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**LEGAL SOLUTION TO OVERCOMING THE PROBLEMS OF THE CASES IN THE  
SUPREME COURT OF INDONESIAN REPUBLIC**

(Proposed Fifth Amendment to the 1945 Constitution of Republic of Indonesian)

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**Abstract**

The accumulation of cases in the Supreme Court of the Republic of Indonesia, especially the case of the General Court (Civil and Criminal case) has not been resolved, even though there is an internal regulation that sets the time limit for the settlement of the case for 250 days and the division of rooms within the Supreme Court and the settlement takes a long time, it does not only violate the legal principles of simple justice, fast and low cost even has opened the door of corruption, because the seeker of justice will try to speed up to get the verdict on his case. This paper provides a legal solution to the problem, namely by establishing representatives of the Supreme Court in every province in Indonesia and empowering the nation's children to become Supreme Court Justice (opening a wide field of employment for legal professionals) using the approach of legislation.

**Keywords:** legal solution, cases, Supreme Court of Indonesian Republic

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**I. INTRODUCTION**

Constitution of 1945 of the State of the Republic of Indonesia in Chapter 24 determines that judicial power is an independent power to administer justice to uphold law and justice. The Supreme Court is one of the judicial authorities in charge of the judiciary within the general judiciary, the religious court environment, the military court environment and the state administrative court environment (Constitution of Indonesian Republic of 1945, Secretariat General of People's Consultative Assembly, 2008).

The authority of the Supreme Court of the Republic of Indonesia in the field of justice, namely as the Supreme Court of Appeal which is the appeal court to foster uniformity in the application of the law through Cassation and Reconsideration Decision and to keep all laws and justice throughout the territory of the Republic of Indonesia applied fairly, accurately and correctly. In addition to its duty as the Court of Appeal, the Supreme Court has the authority to examine and decide at the first and final level all disputes concerning the authority to adjudicate, all disputes arising from the seizure of foreign ships and their cargo by warships of the Republic of Indonesia in accordance with applicable regulations (Articles 33 and 78 of the Supreme Court Law No. 14 of 1985). Besides, it is closely related to the authority in the field of justice is the authority of the material test, that is, the authority to examine/judge materially the law under the law on whether a regulation in terms of its contents (the material) is contrary to the rules of the higher level (Article 31 Constitution of Supreme Court Law Number 14 of 1985).

In relation to the authority of the Supreme Court of the Republic of Indonesia in the field of justice, especially as a cassation court for all cases within the four courts (judiciary, religion, state administration and military) and a review of all cases which have legal force remained without any limitations, plus the strengthening of awareness the law of society where the average of all justice seekers is dissatisfied with the first and the appeal ruling which ultimately seeks justice to the appellate level and pursues a review, this is what causes the number of cases (stacking cases) that must be decided by the Supreme Court, while the number of justices is only 60 persons plus the appellate court judge appeals to the Supreme Court of the Republic of Indonesia and serves the judicial jurisdiction of Indonesia. Due to the accumulation of cases at the appeal of the Supreme Court of the Republic of Indonesia not only violates the legal principles of simple justice, fast and low cost, but has opened the door of corruption, why not because seekers of justice seek in any way and justify any means to seek blame for the case quickly terminated and get the verdict.

The efforts of Supreme Court to overcome and resolve the accumulation of cases have been made through the stipulation of Standard Operational Procedure (SOP) for handling cases of cassation and review through the Decision of the Chief Justice of the Supreme Court Number: 214/KMA/SK/XII/2014 on December 31, 2014. The

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decision on appeal of cassation and review shall be completed within 250 working days, unless otherwise provided by law and regulation such as special civil cases, special crimes, civil religion/syariah economics, state administration / taxes, etc. referring to and subject to the respective laws (Attachment of Decision of *KMA RI* Number: 214/KMA/SK/XII/2014).

Determination of the period of 250 days as stipulated in the Decree of the Chief Justice of the Supreme Court Number: 214/KMA/SK/XII/2014, regarding the Period of case handling to the Supreme Court of the Republic of Indonesia on 31 December 2014. is often violated and even the handling of cases at the level of cassation takes many years and not infrequently the justice seekers are not expecting the decree of the cassation as well as some cases the justice seeker has passed the decision of his new cassation down, this indicates the length of time pennganan case at appeal and review in Supreme Court.

Violation on the provision of the duration of the handling of the cassation case and the review there is no legal sanction (administrative law sanction), so the handling of the cassation and review cases is still stacked by means of the provision of the term of handling of the case for 250 (two hundred and fifty) the work stipulated in the Decision of the Chief Justice of the Supreme Court Number: 214/KMA/SK/XII/2014, December 31, 2014 has not been considered effective or efficient. It is related to the principle of judicial law carried out with simple, fast and low cost as specified in Law Number 48 of 2009 on Judicial Power, where the three principles of law is a fundamental legal principle in the implementation and judicial administration services that lead to the working principle which is effective and efficient, and the Supreme Court should prioritize the acceleration of settlement of cases and reduce arrears to achieve these three principles.

Other effort taken by the Supreme Court of the Republic of Indonesia to accelerate the process of cases handling by overhauling the handling distribution system of the case is the establishment of room systems since 2011 by forming 5 (five) rooms, namely Chamber of Commerce, Chamber of Religion, Military Chamber and TUN Room based on Decree of the Chairman of *RI* (Republic of Indonesia) Supreme Court. 142/KMA/SK/IX/2011, on September 19, 2011 about the Guideline for Implementation of Room System in the Supreme Court of the Republic of Indonesia. The handling of cases with this room system is also still considered less and until now there are still many cases of cassation whose verdict still feels long and exceeds 250 days.

The existence of the Supreme Court of the Republic of Indonesia in every Provincial Region throughout Indonesia allows to overcome the accumulation of cases at the Supreme Court of the Republic of Indonesia, only the existence of these institutions located in each Province throughout the Territory of Indonesia should be considered the legal basis of the use of authority by the Supreme Court.

## **II. DISCUSSION**

The extent of the working legal territory that should be served by the Supreme Court of the Republic of Indonesia for this case of cassation and reassessment of Indonesia has never been contemplated to find a solution to its settlement. Therefore, this paper will analyze the legal issue of "legal solution to reduce the pile of cases at the level of cassation and reforestation in the Supreme Court of the Republic of Indonesia associated with the vast territory of the Supreme Court institution of Indonesia" as a proposal for the fifth amendment of the 1945 Constitution, using a staute approach with normative study, with the following discussion topics:

- a. Introduction;
- b. Division of Working Area of the Supreme Court of the Republic of Indonesia;
- c. Empowerment of Nation Children (Legal Expert) To Occupy The Office of Supreme Court Judge;
- d. Authority as a Representative Body.
- e. Cover.

### **A. Division of Working Area of the Supreme Court Law**

The extent of the legal jurisdiction of the Supreme Court in Indonesia is one of the causes of the accumulation of cases that have not been resolved to date. During the fourth amendment of the 1945 Constitution, the authorities of our jurists have not yet been called upon to divide the working territory of the Supreme Court of Indonesia throughout Indonesia, and for now it is time to consider the division of the working territory of the Supreme Court to reduce its accumulation lawsuits and achieving legal principles of the administration of justice carried out simply, quickly and lightly.

The idea of the division of labor law in order to optimize the performance to achieve efficient and effective for the state high institution level has been shown by the state high institution of the Indonesia State Audit Board (here abbreviated SAB) as set forth in Article 23 G (Fourth Amendment) of the 1945 Constitution of the Republic of Indonesia " The Supreme Audit Board is domiciled in the nation's capital, and has representation in every province ", this provision causes SAB of Indonesia not to experience any congestion in processing inspection service and responsibility on state finance. This is different from the state high institution of the Supreme Court always

experiencing problems in the accumulation of cases (work) in legal services to provide a sense of justice to the justice seeker community.

Supposing that the jurisdiction of the Supreme Court of the Republic of Indonesia follows the pattern of Indonesia SAB working territory in every province, the work will be easy because the justice seeker do not have to bother to Jakarta to pursue the cassation and review law, simply filed and resolved in their respective provinces. In each case a representative of the Supreme Court of the Republic of Indonesia was established with the application of the above-mentioned chamber system, of course, for densely populated or less populated provinces adjusting the composition of the room formation.

The formation and division of the working territory of the Supreme Court in each province is not difficult depending on the agreement between the authority of the executive and the legislative authority as the leading sector to realize the legal politics in overcoming the problem of accumulating cases in the cassation and review to the Supreme Court in order to fulfill a sense of justice for every justice seeker community and the realization of justice law principles implemented with simple, fast and light cost.

It is said that it is not difficult to realize the formation of representatives of the Supreme Court in every province, the authors take the example of the establishment of Corruption Court based on Law Number 46 Year 2009 on Corruption Crime Courts (*LN RI No. 155, of 2009, TLN No. 5074*) which is specialized in handling corruption cases that were initially handled in all district courts, now since the establishment of the Corruption Court all corruption cases are handled by the Corruption Court existing in each provincial capital covering 34 provinces -Indonesia, it depends on the intention that is followed up by the government and the House of Representatives to create legislation on the establishment of representatives of the Supreme Court in each province authorized to handle and resolve the case of cassation and review, so that the burden of the case in the Supreme Court Jakarta today will be reduced.

For the long term it is necessary to be included in the fifth amendment of the 1945 Constitution of the Republic of Indonesia by entering a sentence like the Indonesian SAB mentioned above, namely "the Supreme Court of the Republic of Indonesia based in the national capital, and having representation in each province" authorized to handle appeals and review cases back.

#### **B. Empowerment of Nation Children (Legal Expert) to Occupy the Office of Supreme Court Justice**

It is the right of every citizen to the work and livelihood worthy of humanity as regulated in the 1945 Constitution, Article 27 paragraph (2). Based on these norms, the government is obliged to open employment opportunities for the children of the nation, especially the field of work in the field of law, and with the opening of opportunities for representatives of the Supreme Court of the Republic of Indonesia in every province, it will be necessary for lawyers to hold the office of Supreme Court Justices to fill the Supreme Court RI in 34 provinces, where each province has 5 rooms and in each minimum room there are 3 judges, it takes about 9 Supreme Court judges X 34 provinces, it will take about 306 judges. If this manifests us legal experts will be a little relieved.

Government in this case do not think like colonial era where in the colonial era the one who occupied the position of judge and clerk on Landraad, Raad Van Justitie or Hoogerechtshof was only the Dutch national, while the natives have never been given the opportunity to occupy the post of judge and the registrar, it should be understood that the colonial government at that time imposed discriminatory regulations against indigenous people (Soetandyo Wignjosebroto's Book "From Colonial Law to National Law." *PT. Raja Grafindo Persada*, 1995, p.146). The author wants to convey that the current government should not apply discriminatory regulation such as Dutch colonial era, if there are children of the nation and there is an opportunity to occupy more justices, why not accommodated? rather than providing the state budget to be corrupted by some people as in the case of *E-KTP* (e-ID card) where the calculation of state losses by the Financial and Development Supervisory Agency on e-ID card projects is quite significant, worth Rp 2, 3 trillion and we know together through the news of the mass media where the Corruption Eradication Commission (abbreviated CEC) succeeded in returning the state losses of billions and even trillions of rupiah, such as the number of cases of corruption case handled by CEC in the period of 2001-2009 reached 542 cases that cost the state Rp 73,1 trillion. Of that amount, there was only Rp 5.32 trillion or about 7.27% successfully returned to the new state of so in 2016 the CEC has executed 81 Court Decisions with permanent legal force. More than Rp 497.6 billion has been put into the state treasury in the form of Non-Tax State Revenue from the handling of corruption cases, said Basaria in a press conference of CEC Performance 2016 at CEC Building, Jakarta, Monday (9/1/2017).

Similarly, high financing to establish law enforcement agency at the level of investigation and retrieval is planned to add more to form the Corruption Densus agency in the Police agency with an estimated annual budget of Rp. 2.6 Trillions, in the matter of the existing function and authority of the Police of the Republic of Indonesia itself for the enforcement of Corruption Law inherent in the function and authority of the Police itself for the investigation of corruption cases, this matter there will be conflict of authority. Conflict of authority at the level of investigation has long since the birth of the CEC, where there are three law enforcement agencies in the limitation

of corruption, the Police Agency, the Attorney General and CEC and will be added with the Corruption Disorder institution of criminal acts of corruption with sufficient budget great as mentioned above. The CEC spends more than a year's budget on RPs. 950.000.000.000, - (nine hundred and fifty milliyar), not to mention the Attorney and Police that are not less the budget to finance law enforcement at the level of investigation and the filing of corruption cases. It would be unfair to establish a representative of the Supreme Court of Justice in every province alone, in the event of its objective to accelerate the settlement process in fulfilling legal service to the justice seeker.

The number of children of the nation who are interested in applying to be a Supreme Court Justice in every recruitment of Supreme Court Justice and who pass the test accepted only one and two people, it is because the formation of Supreme Court Justice in the Supreme Court is full, and no new formation or the absence of a judge aggressive retirement age. This indicates the number of children of the nation who wish to become Supreme Court judge while the opportunity of the Supreme Court of the Republic of Indonesia is very limited to the formation of only 60 (sixty) Supreme Court Judges at the most (Article 4 Paragraph (3) No. 5 of 2004 on Amendment to Law No. 14 of 1985 regarding the Supreme Court of the Republic of Indonesia No. State Institution RI No. 9 of 2004, Additional State Institution No. 4359). This condition should be evaluated to adjust the development of the times and the increasing population of Indonesia and the emergence of many legal experts, with the condition that it is time for the Supreme Court to open a representative in each province to accommodate the children of the nation, especially legal experts to overcome the problem of accumulation of cases at the level cassation and reconsideration in accordance with the legal principles of the administration of simple, fast and lightweight courts.

### **C. Authority as a Representative Institution**

The existence of Supreme Court institutions in every Province as representative of Indonesia should be questioned in the use of its authority, whether it uses the authority of the delegate or mandate authority, both of which are the delegation of authority. If the representatives of the Supreme Court in each province use the authority of the delegation is not appropriate, because the authority of the authority use of delegation authority requires inter-agency not to subordinate one agency, whereas if using the authority of the mandate means legal responsibility is on the mandate grantor in other words the Court Agung of The Central of Republic of Jakarta, Indonesia is fully responsible for all legal actions of representative institutions of the Supreme Court in each Province. It should be considered later by lawmakers whether to use the sentence of the Supreme Court of the Republic of Indonesia based in Jakarta and have representation in every Province or Supreme Court of the Republic of Indonesia based in Jakarta and in every Province of Indonesia, without mentioning as representative institution. Thus, the existence of the Supreme Court of the Republic of Indonesia in each Province using the authority of attribution which is directly sourced from the 1945 Constitution of the State of the Republic of Indonesia as well as the basis for the revision of the existing Supreme Court Law.

### **III. CONCLUSION**

For a long term constitution, there need to be included in the proposed fifth amendment of the 1945 Constitution of the Republic of Indonesia, especially in the Chapter of Judicial Power conducted by the Supreme Court to open representatives in each province as the distribution of authority to accommodate the nation's children, especially the legal profession and to overcome the problem of accumulating cases in the cassation and review back in the Supreme Court of the Republic of Indonesia, while the short-term is enough to make the law of the establishment of representatives of the Supreme Court in every province, thereby opening up opportunities for Indonesian Jurists to become Supreme Court Justice. On this occasion I invite fellow lawyers to reproduce writing about the establishment of representatives of the Supreme Court in every province, so that what we imagine becomes reality.

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