

The Ideal Concept of Requirements for Ad Hoc Human Rights Judges at the Supreme Court to Achieve Justice

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Article History:

Submitted:

21-06-2024

Received:

10-07-2024

Accepted:

28-09-2024

Keywords:

human rights judges;

ad hoc judges;

recruitment of judges

Abstract

Resolving severe human rights abuses in Indonesia requires serious efforts. One significant case, the human rights abuses in Paniai, remains unresolved and has not yet found justice. After the accused was acquitted, the Attorney General filed an appeal to the Supreme Court. However, the cassation process has not proceeded due to the absence of ad hoc human rights judges at the Supreme Court. The stringent requirements for ad hoc judges at the Supreme Court level serve as a barrier to attracting competent candidates. This study employs normative legal research methodology, utilizing both legislative and case approaches. The findings indicate that there is a need to amend the administrative requirements outlined in Paragraph 4, clauses (d) and (e), which pertain to the age and experience of prospective ad hoc judges. These requirements hinder qualified candidates, particularly those with expertise in severe human rights abuses, from applying. The inefficiency and ineffectiveness of these administrative criteria contribute to delays in resolving such cases. The study advocates for revising the age and experience requirements, emphasizing that the critical factor in resolving severe human rights abuses is the ad hoc judges' knowledge of victim rehabilitation and the imposition of appropriate penalties on perpetrators. Revising these requirements is essential to expedite the resolution of severe human rights abuses and to ensure a more effective judicial process.

1. Introduction

In the context of a rule of law, one of the crucial issues that takes priority is how the state plays a role in upholding, advancing, and protecting human rights.¹ The primary issue in Indonesia's legal system is the lack of comprehensive application of fundamental rights protection for the public. This is evident from the numerous severe and minor acts that are contrary to the law, namely fundamental rights occurring in Indonesia.² Addressing these various human rights issues requires serious efforts from all parties, especially the government. These efforts are expected to foster a sense of justice among the public, particularly the victims, and encourage them to resolve and uncover cases of human rights abuses. This is hoped to be part of Indonesia's experience in ensuring that human rights abuses do not recur. The state is also expected to develop further preventive measures to reduce or eliminate casualties and losses,³ as human rights are universally recognized as inherent rights of individuals due to their nature and essence as human beings. These rights are declared

¹ Sholihin Bone, "Penataan Kewenangan Komisi Nasional Hak Asasi Manusia: Telaah Sistem Hukum," *Jurnal Ilmu Hukum AMANNA GAPPA* 29, no. 1 (2021): 15–25.

² Eko Hidayat, "Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia," *Asas: Jurnal Hukum Dan Ekonomi Islam* 8, no. 2 (2016): 80–87, <http://ejournal.radenintan.ac.id/index.php/asas/article/view/1249>.

³ Ahmad Samawi, *Pendidikan Hak Asasi Manusia*, ed. Dirjen Pendidikan Tinggi Departemen Pendidikan Nasional (Jakarta, 2018).

"universal" because they are part of every person's human existence, regardless of skin color, gender, age, ethnicity and culture, religion, or spiritual beliefs. These rights are "inherent" to their nature as humans and are not granted by any power organization.⁴

Addressing serious human rights abuses is one of the annual priorities of the National Commission on Human Rights (NCHR). During Joko Widodo's presidency, a case brought to court was the Paniai incident. The Paniai incident arose when the Indonesian National Army (INA) fired shots resulting in fatalities and severe injuries due to abuse at Kodam XVII/Cenderawasih, Papua. The Attorney General's Office commenced an investigation by interviewing 7 civilians, 10 police officers, 25 military personnel, and 6 experts. The investigation identified retired Major Inf. Isak Sattu,⁵ as the liaison officer at the district military command, as a suspect in human rights abuses. The prosecutor has filed an appeal (kasasi), which as of now remains unresolved due to the absence of ad hoc judges to consider the case. Paragraph 33 subsection 1 of Law of the Republic of Indonesia Number 26 of 2000 on Human Rights Court (hereinafter referred to Law No.26/2000) stipulates that severe human rights abuses subject to appeal to the Supreme Court (SC) must be deliberated and decided within 90 days after the case is referred to the SC. However, several judicial panels lack ad hoc judges. Lengthy cassation processes have also occurred in three fundamental rights courts in Indonesia. For instance, the Special Human Rights Court for East Timor deliberated on the cassation of Eurico Guterres, with the cassation file received on March 8, 2005, and decided on the same date. Similarly, the Special Human Rights Court (SHRC) in Abepura⁶ deliberated on the cassation of the defendant Johny Wainal Usman, with the cassation request granted on October 4, 2005, and decided on January 25, 2007.

The delayed implementation of cassation due to the unavailability of ad hoc judges underscores the critical need for such judges to promptly handle human rights violation cases at the SC. Ad hoc judges are appointed outside the career judiciary, meeting professional requirements, demonstrating high dedication and integrity. They uphold and understand the principles of legal supremacy and prioritize justice committed to human rights and fundamental freedoms. The formation of ad hoc judges and the recruitment of SC judges through non-career paths are responses by the government and parliament to address discrepancies in justice values perceived by society and the judiciary.⁷ Judges hold a pivotal role within the legal system.⁸ The law imposes an obligation on judges to delve into, follow, and comprehend the legal principles and sense of justice prevailing in society. The quality of ad hoc judges is closely tied to the fit and proper test conducted by the SC to select qualified candidates. However, the mechanism for recruiting ad hoc judges faces its own set of

⁴ Muhammad Ashri, *Hak Asasi Manusia:Filosofi, Teori Dan Instrumen Dasar*, ed. Cv. Social Politic Genius (Makasar, 2018).

⁵ Widjaja, "Perlindungan Hak Asasi Manusia Dalam Sistem Peradilan Pidana Studi Kasus: Putusan PN MAKASSAR Nomor.1/Pid.Sus-AM/2022/PN.Mks," *Jurnal Intelek Dan Cendikiawan Nusantara* 1, no. 2 (2024): Hlm. 3.

⁶ Novita Maria Ticoalu, "Analisis Yuridis Terhadap Transparansi Pemerintah Dalam Penyelesaian Kasus Hak Asasi Manusia Di Indonesia," *Lex Administratum* XI, no. 04 (2023): Hlm. 6.

⁷ Hasril Hertatno, "Eksistensi Hakim Ad Hoc Dalam Sistem Peradilan Pidana Sebagai Upaya Menumbuhkan Kepercayaan Masyarakat Pada Lembaga Pengadilan" (Universitas Indonesia, 2008).

⁸ Andi Arifin, "Peran Hakim Dalam Mewujudkan Negara Hukum Indonesia," *Indonesian Journal of Law Research* 1, no. 1 (2023): Hlm. 3.

challenges, especially when confronted with the legal system. Several issues arise regarding the requirements for ad hoc judge recruitment, which include a minimum age limit of 50 years and educational qualifications and experience in law of at least 20 years. These criteria are stipulated as general requirements and serve as the initial gateway for ad hoc judges in subsequent selection processes.

Miko Ginting, spokesperson for the Judicial Commission, highlighted obstacles in the selection of ad hoc human rights judges, particularly the statutory requirement of a minimum age of 50 years for candidates. This age limit hinders potential candidates from applying while cases are already pending at the cassation level. The issues related to these limitations hinder potential applicants who possess the capability and profound knowledge of addressing severe human rights abuses. Monitoring by Kontras has shown that one of the factors contributing to the failure of ad hoc judge candidates during the fit and proper test conducted by members of parliament is their lack of deep understanding of human rights, despite meeting general requirements on paper. An ad hoc judge is appointed to sit on specific cases to address particular issues. This concept presents certain challenges that need to be considered, such as: First, competence and qualifications: Ad hoc judges must have adequate qualifications and a thorough understanding of both national and international law relevant to the cases they handle. Challenges arise when ad hoc judges lack sufficient experience or do not have adequate knowledge of the applicable laws. Second, availability and selection: the selection process for ad hoc judges should be transparent and fair to ensure that only the most qualified individuals are appointed. However, challenges often occur in finding ad hoc judges who are available on short notice or in urgent situations. Third, credibility and public trust: the proper appointment of ad hoc judges and the fairness of their decisions are vital to maintaining the credibility of the international or national judicial system. Challenges arise if the appointment of ad hoc judges is perceived as non-transparent or politically motivated.

Considering these challenges, it is important to continually evaluate the role of ad hoc judges in the judicial system to ensure they can make valuable contributions to upholding justice and the rule of law. Reforming age requirements for human rights ad hoc judges could be a topic worth debating. Several considerations should be taken into account in this reform, including quality and experience. Setting minimum or maximum age limits for ad hoc judges can influence the quality of the decisions made. Younger judges may have extensive experience and a deep knowledge base that can provide valuable perspectives and up-to-date understanding of contemporary human rights issues. It should be noted that any reform related to age should be based on careful consideration of the legal, cultural, and social context of the country or institution. The goal should always be to enhance the fairness and effectiveness of the judicial system, not to restrict access or opportunities for individuals based on age. In South Africa, human rights courts are generally regulated by multiple bodies and legal systems. However, the specific age of ad hoc judges is usually not explicitly stipulated. Instead, the focus is more on qualifications, experience, and integrity. Proposed reforms to enhance the effectiveness of ad hoc judges and analyze the broader implications of postponement of trials for the protection of human rights. Some studies discuss ad hoc judges, such as research by I Putu Rasmadi Arsha Putra titled "Implications of Ad Hoc Judges in Industrial Relations Court" and by Kiki Adelia titled "Issues in Recruiting Ad Hoc Judges in

the Industrial Relations Court." However, none of them specifically address ad hoc judges in the SC. Based on the summarized points, this study will explore the challenges in recruiting ad hoc judges for the SC and propose an ideal concept for the recruitment requirements of ad hoc judges at the SHRC in Indonesia.

2. Methods

This research employs normative legal research methodology. The method involves analyzing legislative approaches related to human rights appeals. A case approach forms the primary basis for analyzing and examining the severe human rights violation case in Paniai. Subsequently, a legislative approach involves reviewing laws and regulations pertaining to human rights, Law No.26/2000 and other legal materials related to human rights research sources. Legal materials concerning human rights law provide a framework for critiquing implemented policies and suggesting improvements to these policies, thereby offering effective and efficient guideline recommendations. This method requires an understanding of the principle of expedited justice in addressing severe human rights abuses by evaluating the establishment of relevant requirements for recruiting ad hoc judge candidates.

3. Results and Discussion

3.1. The Chronology of the Paniai Case

Human rights abuses in Papua are not a recent occurrence; such violations, including discrimination and stigmatization, have long been prevalent. "Many human rights defenders find their gatherings and peaceful expressions of dissent disrupted by authorities, denying them the opportunity to peacefully convey their demands to the government," Furthermore, various other human rights abuses in Papua, including acts of violence, torture, and even murder, such as the Paniai case in 2014, persist. The incident in Paniai began when a group of young men reprimanded a military member for driving a vehicle without headlights, resulting in a dispute and subsequent physical assault by military personnel against three teenage boys. The community of Papua, led by Ipakiye, gathered at the Paniai Police Station and Koramil to seek clarification regarding the incident. The situation deteriorated when the community's demands were ignored, leading to the throwing of stones at the police station and military base, making it difficult.⁹

After the events in Paniai, in 2015 the NCHR formed a Fact-Finding Team (FFT). The FFT's task was to provide recommendations to the government. During the same year, Manager Nasution, as the head of the FFT, met with eyewitnesses and victims. The outcome of these meetings was subsequently communicated to the media, indicating strong evidence of violations concerning four elements of human rights: freedom from persecution, women's rights, the right to life, and children's rights. NCHR conducted investigation and collected evidence over approximately five years, from 2015 to 2020. The Paniai case, which involves the use of violence by security forces against civilians, indeed violates several. The articles violated in the Paniai case include:

1. Article 7 in Law No. 39 of 1999 on Human Rights, which guarantees the right to life, freedom from torture, and inhumane or degrading treatment.

⁹ Muhammad Miftakhul Huda, "Implementasi Tanggung Jawab Negara Terhadap Pelanggaran HAM Berat Paniai Prespektif Teori Efektivitas Hukum Soerjono Soekanto," *Jurnal Agama Dan Hak Asasi Manusia* Vol. 11, no. No. 1 (2022): Hlm 118.

2. Article 9 in Law No. 39 of 1999 on Human Rights, which guarantees the right of every person to be free from torture or cruel, inhuman, or degrading treatment.
3. Article 37 of Law No. 26 of 2000.
4. Article 42, Paragraph 1(a) and (b).
5. Article 40 of the Human Rights Court Law.

In the Paniai case, the actions of security forces using violence and firing firearms directly at peaceful demonstrators and civilians not directly involved in the violence, as reported, clearly violate the rights guaranteed by Law No. 39 of 1999. The use of disproportionate force and failure to adhere to fundamental principles of security and human rights represent serious violations of the law. Besides that the Paniai case in Papua illustrates a series of violations of important international human rights principles. Several international human rights norms that may have been violated in this case include: The Right to Life as per the International Covenant on Civil and Political Rights (ICCPR), which guarantees every individual's right to life and ensures that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment. The Universal Declaration of Human Rights (UDHR), which affirms the right to life and prohibits torture and cruel or inhumane treatment. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which forbids torture and inhumane or degrading treatment.

These international legal standards underscore the gravity of the violations reported in the Paniai case, highlighting the need for rigorous adherence to human rights protections and accountability for those responsible. The response to this case, including the appointment of human rights ad hoc judges, is crucial to ensure that perpetrators of violations are prosecuted according to the law and to restore justice for the victims and affected communities. Based on the findings from the ad hoc team's investigation, a comprehensive decision was reached. It was unanimously decided that the human rights abuses constituted severe violations of human rights.

3.2. Issues of Ad Hoc Judge Recruitment in Human Rights Courts

The presence of ad hoc judges, in reality, poses its own set of challenges that must be addressed, especially when confronted with the existing legal system. The issues include: Firstly, the human resources recruited as ad hoc judges generally lack the specialized expertise that was one of the original purposes for their formation. Ad hoc judges in human rights courts (HRC) are required to have a thorough understanding of human rights; however, in reality, there are instances where some ad hoc judges do not possess this expertise. Secondly, the requirements for ad hoc judges as stipulated by law are typically identical to those for regular judges. These requirements often fail to address the specific needs of the cases to be handled by ad hoc judges. Legal requirements usually focus on the duration of legal experience held by ad hoc judge candidates. There is no explicit provision stating what constitutes relevant experience in other fields pertinent to the cases to be adjudicated. Determining a candidate's expertise becomes a burden for the selection committee, given that the law formulates these requirements in a general manner. Thirdly, the recruitment mechanism for ad hoc judge candidates in HRC is conducted by selection committees through talent scouting, where potential candidates proposed by universities are approached. These challenges underscore

the complexities involved in effectively integrating ad hoc judges into the current legal framework, particularly within the context of human rights adjudication.

Commission Judiciary Spokesperson Miko Ginting explained the challenges in selecting ad hoc human rights judges, citing the legal requirement that candidates must be at least 50 years old. This age limit restricts potential candidates from applying while cases are already pending at the appellate level. In practice, the selection process for ad hoc judges monitored by the Commission for the Disappeared and Victims of Violence (CDVV) has revealed that candidates who meet the general requirements – such as being at least 50 years old, holding a law degree or another relevant field, and having at least 20 years of legal experience – often lack the necessary quality and understanding of human rights abuses. CDVV identified several findings: Firstly, many candidates possess limited knowledge regarding human rights courts, such as distinguishing between human rights abuses defined in Law of the Republic of Indonesia Number 39 of 1999 on Human Rights (hereinafter referred to Law No.39/1999) and severe human rights abuses defined in the HRC Law. They also struggle to differentiate between compensation and restitution mechanisms, understand judicial and non-judicial mechanisms, and lack comprehension regarding command responsibility. Additionally, some candidates support resolving severe human rights abuses through non-judicial means.

These findings underscore significant deficiencies in the preparedness and understanding of ad hoc judge candidates regarding human rights issues, highlighting the challenges and gaps in the current selection and training processes. Ad hoc judges should possess a profound understanding of the mechanisms of HRC, coupled with knowledge of each element of human rights abuses, rather than solely meeting general requirements such as being at least 50 years old and having a minimum of 20 years of education and/or experience. Before the Paniai case occurred, there were issues with the recruitment mechanism and selection of ad hoc judges that did not meet the requirements. For instance, in the conduct of the HRC for the Abepura Case in Makassar, the quality of judges was found to be unsatisfactory because they lacked sufficient understanding of human rights instruments. Similarly, during the HRC proceedings for the Timor-Leste cases held in Jakarta, the competence of the judges was questioned, particularly in understanding the concept of command responsibility, genocide, and crimes against humanity. The judges' understanding of procedural rules and evidentiary standards was also found to be inadequate.¹⁰ In the general judicial environment, investigations into fundamental rights abuses in Indonesia based on the HRC Law are still weak, and the judicial system heavily relies on bureaucratic and administrative structures. There are clauses misunderstood that set age limits for investigators, prosecutors, civil servants, and ad hoc judges.¹¹ The requirement for appointing ad hoc judges for human rights courts, particularly the minimum age limit of 50 years, has significant implications. Given the judges' lengthy term of office, which is five years, fewer eligible individuals may be willing to serve as ad hoc judges.¹² The government's commitment

¹⁰ Trihoni Nalesti Dewi Diajeng Wulan Christianty, Ifdhal Kasim, *Pengadilan Pura-Pura: Eksminasi Publik Atas Putusan Pengadilan HAM Kasus Abepura* (Jakarta: ELSAM, 2007).

¹¹ Kumbul Kusdwidjanto Sudjasi dan Yusuf Setyadi, "Problematisasi Proses Peradilan Perkara Pelanggaran HAM Di Indonesia," *Journal of Islamic And Law Studies* Vol. 6, no. No. 1 (2022): Hlm. 52.

¹² Majda El Muthaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia Dari UUD 1945 Sampai Dengan Amandemen UUD 1945 Tahun 2002* (Jakarta: Prenada Media, 2005).

to timely resolution of human rights cases could diminish if administrative issues, which could be streamlined with efficient and effective administrative requirements, become obstacles.

3.3. The Principle of Expedited Justice in the Supreme Court's Authority at the Cassation Level for Serious Human Rights Abuses

R. Subekti and R. Tjitrosoedibio define a court as an institution that conducts judicial proceedings.¹³ It is an official body or institution that conducts judicial proceedings, which include examining, adjudicating, and deciding cases. The form of judicial system practiced in courts is a formal public forum governed by procedural laws applicable in Indonesia. Paragraph 4 of the Judicial Power Law stipulates that courts administer justice impartially, assisting pursuers of justice and endeavoring to overcome any obstacles to achieve simple, speedy, and cost-effective judicial proceedings. All participants in the judiciary, including prosecutors as public prosecutors, lawyers as legal advisors or representatives, the parties involved (plaintiffs/defendants, applicants/respondents), and especially judges as mandatory judicial officers, must ensure that trial proceedings are conducted fairly and objectively. In criminal cases, the principle of expeditious justice must be adhered to as stipulated by the Code of Criminal Procedure (CCP), ensuring the right to a speedy trial by the court.¹⁴ Similarly, specialized courts such as HRC must be competent and independent as required to ensure a fair judicial process. Competence refers to the jurisdiction defined within the legal framework governing the court itself, where its authority is determined by applicable law.¹⁵

"Justice delayed is justice denied," or the delay in delivering justice is another form of injustice.¹⁶ Paragraph 10 of Law No.26/2000 stipulates that the procedural law used in HRC is based on criminal procedural law unless otherwise specified in the law. This means that all mechanisms for judicial examination processes follow the procedural law as outlined in the CCP.¹⁷ The Law on Judicial Power and other judicial regulations establish the principles of judicial power administration. One of the general principles of judicial power is that judicial proceedings should be conducted simply, swiftly, and at a low cost.¹⁸ This principle is also stipulated in Paragraph 4, subsection 2 of Law of the Republic of Indonesia Number 48 of 2009 on Judicial Power (hereinafter referred to Law No.48/2009), which aims to assist seekers of justice by overcoming all obstacles and impediments. The explanation provided states that "simple" means that the examination and resolution of cases should be carried out efficiently and effectively, while "low cost" means that legal fees should be affordable for the public. Protracted case resolution processes equate to neglecting justice itself. This principle essentially means that judicial procedures should be straightforward, with clear and easily

¹³ Ahmad Asif Sardari and Ja'far Shodiq, "Peradilan Dan Pengadilan Dalam Konsep Dasar, Perbedaan Dan Dasar Hukum," *JIFLAW: Journal Of Islamic Family Law* 1, no. 1 (2022): Hlm. 6.

¹⁴ Suparman Marzuki, *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2017).

¹⁵ Yustina Trihoni Nalesti Dewi, "Hak Konstitusional Korban Atas Pengadilan HAM Yang Kompeten, Independen Dan Imparsial," *Jurnal Konstitusi* Vol. 2, no. 1 (2014): Hlm. 151.

¹⁶ Aisya Avrylia Elskan Wilde, "Kelemahan Penanganan Pelanggaran Tindak Pidana Pemilihan Umum Di Negara Republik Indonesia," *Unes Law Review* 6, no. 4 (2024): Hlm. 7.

¹⁷ Fatma Faisal, "Eksistensi Pengadilan Hak Asasi Manusia Terhadap Penegakan Hak Asasi Manusia Dalam Sistem Peradilan," *Gorontalo Law Reviewer* Vol. 2, no. 1 (2019): Hlm. 45.

¹⁸ Dina Prihastuti, "Tinjauan Yuridis Pemeriksaan Persidangan Biasa Dengan Hakim Berjumlah Genap," *Jurnal Hukum Dan Kewarganeraan* 2, no. 1 (2024): Hlm.10.

understood processes, and affordable costs for the public. However, the implementation of this principle has proven to be challenging.

The Paniai case involves serious human rights abuses¹⁹, where the defendant was acquitted by the Makassar District Court, prompting the Attorney General to appeal to the SC. This resolution remains incomplete due to difficulties in recruiting qualified candidates willing to serve as ad hoc judges. Although the case file has reached the Supreme Court, ad hoc human rights judges are still unavailable. The selection process conducted by the DPR RI through fit and proper tests failed to approve the candidates for ad hoc judges. Consequently, a new selection process involving the SC and Judicial Commission is required, which delays the resolution at the cassation level. The handling of the Paniai case clearly demonstrates that the SC, as the highest authority in general judiciary, has failed to conduct the resolution process in accordance with the mandates of the legislation.

Cassation is the authority of the Supreme Court to review the application of law (decisions that contradict the law) in cases decided by all lower courts as the final instance, excluding the SC itself.²⁰ Oemar Seno Adji proposed three reasons for filing for cassation:²¹a) In the event of procedural negligence; b) When a legal regulation is not implemented or there is an error in its implementation; c) When the judicial process is not conducted according to the methods prescribed by law. According to M. Yahya Harahap, there are several primary objectives of the cassation legal effort.²² a) Correction of errors in lower court judgments. One of the objectives of cassation is to rectify and clarify errors in the application of law, ensuring that the law is properly enforced as intended and that the adjudication of cases is conducted in accordance with legal provisions, b) Creation and shaping of new laws. In addition to corrective actions undertaken by the SC in cassation proceedings, there are instances where such corrections simultaneously create new laws in the form of jurisprudence, c) Supervision to ensure uniformity in the application of law. Another objective of cassation review is to promote awareness of "uniformity" in the application of law or a unified legal framework and opinion. Through cassation decisions that establish jurisprudence, there is a direction towards consistent legal interpretations and starting points for the application of law. Moreover, cassation efforts serve to prevent arbitrariness and misuse of judicial authority by judges tempted to exploit the freedoms inherent in their positions.

Constitutionally and hierarchically, legislation has been entrusted with the special authority to the SC to adjudicate at the cassation level, including the administrative and case management aspects. Paragraph 24 subsection 1 of the 1945 Constitution (hereinafter referred to UUD NRI 1945) stipulates that the Supreme Court has the authority to adjudicate at the

¹⁹ Jodhy Kurnianto, "Potert Suram Terhadap Penanganan Pelanggaran Hak Asasi Manusia Paniai," *Prosiding Seminar Nasional Kota Ramah Hak Asasi Manusia* 3, no. 3 (2023): Hlm. 5.

²⁰ S Handayani et al., "Tinjauan Yuridis Terhadap Mekanisme Upaya Hukum Kasasi Perkara Pidana Anak Di Pengadilan Negeri Lubuk Pakam (Studi Kasus Putusan ...," *Neraca Keadilan* 1, no. 2 (2023): Hlm.

12, <https://puskapad.co.id/index.php/mp/article/view/38%0Ahttps://puskapad.co.id/index.php/mp/article/download/38/38>.

²¹ Oemar Seno Adji, *Hukum Pidana* (Jakarta: Erlangga, 1981).

²² M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Edisi Ke Dua* (Jakarta: Sinar Grafika, 2007).

cassation level, to examine regulations under the law against the law, and to possess other authorities granted by law. Meanwhile, Paragraph 20 subsection 1 of La No.48/2009 stipulates that the SC is the highest judicial body of the judiciary as referred to in Paragraph 18 subsection 2. The SC has the authority to: a) adjudicate at the cassation level against decisions rendered at the final level by courts within all judicial bodies under the SC, unless otherwise determined by law; b) examine regulations under the law against the law; and c) exercise other authorities granted by law.²³ In cassation cases, the SC is mandated to handle appeals submitted by the submitting institutions, namely the Courts and the Prosecutor's Office.

A judge is an integral part of the four pillars of law enforcement in Indonesia. As a law enforcer, a judge's primary duty lies within the judicial domain. Judges are the core executors who functionally implement judicial power. Therefore, the presence of a judge is crucial in determining law enforcement through their rulings.²⁴ The execution of the cassation for the Paniai case has been delayed due to the unavailability of judges, particularly ad hoc judges who are essential for resolving serious human rights abuses. The recruitment mechanism for ad hoc judges at the cassation level should facilitate the principle of swift justice. This process must ensure both efficiency and meticulousness in selecting ad hoc judges who will adjudicate the Paniai human rights case. However, the requirement of a minimum age of 50 years and a minimum of 20 years of experience as general prerequisites for ad hoc judges may inadvertently hinder the selection of competent individuals. These administrative criteria may overshadow candidates who are otherwise well-suited based on their qualifications and expertise. If you are preparing this for an international journal, you may want to refine the language further to align with academic standards and ensure clarity.

The aforementioned requirements are stipulated in legislation but are no longer relevant. Therefore, the age requirement in Supreme Court Regulation of the Republic of Indonesia Number 4 Year 2009 on Guidelines for the Organization of Selection of Ad Hoc Judges in Corruption Courts, High Courts, and the Supreme Court (hereinafter referred to SC Regulation No.4/2009) should be amended. The current minimum age requirement of 50 years should be revised to a minimum of 40 years to facilitate the recruitment of ad hoc judges who are willing to apply. This revision should also include changing the educational requirement from a law degree or equivalent to a minimum of 15 years of legal experience, down from the previous requirement of at least 20 years, specifically for ad hoc judges at the Supreme Court. The Judicial Commission also agrees that the only way to change these age requirements is through an amendment to the relevant legislation. If you intend to publish this in an international journal, further refinement for academic clarity and coherence may be necessary. Such changes can be pursued through judicial review.

If the general requirements, which are part of the administrative selection process, indeed hinder the discovery of ad hoc judges at the cassation level of the SC for human rights abuses, they should be amendable through judicial review. The most crucial requirement

²³ Moch. Ridwan, "Pendekatan Sistem Dalam Penyelesaian Upaya Kasasi," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): Hlm. 1, <https://doi.org/10.30641/kebijakan.2021.v15.305-326>.

²⁴ Fairuz Sabiq Khaidar Rohman, Sutrisno, Zaidah Nur Rosidah, "Implementasi Perma Nomor 5 Tahun 2016 Tentang Sertifikasi Hakim Ekonomi Syariah Terhadap Penanganan Perkara Di Pengadilan Agama Sukoharjo," *Jurnal Hukum Ekonomi Syariah* 5, no. 1 (2023): 34-45, <https://doi.org/https://doi.org/10.24252/el-iqthisady.vi.35621>.

should not be age but rather the knowledge of ad hoc judges regarding the resolution of serious human rights abuses. There is no evidence to suggest that someone under the age of 50 lacks understanding of serious human rights abuses. Experience in the legal profession and/or academia is also not determined by age but by the depth of knowledge and commitment to applying human rights values.

The recruitment of ad hoc judges faces various challenges that need to be addressed to ensure integrity, competence, and independence within the judicial system. One significant challenge is finding ad hoc judges who possess the necessary qualifications and experience to handle specific cases. To tackle these challenges, it is crucial to have a clear and transparent framework for the appointment of ad hoc judges, with a focus on qualifications, independence, and integrity. This also requires effective collaboration between the government, legal institutions, and civil society to ensure that the judicial process remains fair and effective.

In an international journal context, you might want to further elaborate on how these criteria affect the selection process and the importance of focusing on qualifications related to human rights issues rather than age. This can enhance the clarity and depth of your argument. Judicial Review is the authority to examine regulations within the judicial process. This review process involves examining, adjudicating, and determining the legality or illegality of all or part of the legislation,²⁵ whether in cases like Paniai or future human rights abuses. It is the judicial branch's authority to examine the validity and effectiveness of legal products produced by the executive, legislative, or judicial bodies consistent with the constitution. Therefore, the power to conduct judicial review is inherent in the judicial function as its subject, not in other offices (legislative or executive).

In an international journal context, it would be beneficial to further explore how judicial review contributes to legal certainty and protection, particularly in cases of human rights abuses, and how it reinforces the judiciary's role in upholding constitutional principles. This can provide a deeper understanding for readers unfamiliar with the Indonesian legal system.²⁶ In this context, the Constitutional Court (CC) is empowered to conduct judicial review. Protection of human rights can be achieved through the examination of laws by the CC. The CC is a judicial institution with specific powers to assess the compatibility of laws with UUD NRI 1945. Through the process of judicial review, the CC ensures that laws adhere to constitutional principles, including in the context of human rights protection. The CC has the authority to annul or amend laws deemed incompatible with the constitution, thereby providing stronger legal protection for human rights.

In addition to judicial review, there is a concept of legislative regulation evaluation. In October 2016, President Joko Widodo issued a policy package aimed at legal revitalization through regulatory restructuring, institutional reform, and legal culture development. The regulatory restructuring program encompasses three subprograms: strengthening legislative formation, revitalizing legislative regulation evaluation, and organizing a legislative

²⁵ Muh Sadli Sabir, "Analisis Perbandingan Kewenangan Executive Review Dan Judicial Review Terhadap Pembatalan Peraturan Daerah Di Indonesia," *Jurnal Ilmu Syariah Dan Hukum* 3, no. 1 (2023): Hlm 38.

²⁶ Dian Rosiwati, *Seri Bahan Bacaan Kursus HAM Untuk Pengacara XI Tahun 2007* (Jakarta: ELSAM, 2007).

regulation database.²⁷ Paragraph 11 letter d Law of the Republic of Indonesia Number 44 of 2015 on Presidential Regulation on the Ministry of Law and Human Rights (hereinafter referred to PR on MLHR No.44/2015) to evaluate legislation. Essentially, it outlines the duties and functions of the Minister of Law and Human Rights in addressing legal and human rights issues. The expectation of legislative regulation evaluation implies improvements in legislation because such evaluations may recommend the repeal, amendment, or retention of legislation to ensure quality and applicability.

Recommendations for legislative amendments can be utilized by the MLHR, as an institution tasked with administering governmental affairs in the fields of law and human rights, to assist the President in governing the state. Paragraph 4 of Ministerial Regulation on the Law and Human Rights functions to provide policy strategy recommendations in the fields of law and human rights. However, the MLHR has not strongly supported the resolution of the Paniai case, as evidenced by Minister Yasonna Laoly's statement that the government handed over the case of serious human rights abuses in Paniai to legal processes without playing a role as a human rights enforcement institution capable of providing policy strategy recommendations in legal and human rights matters. The ideal concept of revising the age requirement in the general criteria for the recruitment mechanism of ad hoc judges by the SC is not without reason. The rationale behind such regulatory changes is wise, rational, and relevant. These adjustments aim to expedite the resolution of serious human rights abuses within a timeframe consistent with Paragraph 10 of Law No.26/2000. The prompt handling of criminal offenses and trials, along with the timely execution of judgments, will foster public trust in law enforcement institutions, particularly in cases of serious human rights abuses.²⁸

Criticism of the Judicial Law, which governs the principle of speedy justice, often relates to its implementation and the limitations in practice. Despite the existence of legislation mandating speedy trials, the complexity of legal processes frequently serves as a barrier. Complicated procedures, including strict rules related to evidence, filing claims, and trials, along with the need for human resources within the judicial system, can hinder effective implementation of the speedy justice principle. The limited capacity of qualified and experienced judges can also be an obstacle to effectively applying the principle of speedy justice. To address these criticisms, the state should develop an agenda to evaluate the implementation of the judicial law governing speedy trials. Such an evaluation could lead to reforms that allow the principle of speedy justice to be applied more effectively and meet expectations for delivering swift and fair justice for all parties involved in the judicial process. One potential reform might involve adjusting the minimum age requirement for serving as an ad hoc human rights judge.

One manifestation of public distrust in the resolution of cases is the absence of victims and their families during the initial hearings of serious human rights violation cases such as the Paniai case. Public trust in the judiciary continues to decline as the courts are perceived as impartial towards individuals seeking legal justice. These grievances are brought to the

²⁷ M. Nur Sholikin, "Penataan Untuk Menjalankan Reformasi Regulasi Di Indonesia," *Jurnal Hukum Dan Pasar Modal* VIII (2018): 85.

²⁸ Gunawan Santoso, "Kajian Penegak Hukum Di Indonesia Untuk Membentuk Perdamaian Dalam Bhineka Tunggal Ika Indonesia Abad 21," *Jurnal Pendidikan Transformatif* 2, no. 1 (2023): Hlm. 9.

attention of the Judicial Commission. As mentioned earlier, if various human rights abuses are proven and resolved, at least the victims would receive justice, while the perpetrators and their families can be assured they will no longer bear the burden of guilt and societal exclusion. The credibility of HRC in the eyes of the public can be restored, thereby enhancing their trust in resolving serious human rights abuses. In the process of resolving the Paniai case of serious human rights abuses, it is not solely the responsibility of the Judicial Commission and the SC to prepare ad hoc judges at the cassation level.

Delays in handling the Paniai case can be seen as a violation of the victims' and their families' right to obtain swift justice. This right is guaranteed by various international legal instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Additionally, delays create legal uncertainty for all parties involved in the case, whether victims, suspects, or other participants in the legal process. This uncertainty negatively affects decision-making and planning within the community. The state's accountability also diminishes if there is negligence or a lack of human resources, such as ad hoc human rights judges. This situation can lead to demands for compensation or recognition for the victims or their families. The recruitment of ad hoc judges should be considered a critical necessity, given the numerous victims of serious human rights abuses. Coordination among human rights enforcement agencies must support each other to promptly provide certainty to both perpetrators and victims, as well as the broader Indonesian society.

4. Conclusions

The requirements for ad hoc judges in serious human rights violation cases at the cassation level in the SC should not solely focus on the criteria outlined in Paragraph 4(d) and (e), which stipulate a minimum age of 50 years and a minimum of 20 years of legal education or experience. This concept is not ideal as it impedes potential applicants who possess deep knowledge of fundamental rights. As a result of these requirements, the resolution of serious human rights abuses at the cassation level is delayed. This delay contradicts the aspirations of the judiciary to achieve the principle of swift justice. Care and precision in selecting ad hoc judges are indeed crucial because these judges contribute through their judgments. However, this contribution is less meaningful to society if the trials for serious human rights violation cases are not promptly conducted. Administrative requirements regarding age and experience should be reconsidered because the most crucial aspect for resolving serious human rights abuses is the ad hoc judges' understanding of restoring victims and ensuring appropriate punishments for perpetrators. This can only be achieved through trials in Human Rights Courts. To address the legal implications of delays in the Paniai case and similar cases, it is crucial for the government and the judicial system to take necessary measures. These measures include enhancing judicial capacity, expediting legal processes, ensuring protection for victims and witnesses, and fulfilling international legal obligations in the protection of human rights. These steps are essential to ensure that swift and appropriate justice is achieved for all parties involved.

5. Acknowledgments

I thank the Faculty of Law, Universitas Pelita Harapan Surabaya

6. Funding

Funding from Faculty of Law, Universitas Pelita Harapan Surabaya

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