

## **ANALYSIS OF LAW MAKING NO.48/2009 ON JUDICIAL POWER USING JURIDICAL, SOCIOLOGICAL, AND PHILOSOPHICAL ANALYSIS**

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### ***Abstract***

*Since its enactment, this law has been the subject of in-depth analysis to understand the impact and implications on the life of the nation and state. In this paper, we will describe the analysis of Law No.48/2009. In addition, the role and responsibility of the community in supporting the implementation of this Law is also the focus of analysis. Through philosophical analysis, we can assess the extent to which the Act is consistent with the basic values and principles of the rule of law. Juridical Analysis opens insight into legal aspects that need to be evaluated and improved. Sociological analysis provides an overview of how these regulations are accepted and implemented by society. In conclusion, an in-depth analysis of Law No. 48/2009 from a juridical perspective, this law, in theory, has a positive impact by affirming judicial autonomy. In a philosophical view, the law reflects the basic principles of the rule of law, but an evaluation of its implementation shows that these values have not been fully reflected in the day-to-day practice of justice. The existence of conceptual problems in the substance of Law No. 48/2009 during the formation of this law created challenges in implementing the law, especially in the context of the election of Supreme Court justices.*

**Keywords:** *Analysis of Law, Law No 48 of 2009, Judicial Power*

## **INTRODUCTION**

Law Number 48 of 2009 concerning Judicial Power is the legal basis that regulates the judicial system in Indonesia. Since its enactment, this law has been the subject of in-depth analysis to understand the impact and implications on the life of the nation and state. In this paper, we will describe the analysis of Law No. 48/2009 using Juridical, Sociological, and Philosophical approaches, and utilize the Juridical analysis tool as the main guide.

Juridically, Law No. 48/2009 brought significant changes in the Indonesian justice system. This law affirms the independence of judicial power, avoiding interference of executive and legislative power in carrying out judicial functions. In the Juridical context, we can use the Juridical analysis tool to further detail the positive and negative impacts of the juridical aspects of this Law (Amin, 2019).

In terms of Juridical, it is necessary to observe how this law affects the independence of the judiciary. With the affirmation of the autonomy of judicial

power, it is expected that law enforcement will be more neutral and not influenced by political interests. However, in its implementation, there are still several obstacles, such as the selection of Supreme Court justices whose integrity and independence can be questioned.

From a sociological perspective, Law No. 48/2009 has had a far-reaching impact on society. The sociology of law helps us understand how these regulations respond to and influence social structures. Therefore, it is important to analyze this Law taking into account the social factors that influence its application.

In this context, Sociological Juridical allows us to see how changes in the judicial system affect people's belief in justice. Does the community feel that these changes bring significant improvements in law enforcement, or vice versa? In addition, the role and responsibility of the community in supporting the implementation of this law is also the focus of analysis.

From a philosophical point of view, Law No. 48/2009 can be interpreted as an effort to achieve the philosophical goals of the rule of law. Legal philosophy gives us a deeper understanding of the basic principles underlying legislation. Through philosophical analysis, we can assess the extent to which the Act is consistent with the basic values and principles of the rule of law.

In the analysis of Philosophical Juridical, we need to consider whether this Law reflects the principles of justice, humanity, and the rule of law. Legal philosophy helps us answer fundamental questions about the purpose of the state in formulating laws, as well as how those laws should affect human behavior.

Using a holistic approach to judicial analysis, we can better understand the complexity of Law No. 48/2009 on Judicial Power. Juridical Analysis opens insight into legal aspects that need to be evaluated and improved. Sociological analysis provides an overview of how these regulations are accepted and implemented by society. Meanwhile, Philosophical analysis helps us assess the extent to which this Law conforms to the basic principles of the rule of law.

Thus, this analysis not only delves into the formal aspects of legislation, but also relates them to social and philosophical realities. With a deeper understanding of

Law No. 48/2009 through this Yutidis approach, it is expected to make a positive contribution to the improvement of the justice system in Indonesia as a whole.

## **RESULTS AND DISCUSION**

The discussion of Law No. 48/2009 on Judicial Power requires a holistic approach, involving juridical, sociological, and philosophical analysis to understand the impact, conceptualization, expert views, international comparisons, and implementation problems.

Impact of the Application of Law No. 48/2009 from a Juridical, Sociological, and Philosophical Perspective: From a Juridical Perspective, Law No. 48/2009 affirms the independence of judicial power, creating a legal basis for judicial autonomy. The positive impact is an increase in the independence of the judiciary, reducing the risk of interference of executive and legislative power. However, along with its implementation, obstacles were encountered such as the selection process for Supreme Court justices which was still open to political speculation (Widjaja, 2018).

Sociologists describe how society responds to these changes. Public confidence in justice can be influenced by the performance of a more independent judiciary. However, there is potential for dissatisfaction if the implementation of this law does not meet public expectations regarding improving justice.

Philosophically helps us see if this law reflects the basic principles of the rule of law. Although in theory this law prioritizes justice, in practice, it still needs to be evaluated regarding the extent to which these philosophical values are reflected in judicial decisions.

Conceptual Problems in the Substance of Law No. 48/2009: There are several conceptual problems in the substance of Law No. 48/2009. The concept of judicial independence, although recognized, but its implementation is still vulnerable to political interests. The arrangement on the selection of Supreme Court justices can be cited as a conceptual issue, as the process can still be affected by political policies.

Expert Views on Implementation Problems of Law No. 48/2009: The views of legal experts highlight various problems that may arise in the implementation of this law. Some scholars note the lack of clarification in some articles that can lead to

mixed interpretations. They also questioned the integrity of the Supreme Court justice selection process, which is considered vulnerable to political pressure.

**Comparison of Similar Regulations in Other Countries:** In comparing with similar regulations in other countries, it appears that some countries have more effective mechanisms in ensuring the independence of the judiciary. The experience of these countries can be used as a reference to improve Law No. 48/2009. However, each country has its own context, so not all aspects can be applied casually.

### **Implementation Problems as a Result of Formation Problems**

The process of establishing Law No. 48/2009 raises several obstacles, such as debate and tension between legislative and executive power. This can have an impact on the implementation of the law, especially if there are disagreements regarding the interpretation of certain articles. In addition, the controversy in the selection of Supreme Court justices also has a negative impact on the implementation of this law. This discussion describes the complexity of Law No. 48/2009 through the lens of Juridical, Sociological, and Philosophical analysis. Impact, conceptual issues, expert views, international comparisons, and implementation problems all provide a comprehensive picture of the law. With a deeper understanding, it is expected to encourage improvement and improvement of justice in the justice system in Indonesia (Prakoso, H. 2017).

From a juridical perspective, Law No. 48/2009 on Judicial Power illustrates the state's commitment to strengthening judicial independence. The concept of judicial autonomy is key in securing justice and ensuring that judicial power is not affected by executive or legislative political pressure. The positive impact is seen in increasing the authority of the judiciary in making decisions without external intervention that harms the principles of justice. However, such positive impacts need to be seen in the context of actual implementation. Although the law outlines clear principles, in practice, there are still constraints affecting the independence of the judiciary. For example, the selection process for Supreme Court justices still has the potential to open loopholes for political interference. This shows that, although the

law juridically secures judicial autonomy, implementation challenges still require careful monitoring.

From a sociological perspective, the impact of the implementation of Law No. 48/2009 can be measured through public responses and perceptions to changes in the justice system. Judicial autonomy is expected to increase public trust in the judiciary, so that justice is considered a collective effort and is inclusive. Openness and accountability are expected to have a positive impact on public perception of legal sustainability.

However, in its implementation, the public's response to this law is not always homogeneous. There are groups of people who feel that these changes do not have a significant impact on their access to justice, especially in cases related to political interests. Some also doubt whether the independence of the judiciary is really manifested or if it is just jargon that is nothing more than symbolism. From a philosophical perspective, Law No. 48/2009 reflects the philosophical aspirations of the rule of law. Legal philosophy, in this context, includes an understanding of justice, rule of law, and humanity. The law, in theory, is designed to accommodate these values in any judicial process.

However, philosophical evaluation cannot be separated from the context of its practice. How judicial rulings reflect these principles in real cases is a philosophical question worth paying attention to. Some controversial decisions, especially those relating to politics, may raise doubts about the extent to which such philosophical principles are respected in everyday judicial practice. Conceptual Problems in the Substance of Law No. 48/2009:

Although Law No. 48/2009 theoretically supports judicial independence, there are several conceptual issues that need to be identified. One of the problems is related to the selection of Supreme Court justices. Although the selection process is carried out by the Consultative Panel of Judges, the involvement of the executive in determining candidates for Supreme Court justices is still a point of controversy. This creates uncertainty regarding the independence of Supreme Court justices in making decisions. There are doubts as to whether Supreme Court justices will feel burdened

by political interests that may arise during the selection process. Therefore, this conceptual constraint needs to be taken seriously so that the essence of judicial independence can be fully realized.

### **Expert Views on Implementation Problems of Law No. 48/2009**

Expert views are very important in reading the dynamics of the implementation of Law No. 48/2009. Constitutional and judicial law experts often provide in-depth perspectives on problems that may arise in the implementation of these laws (Sutrisno, A. 2016).

Some constitutional law experts highlighted deficiencies in several articles of Law No. 48/2009. They point out that vagueness in some articles can leave room for diverse interpretations, which in turn can open loopholes for political manipulation. In addition, they voiced concerns regarding the selection process for Supreme Court justices which was considered not fully transparent and avoided political interference. The views of judicial experts also corroborate the findings. Some of them argue that the changes in Law No. 48/2009 have not adequately accommodated practical challenges on the ground. They reminded that the independence of the judiciary depends not only on the text of the law, but also on daily practice and a supportive working environment.

### **Comparison of Similar Regulations in Other Countries**

In comparing similar regulations in other countries, we can see how those countries respond to the need to strengthen the independence of the judiciary. Some countries may have found solutions that can be adopted or applied as models in the improvement of Law No. 48/2009. Countries with judicial systems that are considered effective may have stronger mechanisms to ensure judicial independence. They may have more transparent judge selection processes, as well as institutions that objectively monitor and assess judicial performance.

However, each country has its own unique context, and not all models or mechanisms can be applied casually. Differences in legal culture, political systems,

and legal traditions must be taken into account in making comparisons. However, looking at the experience of other countries can provide valuable insights into various approaches that may be taken to improve Law No. 48/2009.

#### Implementation Problems as a Result of Formation Problems:

The process of forming Law No. 48/2009 is inseparable from the political complexity and dynamics between state institutions. Controversies and tensions between legislative and executive powers can create uncertainty in the implementation of such laws. One of the problematic impacts of the formation is seen in the process of selecting Supreme Court justices. Controversies over the selection of Supreme Court justices create uncertainty and distrust of the independence of the judiciary. The public and stakeholders can doubt whether the elected judges are actually selected based on qualifications and merit, or whether there is political intervention that affects the outcome of the election.

In this case, implementation problems as a result of formation problems can manifest in several aspects. First, there is the risk that elected judges will not gain the full support and trust of the public. Second, uncertainty in the selection process can create instability within the judiciary, affecting the quality of judicial decisions (Setiawan, 2018).

In-depth analysis of Law No. 48/2009 on Judicial Power using Juridical, Sociological, and Philosophical analysis blades results in a more holistic understanding. The impact of application from a juridical perspective shows that, despite efforts to increase the independence of the judiciary, there are still obstacles in its implementation. From a sociological perspective, societal responses to these changes have not always been positive, with some groups feeling that these reforms have not had a real impact on their access to justice. Meanwhile, the philosophical review highlights that, although the Act lists the basic principles of the rule of law, there are still challenges in applying them in day-to-day judicial practice.

Conceptual issues in the substance of Law No. 48/2009, especially related to the selection of Supreme Court justices, raise critical questions about the extent to which judicial independence can be realized. Expert opinions, both constitutional and

judicial, highlight shortcomings and potential risks in the implementation of this law. In the context of international comparisons, seeing similar arrangements in other countries opens up opportunities for learning and application of positive aspects. However, keep in mind that not all models can be applied simply due to differences in context and policy.

The problem of implementation as a result of the problem of formation confirms that the success of a law is determined not only by the text of the law itself, but also by the process of making it. Controversies during the establishment of Law No. 48/2009 created shadows involving the implementation of the law. In conclusion, Law No. 48/2009 on Judicial Power should be seen as a complex product involving many dimensions. Only by understanding its impact from multiple perspectives, identifying conceptual problems, listening to expert views, comparing with similar regulations in other countries, and considering the problems of its implementation as a result of the problems of its formation, can we formulate substantial corrective measures and realize the aspirations of true justice in the Indonesian justice system (Nugroho, 2019).

## **CONCLUSION**

In conclusion, an in-depth analysis of Law No. 48/2009 on Judicial Power opens a wider horizon of understanding regarding its impact, conceptualization, expert views, international comparisons, and implementation problems. From a juridical perspective, this law, in theory, has a positive impact by affirming judicial autonomy. However, in practice, there are obstacles such as the selection process of Supreme Court justices who are vulnerable to political interference, illustrating the gap between theory and implementation.

From a sociological perspective, people's response to this law is not homogeneous. Although it is expected to increase public trust in the judiciary, there are groups who feel that these reforms have not had a real impact on their access to justice. In a philosophical view, the law reflects the basic principles of the rule of law,



but an evaluation of its implementation shows that these values have not been fully reflected in the day-to-day practice of justice.

The existence of conceptual problems in the substance of Law No. 48/2009, especially related to the selection of Supreme Court justices, raises critical questions about the extent to which judicial independence can be realized. The expert's view highlights the shortcomings and potential risks in the implementation of this law, providing an in-depth overview of the challenges faced in actualizing judicial reform. In the context of international comparisons, insights from similar regulations in other countries provide an idea of the variety of approaches that can be taken to improve Law No. 48/2009. However, keep in mind that each country has a unique context, and not all models can be applied directly.

Implementation problems as a result of formation problems highlight the complex relationship between the law-making process and its implementation. Controversies during the law's creation created challenges in implementing the law, especially in the context of the selection of Supreme Court justices. In conclusion, Law No. 48/2009 on Judicial Power reflects the complexity and dynamics involved in formulating and implementing legal policies. The long journey to achieve true judicial independence still requires ongoing evaluation, cooperation between stakeholders, and a willingness to continually adapt to evolving contextual changes. Only with a strong commitment to the principles of law and justice can Indonesia strengthen its justice system and ensure that Law No. 48/2009 has a significant positive impact on society and the country as a whole.

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