the judge asks their conscience and then seeks for the related articles of legislation to legalize their decision. For them, justness is number one, and law is number two. Second type of judge is who makes the decision based on their lust. Many evidences in the field have justified this typology. Therefore, it is not surprising if the term of "transaction of law/decision" is so familiar.

Satjipto's view justifies the decay of judicial image and judge integrity. The emergence of Justice Mafia and Justice Crime (*judicial corruption*) is also the justifier of Satjipto's view.

Judge decision that shows a bad face of judge behavior because the decision is based only on the lust is not a merely gossip of law and justness. Tedy Asmara<sup>3</sup> has stated that economic behavior of judge is a determinant factor to the substance of their decision.

Evi Deliana HZ<sup>4</sup> suggests that:

It is not easy to the judge in making their ideal decision because the ideal decision must have *idée des recht*, which involves three elements, which are: justness (*gerechtigheit*), law certainty (*rechtsicherheit*) and usefulness (*zweckmassigkeit*).

According to Busyro Muqqodas<sup>5</sup>, the essence of law is:

The formulation of moral and ethic values which contain of imperative messages in wider sense of what is right or wrong, proper or improper, just or unjust, human or inhuman, and civilized or uncivilized.

Busyro's opinion insists that judge is the only person charged with the task to manifest justness, and therefore, they must understand justness and unjustness under a comprehensive perspective because both are attributes of the prosperous society.

Nurahim Rasudin<sup>6</sup> has studied about judge decision, and found that:

Judge decision has complied with legislation, especially with civil agenda law. However, the consideration behind judge decision is not explaining the detail of why among six defendants there is an improper defendant, meaning that the litigant makes *error in persona* in determining a person as the defendant.

Wahyu Sasongko<sup>7</sup> declares that judge is not truly doing the examination during the trial such that their decision only reflects the conflict of interest within the psychology of the judge themselves.

<sup>1</sup> Ibid. Page 215.

<sup>2</sup> Satjipto Raharjo, 2010. *Dalam Bunga Rampai Komisi Yudisial*. Page 318.

<sup>3</sup> Tedy Asmara, 2010. *Budaya Ekonomi Hakim: Kajian Antropologis tentang Rasionalitas Ekonomik Pada Penggunaan Kebebasan Hakim Dalam Penanganan Perkara Pidana di Pengadilan Negeri Kotamaju*. Semarang. University of Diponegoro.

<sup>4</sup> Evi Deliana HZ, 2007. *Kajian Terhadap Putusan Perkara No. 393/Pid.B/2006/PN.PR.B, Tentang Kekerasan Psikis Dalam Rumah Tangga*. Journal of Judicial Commission, Vol.I/ No.02/November/2007. Page 103.

<sup>5</sup> Busyro Muqqodas, 2010. *Dalam Komisi Yudisial dan Keadilan Sosial*. Page 225-226.

<sup>6</sup> Nurahim Rasudin, 2007. *Kajian Terhadap Putusan No. 12/PDT/G/2004/PN.PBR, Tentang Penyelesaian Sengketa Tanah*. Journal of Judicial Commission, Vol-I/No-02/November/2007. Page 123.

<sup>7</sup> Wahyu Sasongko, 2007. *Kajian Terhadap Putusan No. 147/Pdt.G/2006/ P.A. Tnk, tentang Putusan Verstek: Solusi Hukum Kasus Perceraian di Pengadilan Agama*. Journal of Judicial Commission, Vol-I/No-02/November 2007. Page 133.

The finding about the empiricism of judge decision which disregards a psychological condition is also revealed by Yusti Probowati Rahayu<sup>1</sup> who says that judge may not understand the psychological condition of the criminal actor and not use psychological aspect of the criminal actor as a consideration in their decision.

Jamal Hi. Arsyad and Sultan Alwan<sup>2</sup> declare that:

Judge decision is not comprehensive in this case such that the subject matter is not touched at all and some law facts are not yet revealed. The implication is so obvious to the applied regulation, the person who shall be presented for witnessing, and also judge decision.

Eko Riyadi<sup>3</sup> also reveals that:

The content of judge decision is mechanically not different from that of decision made by other government bureaucracy apparatus. Their main task as the explorer and the enforcer of justness is faded without remnants.

Research by Imran<sup>4</sup> on judge decision has uncovered that:

Judge decision must be lacking of law breakthroughs when judge attempts to find out facts or events during the trial because there is a possibility that they seek out opportunity to benefit themselves, other, or a corporation, or to misuse their authority, chance or structure provided to them due to their rank or status.

Research by Aswandi<sup>5</sup> on judge decision has found that:

Aswandi also reveals the presence of justness engineering within judge decision. It is an obvious form of *judicial crime* which destructs the face and pride of judge decision. Law engineering by the judge in their decision making is more evil than the deed of the criminal. Suharizal et al<sup>6</sup> suggest that:

Judge has not tried a deep exploration to capture other criminal. Judge decision does not deny political interest by not putting law supremacy above this interest. Judge decision also excludes the execution words when the decision is announced.

The author (Sidik Sunaryo)<sup>7</sup> has researched judge decision between 2006 and 2012 in cooperation with Judicial Commission of Republic of Indonesia. The following is his finding about judge decision in NAPZA case:

Judge decision has not met the values of justness, usefulness and law certainty. Judge decision is a base for the improvement of justice system into an effective and efficient system. Therefore, every judge must consider the aspects of philosophy, sociology and psychology in their decision.

A research by Amzulian et al<sup>8</sup> also discovers the unjust judge decision which becomes the unlimited reflection of judge's bad behavior in the enforcement of law in judicial. The finding is explained as follows:

Sutandyo Wignjosubroto<sup>9</sup> still questions the justness in judge decision by saying that the embodiment of social justness within justice implementation is always difficult in the country with a complex culture.

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<sup>1</sup> Yusti Probowati, 2001. "*Rekuisitur Jaksa Penuntut Umum dan Kepribadian Otoritarian Hakim Dalam Proses Pemidanaan di Indonesia*". Yogyakarta. University of Gadjahmada.

<sup>2</sup> Jamal Hi. Arsyad and Sultan Alwan, 2007. *Kajian Terhadap Putusan No. 28/PID.B/2006/PN.TTE, tentang Distorsi Pengungkapan Fakta Hukum*. Journal of Judicial Commission Vol-I/No-02/November/2007. Page 143.

<sup>3</sup> Eko Riyadi, 2007. *Kajian Terhadap Putusan No. 269/PID.B/2006/PA.Btl, tentang Kesadaran Mekanis: Pola Pikir Hakim Yang Menyandera Keadilan*. Journal of Judicial Commission Vol-I/No-02/November/2007. Page 152-153.

<sup>4</sup> Imran, 2007. *Kajian Terhadap Putusan No. 01/Pid.B/2004/PN.Btl, tentang Pendidikan, Putusan Hakim dan Persoalannya*. Journal of Judicial Commission Vol-I/No-02/November/2007. Page 159.

<sup>5</sup> Aswandi, 2007. *Kajian Terhadap Putusan Perkara No. 325/Pid.B/2002/PN.PTK, tentang Tindak Pidana Penggelapan Terhadap Modal Kerjasama Usaha*. Journal of Judicial Commission Vol-I/No-02/August/2007. Page 17.

<sup>6</sup> Suharizal et al, 2007. *Kajian Terhadap Putusan Perkara No. 55/Pid.B/2002/PN.Pdg, tentang Tindak Pidana Korupsi Proyek Penyiapan Pengerahan Penempatan dan Pemberdayaan Kawasan Transmigrasi (P4KT) Propinsi Sumatra Barat Tahun Anggaran 2002*. Journal of Judicial Commission Vol-I/No-01/August/2007. Page 34 and 49.

<sup>7</sup> Sidik Sunaryo, 2007. *Kajian Terhadap Putusan Hakim No.1819/Pid.B/2006/PN.Sby, tentang Transaksi Hukum dan Transaksi Ekonomi dalam Putusan Hakim*. Journal of Judicial Commission Vol-I/No-01/August/2007. Page 76.

<sup>8</sup> Quoted in Eko Riyadi, 2011. *Wajah Hakim Dalam Putusan Studi Atas Perkara HAM*. PUSHAM UII-NHCR, University of Oslo, Norwegia, Page 121.

<sup>9</sup> Ibid. Page 130-131.

The plurality of problems and the complexity of social, economical and cultural backgrounds of the society<sup>1</sup> have blurred judge awareness that they are appointed for the enforcement of law and justness, and not for the enforcement of their materialistic interest and subsistence. It can be said that such judge performance is only enforcing articles of legislation, but not enforcing justness. It is supported by Sutandyo Wignjosubroto<sup>2</sup> through his statement that:

The unification of national law is not only the work of unification and standardization, but it also represents, intentionally or accidentally, the work of formalization and neutralization against legislation norms into a new form, that is prescriptions.

#### **D. The Urgency of Integrity as The Unlimited Reflection of Judge Behavior**

Integrity is the unification of the words of mouth, heart and conscience with the actual deed which is then manifested into daily behavior. Any behaviors shown in any social manners and mental attitudes of the individuals when they walk on their destiny are the unlimited reflection of their integrity. As said by Busyro Muqoddas<sup>3</sup>:

Judge is always a product of college, and thus, they have passed strata 1 education, but it is possible that they do not understand the standard of law philosophy construction or the theories of law which are responsive to a corrupt sociopolitical system.

Busyro's opinion emphasizes that Faculty of Law must engage within the effort to straighten the enforcement of law and justness. Considering that judge is an indirect product of Faculty of Law, it is suggested that Faculty of Law must be involved in judge recruitment process.

Taufik Sri Sumantri<sup>4</sup> has asserted that:

An independent justice power is a distinctive marker of Law State of Indonesia. It is only manifested through providing the judge with integrity and also with unimpeachable personality, honest, just, professional, and expertise in law field.

A more tragic reality about the fact of judge quality in the enforcement of law is described by Sebastian Pompe<sup>5</sup> who states that the highest symbol of law enforcement institution in Indonesia is Supreme Court, but this institution has been buried under.

According to Mardjono Reksodiputro<sup>6</sup>:

As illustrated by a reformation paradigm of moving "justice system" from two-roofs into one roof, the authority of proposing new Supreme Judges must be understood as the untrustworthiness to the capacity Supreme Court in selecting their own judges, especially those with integrity (honest and trustable). This untrustworthiness is more clearly defined when Supreme Judges are selected from outside judicial field and a term "ad-hoc judge" is introduced, meaning that the judge is coming from judge profession.

Once again, judge is not a common person, but they have privilege status. Their privilege humanity remains on their "double" personality and integrity, and both are required for the enforcement of law and justness. As suggested by Emanuel Kant<sup>7</sup>:

Respect, prestige, and behavior of the judge are not only concerning themselves as *Home Faber*, which is a human with work and think, but also be *Home Juridicus*, which is a human who consider and make decision based on juridical technique when the judge have to check out and to conclude the case submitted to them.

The sensitivity of a judge is a determinant factor to understand law and justness. A main issue remains in the quality of a judge, but the quality of a judge is determined by the system and

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<sup>1</sup> Iman Anshori Saleh says that judge freedom is influenced by the systems of government, politic, economic and others. Judge is only human and their authority and task cannot escape from various interests and influences around them, including personal interest, family interest, and others. It keeps them easily subjected to *conflict of interest* within the personality of judge such that judge deed or behavior may blot their respect, nobleness, and morality. See Imam Anshori Saleh, 2014. *Konsep Pengawasan Kehakiman*. Malang. Setara Press. Page 138.

<sup>2</sup> Ibid. Page 132.

<sup>3</sup> Komisi Yudisial, 2011. *Bunga Rampai Refleksi Satu Tahun Komisi Yudisial RI*. Page vii-viii.

<sup>4</sup> Komisi Yudisial, 2011. *Bunga Rampai Refleksi Satu Tahun*. Page 16-17.

<sup>5</sup> Dissertation of Sebastian Pompe, 2005. *The Indonesian Supreme Court: A Study of Institutional Collapse*. Cornell University, Ithaca, New York.

<sup>6</sup> Komisi Yudisial. *Bunga Rampai*. Page 43-44.

<sup>7</sup> Quoted in Arbijoto, in Komisi Yudisial. Page 57.

model which appoint them. Judge appointment model is determined by how the appointment process is made and conducted. Mustafa Abdullah<sup>1</sup> has reported that:

Judicial Commission's authority to propose the Supreme Judge candidates to House of Representatives (DPR) is a matter of preventive monitoring, meaning that Judicial Commission must select the Supreme Judge candidates with integrity, professionalism, and independence to the hand of House of Representatives.

However, all these requirements only concern most with administrative aspect and still do not touch integrity aspect in substance. Thus, it can be said that professionalism, honest, quality and visionary are primary requirements for a judge.

Satjipto Raharjo<sup>2</sup> asserts that justice practice is like judicial trade market. The review of *Komisi Hukum Nasional*<sup>3</sup> (National Law Commission) has reported that:

Ad-hoc judge system is founded based on judgment that the knowledge of career judges tend to be general (generalist) whereby the resolution of business cases need judges with specialties.

Other section<sup>4</sup> explains that:

The recruitment of ad-hoc judges brings along weaknesses. Objective and measurable parameters to assess the criteria are absent. The process is closed at relatively short schedule, and therefore, the exploration of *track record* of candidates is difficult. The skill of ad-hoc judges is questionable. Public participation is lacking.

Judge decision will be a proof and treaty of the history of human civilization on the earth, and therefore, judge integrity in the substance of judge decision shall be the unlimited reflection of judge behavior.

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<sup>2</sup> Satjipto Raharjo, 2010. *Dalam Bunga Rampai Komisi Yudisial*. Page 312-313.

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