

IMPLEMENTATION OF NEMO JUDEX IDONEUS IN PROPRIA CAUSA PRINCIPLE IN CONSTITUTIONAL COURT DECISION PERSPECTIVE OF SEPARATION POWER THEORY

Teguh Basuki
Waluyo

ABSTRACT

The nemo judex idoneus in propria causa principle is a procedural law of the Constitutional Court. It is used in every court case in Indonesia because it shows that judges are fair when they dole out justice. The nemo judex idoneus in propria causa principle says that judges cannot look into things that affect them because no one can be a good judge in his case. So the judge can not look into things that affect the judge's interests. Based on the power-sharing theory, this study aims to figure out how the nemo judex in causa sua Constitutional Court decision was carried out. The research method used is the doctrinal law research method using the case approach and legislation approach. The judgement is also void because to Nemo Judex's violation of the Causa Sua principle. The presiding judge may be found guilty or subject to administrative sanctions. The principle ought to be expressed differently than in summary form. In other words, the idea is all-encompassing, general, and abstract. Because the essence of the concept will be precise, particular, and exclusive to the legal standard if it is set in writing or made into a legal standard. Thus, the Constitutional Court must consider Article 24C of the Republic of Indonesia's 1945 Constitution as the normative restriction that may be applied to that fundamental idea. The Constitutional Court's powers are specifically listed on this page. The Legi Inferiori is forgotten by the Lex Superior.

Keywords: Constitutional, Court, Judges, Legal, Principle

INTRODUCTION

The principle of law is an essential thought of a general nature, not a concrete legal regulation. Satjipto Rahardjo also explained that related to the direction of law, the focus of the law is the "heart" of Legal Regulation (Dhiba, 2019). One of the legal principles that apply in Indonesian courts is the principle of nemo judex in causa sua or the direction of nemo judex in propria causa. The principle is a legal principle that expressly prohibits judges from examining cases concerning their own interests because no one can be a good judge in their own case (Marsela, 2017).

So the judge cannot examine matters that concern the interests of the judge himself. The nemo judex in causa sua principle is the spirit of Article 17, paragraph 5, of Law Number 48 of 2009 about judicial power, which says: "A judge or clerk is required to step down from the trial if he or she has a direct or indirect interest in the case being heard, either of his own free will or at the request of the parties."

Based on the laws and regulations, nemo judex in causa sua principle can be divided into several definitions, namely (Marsela, 2017) :

1. No one can be a good judge if a person on trial raises a reasoned objection against a judge on trial;
2. No one can be a good judge if they are related by blood or marriage up to the third degree, or if they are still husband and wife with the Chairman, one of the other judges, prosecutors, advocates, or clerks;
3. No one can be a good judge if they are related by blood or marriage up to the third degree, or if they are still husband and wife with the party being judged or defended;
4. No one can be a good judge if he has a direct.

In addition, Yanis Maladi said because the Indonesian legal system adheres to the principle of nemo judex in causa sua, which states that no one can be a judge in his own case (Maladi, 2016).

The assumption that judges will base their judgments on the law and the evidence presented in a trial is one way to illustrate the impartiality of the judicial system. Not founded on a relationship with one of the litigants and not a fatal flaw in its own argument either. Inherent in the examination of a case is the principle of impartiality, which must be reflected in each stage of the process leading up to the location where a decision is made for the decision of the court to be truly accepted as a fair legal solution for all parties involved and for the larger community as a whole.

The principle is in line with the Constitutional Court's vision, which is "guarding the establishment of the Constitution through a modern and reliable judiciary." It should be underlined that the word "trusted" in the vision of the Constitutional Court is the spirit of the Constitutional Court itself. The nemo judex in causa sua principle states that no one can be a good judge in his own case. That is, it is considered that a judge will not be able to act objectively on a case for himself or his family, so he is not allowed to work to judge it (Mas, 2004).

In the framework of the Constitution, the Constitutional Court serves as the custodian of the Constitution and is responsible for maintaining constitutional justice during everyday public life. It is the responsibility of the Constitutional Court to both encourage and guarantee that the Constitution will be respected and applied by all levels and aspects of state government in a consistent and responsible manner. In addition, the Constitutional Court is responsible for interpreting the constitutional provisions, ensuring that the spirit of the document is kept alive at all times, and contributing to the state's and society's continued viability. (Titik Triwulan Tutik, 2006).

As the guardian of the Constitution, in making its decision, the Constitutional Court may not contain regulating content. The Constitutional Court may not rule null or void a law or part of an open law. The Constitutional Court cannot decide unsolicited matters (*ultra petita*). The Constitutional Court also may not make decisions directly or indirectly concerning its own interests. This follows the principle of *nemo iudex in causa sua* or *nemo iudex indoneus in propria causa*, which states that the judge does not examine and decide or be a judge in matters related to him. Since its inception, the Constitutional Court has issued numerous decisions pertaining to itself, including Constitutional Court decision number 005/PUU-IV/2006: judicial review of Law Number 22 of 2004 concerning judicial commissions, Constitutional Court decision Number 49/PUU-IX/2011: judicial review of Law Number 8 of 2011 regarding amendments to Law Number 24 of 2003 regarding the Constitutional Court, and Constitutional Court decision Number 56/PUU-XX/2: judicial review of Law Number 8 of 2011 That the three decisions violate the concept of *Nemo Iudex Idoneus in Propria Causa* since it is evident that the constitutional judge decided a matter involving himself in each of the three decisions.

In this study, the authors want to look at how the *Nemo Iudex Idoneus in Propria Causa* principle is used in the decisions of the Constitutional Court from the point of view of The Theory of Separation of Powers. They use the three abovementioned decisions as examples of how Constitutional Court judges have broken the *Nemo Iudex Idoneus in Propria Causa* principle.

RESEARCH METHODS

The procedure for obtaining materials and research data to be processed and understood, and developed will be influenced by the research method used by the researcher (Marzuki, 2011). This type of research in legal research includes normative research or doctrinal legal research (Soekanto, Soerjono ; Mamudji, 2003). The normative study of law focuses on the underlying assumptions of legal theory and the connection between the rules, principles, concepts, and values that are either assumed or explicitly stated. A normative legal study will also investigate the link between regulations, conceptions, and values (Cotterell, 1983). In addition, in the normative concept, the law is a norm, whether it is identified with justice that must be realized (*ius constituendum*) or a norm that has been manifested as an explicit order and that has been positively explained (*Ius constitutum*) to ensure certainty, as well as norms that are the product of a judge (judgments) when the judge decides a case based on the realization benefit and benefit for the litigants (Burhan Ashshofa, 1996)

The approach used by researchers in this study is certainly very relevant to the research conducted by researchers. This is because, in this study, the researcher will look for any limitations that need to be applied when the judge ignores the principle of *nemo iudex in causa law*.

RESULTS AND DISCUSSION

According to Article 1 of the Constitution of the Republic of Indonesia from 1945, the Constitutional Court is responsible for interpreting the laws enshrined to establish a lawful democratic state (Ulum, 2009). Establishing a Constitutional Court in Indonesia predates the country's independence. Muhammad Yamin advocated during the BPUPK session that the Balai Agung (or Supreme Court) be granted the authority to "compare" legislation. Nonetheless, Soepomo rejected the proposal. Soepomo states that there are two explanations. First, the draught Constitution does not correspond to Triassic politics (separation of powers) but rather to the concept of division of powers.

Jimly Asshiddiqie claimed that Indonesia's 1945 Constitution adheres to the separation of powers based on the notion of checks and balances, with the caveat that this division of powers is not to be construed as Montesquieu's *trias politica* (Asshiddiqie, 2006). Reading the 1945 constitution from the perspective of separation of powers requires classifying state institutions into three large groups: legislative function or the function of forming laws (DPR with the president), executive function or the function of implementing the law (President), and judicial function or the function of prosecuting violators of the law (Judicial Branch) (MA and MK). There is a possibility that The 1945 Constitution's grouping of state institutions will encounter difficulties, particularly when faced with state institutions that do not have the nature of the three branches of power/function or precisely when there are state institutions with more than one branch of power/function.

Such problems also occur in several nations: 1984 Peter L. Strauss is the fourth branch of the United States Union's division of powers. Administrative agencies comprise the fourth branch (Zainal Arifin Mochtar, 2016).

Decisions delivered by the Constitutional Court that breach the concept of *nemo iudex in causa sua* would inevitably have legal ramifications for Indonesia's constitutional framework. This proves to justice seekers that judges are no longer autonomous, unbiased, and objective. The judgments tend to be subjective, and there is an element of favoritism toward the combatant. Consequently, a Constitutional Court judgement that violates the idea of *nemo iudex in causa sua* will be viewed as less fair and detrimental to one party. *Nemo iudex idoneus in propria causa* is a universal legal principle applicable to all court decisions. Given that this principle is one of the procedural law principles, it must be understood. Nonetheless, the Constitutional Court has jurisdiction over this issue because it involves a constitutional challenge to the Act. The public interest is the most significant

consideration in constitutional matters. As a result, protecting and upholding the Constitution is what the Constitutional Court tries to do when it rules on a matter. It is essential to the Constitutional Court's authority that the principle of impassibility is established not only for the benefit of individuals but for the good of the entire judicial system. As a result, the value of legal advantages and the public interest form the basis for the legal value that provides a normative limitation on the departure of the *nemo iudex in propria causa* principle. *Nemo iudex in propria causa* is a Constitutional Court procedural law principle utilized in all Indonesian legal proceedings. This shows that judges should be fair and impartial when giving justice. This is a rule that is built into the function. In this case, the constitutional judge is a party expected to find answers to constitutional claims brought to him. Focusing on fairness is a natural part of the case-examination process, and it must be reflected in all of the steps leading up to the decision-making stage so that all parties and the community can accept the court's decision as a fair legal solution (Maladi, 2010). When the application of the *nemo iudex in propria causa* principle contradicts legal gain and public interest, it can be barred based on this understanding. Since the Constitutional Court's principal duty is to examine and decide constitutional disputes for the benefit of the nation and state, implementing that principle cannot be used as an excuse to avoid doing so. When a case involves the Constitution's preeminence, the Constitutional Court must meet in the Supreme Court because no other venue has been granted authority to host it. Moreover, the Constitutional Court waived this concept during the argument on the *amar* of the decision when they were trying to define the impartiality rule. According to the Constitutional Court's ruling, judicial impartiality is only relevant in reviewing routine cases, such as those in which the parties' rights and interests are at stake (Maladi, 2010). So it is appropriate if the case submitted to the Constitutional Court is considered a constitutional issue of the nation and state, not the interests of the Constitutional Court institution itself or the personal interests of the constitutional judge. The existence of a case submitted to the Constitutional Court must be addressed as a particular case that can cause legal consequences to override certain legal principles. This is because the direction of *nemo iudex in propria causa* has essential general and universal characteristics. So, applying the regulation does not refer to specific cases and legal actions. Then every general direction should be excluded due to certain factors and considerations. Just as the application of the principle of open justice to the public can be ruled out when it comes to issues related to military/state secrets (Lailam, 2016).

Although waiving the norm of the principle is a kind of Constitutional Court interpretation, it is done to ensure the Constitution's supremacy. Moreover, the Constitutional Court cannot dismiss a case brought against it. This follows the *Ius Curia Novit* concept, which states that judges must be presumed to have knowledge of all laws, so a court cannot refuse to examine and rule on any case presented to it. (M. Yahya Harahap, 2004).

Based on this understanding, the Constitutional Court must review and decide on filed constitutional cases. However, this position presents a dilemma because the Constitutional Court adheres to the *Ius Curia Novit* principle when deciding the issue. In contrast, it disproved the existence of the *nemo iudex in propria causa* code. In response, there is a need for legal considerations that emphasize features of the law that are more advantageous to the public interest. In this situation, the constitutional judge must recognize the worth of permitted principles that embody social justice. The Constitutional Court can provide justice and fulfill its responsibilities in addressing constitutional concerns. In some cases, the Constitutional Court's ability to investigate and render judgments may be constrained by the principle of *nemo iudex in propria causa*. This suggests that the idea cannot be applied in all or some circumstances. The case's legitimacy rests partly on the Constitutional Court's ruling is extraordinarily binding on all Indonesians. Thus, the principle of *nemo iudex in propria causa* can be relaxed to some extent in constitutional disputes.

Constitutional disputes must be heard. Thus, we do not use the rule of *nemo iudex in propria causa*. The Constitutional Court's rulings must be fair and lawful. Hence it must rigorously follow the document. To restate, the Constitutional Court checks legislation for constitutionality. This means the Constitutional Court sees itself as separate from the General Court in fundamental ways. To distinguish itself from lower courts, the Constitutional Court is given the exclusive power to interpret normative principles as the highest law, and its judges can do so in their individual capacities as constitutional judges. The Constitutional Court has established a new line of reasoning as part of cutting-edge legal research thanks to this case. To this extent, the Constitutional Court may restrict the waiver of *nemo iudex in propria causa* so long as it strives to prove the importance of law and justice in addressing constitutional concerns. Overturning the "*nemo iudex in propria causa*" rule is an example of how critical constitutional issues are when weighed against the benefits to the nation and state, as demonstrated by the Constitutional Court's decision. For this reason, the Constitutional Court's ruling should represent an effort to implement the Constitution in governmental operations.

CONCLUSION

Principles are the foundations, foundations, and guidelines of legal standards. Its direction can be determined by examining aspects or characteristics of legal norms. The concept is a public objective, the application of which is expected to generate justice, peace, and order. The *nemo iudex in propria causa* principles are universal, generic, and abstract. *Nemo Iudex in Causa Sua* is the spirit of Article 17, paragraph 5 of Law Number 48 of 2009, about judicial authority, which cannot be disregarded. However, the Constitutional Court judges are primarily concerned with the Constitution's Article 24 letter C, which outlines the court's authority. Meanwhile, because of *Nemo Iudex*'s violation of the *Causa Sua* principle, the verdict is null and void. The sitting judge may be punished administratively or found guilty. The principle should be expressed in a format other than a summary. The principle is, therefore, universal, generic, and abstract. Because if the concept is written down or transformed into a legal standard, its nature will be exact, specific, and unique to the legal standard. Consequently, the Constitutional Court must look back to Article 24C of the 1945 Constitution of the Republic of Indonesia to apply a normative limitation to this principle concept. The page provides a detailed listing of the Constitutional Court's authority, *Lex Superior derogates Legi Inferiori*.

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Teguh Basuki
Faculty of Law, Sebelas Maret University
Jl. Ir. Sutami No. 36 A, Jebres, Surakarta, Indonesia
Email: teguh.yusubasuki@gmail.com

Waluyo
Faculty of Law, Sebelas Maret University
Jl. Ir. Sutami No. 36 A, Jebres, Surakarta, Indonesia
Email: waluyo.fh@gmail.com