



# NEGARA DAN PEMENUHAN HAK KESEJAHTERAAN HAKIM

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Penguatan Independensi Peradilan di Indonesia'

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# Pendahuluan

Are Judges Overpaid? A skeptical response to the Judicial salary debate

*Stephen J. Choi, G. Mitu Gulati & Eric A. Posner*

Journal of Legal Analysis, Vol 1, Number 1, 2009

- Chief Justice John Roberts says that the pay increases that his colleagues have received over the past two decades are so inadequate as to create a “constitutional crisis” (Year-End Report 2007).
- Justice Kennedy says that “[because of inadequate judicial pay] the nation is in danger of having a judiciary that is no longer considered one of the leading judiciaries of the world”.

# Pendahuluan

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Justice Breyer “believe[s] that something has seriously gone wrong with the judicial compensation system”

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Justice Alito warns that “eroding judicial salaries will lead, sooner or later, to less capable judges and ultimately to inferior adjudication”

# Pendahuluan

Pertanyaan-pertanyaan penting, antara lain:

- Apakah peningkatan kesejahteraan berkorelasi dengan kekuasaan kehakiman yang independen?
- Apakah peningkatan gaji akan menyebabkan peningkatan kinerja?
- Bagaimana prinsip kesejahteraan hakim yang proporsional?

# Instrumen internasional

Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

# Instrumen internasional

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## Beijing Statement



## OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION



## JUDICIAL CONDITIONS

31. Judges must receive adequate remuneration and be given appropriate terms and conditions of service. The remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them, have agreed.



# Praktik negara lain: Kanada

- The Judge Act
- Judicial Compensation and Benefit Commission
- The commission was created in 1999 by the government of Prime Minister Jean Chrétien, under the Judges Act.
- This was prompted by the *Provincial Judges Reference* (1997), an opinion by the Supreme Court of Canada, although the federal government itself was not bound by this opinion.



# Praktik negara lain: Kanada

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The Reference: komisi independent diperlukan untuk menjamin gaji bebas dari manipulasi politik

Didasarkan pada prinsip kekuasaan kehakiman yang independen, said to be implied by the preamble of the *Constitution Act, 1867*.

Pemerintah menerima Reference yang menyatakan komisi tersebut penting dan harus bersifat "Independent, objective and effective."



# Praktik negara lain: Amerika Serikat

US Constitution, Article III, Section 1:

*The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.*

# Praktik negara lain: Amerika Serikat

## Prinsip:

- Constitutional salary protection
- Congress dapat menaikkan gaji, tapi tidak menurunkan



## Konstitusi Filipina 1987



Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.



Section 10. The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts, shall be fixed by law. During their continuance in office, their salary shall not be decreased.

# Praktik negara lain: Filipina

# Bagaimana Indonesia?

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Tidak terdapat proteksi konstitusi yang secara khusus mengatur perlindungan kesejahteraan hakim

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UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman

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Pasal 19: Hakim dan hakim konstitusi adalah pejabat negara yang melakukan kekuasaan kehakiman yang diatur dalam undang-undang.

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Pasal 48

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(1) Negara memberikan jaminan keamanan dan kesejahteraan hakim dan hakim konstitusi dalam menjalankan tugas dan tanggung jawab penyelenggaraan kekuasaan kehakiman.

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(2) Jaminan keamanan dan kesejahteraan hakim dan hakim konstitusi sebagaimana dimaksud pada ayat (1) diatur sesuai dengan ketentuan peraturan perundang-undangan.

# Bagaimana Indonesia?

Pasal 49

(1) Hakim ad hoc dalam menjalankan tugas dan tanggung jawab penyelenggaraan kekuasaan kehakiman diberikan tunjangan khusus.

(2) Tunjangan khusus sebagaimana dimaksud pada ayat (1) diatur sesuai dengan ketentuan peraturan perundang-undangan.

# Proposal

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- Pertimbangan yang perlu dipikirkan:
  1. Gaji hakim tidak dapat dievaluasi secara terisolasi karena gaji hanyalah salah satu aspek dari kompensasi yang meliputi status, masa kerja, pensiun, bekerja dalam situasi yang relatif memadai (terutama untuk hakim-hakim di MA)
  2. Gaji hakim dikaitkan dengan pelaksanaan fungsi dalam kerangka kepentingan publik dan memberikan dorongan bagi mereka yang memiliki kemampuan tinggi tertarik menjadi hakim
  3. Persoalan apakah kenaikan gaji akan meningkatkan kinerja hakim merupakan pertanyaan empiris yang perlu dibuktikan

# Proposal

- Prinsip-prinsip:
  1. **Equity:** judicial salaries should be broadly comparable to the remuneration received by attorneys taking similar career paths and by other public servants having comparable responsibility, training and experience.
  2. **Regularity:** The real value of judicial compensation should be maintained through adjustments that respond to inflation so that the salary a judge accepts upon joining the bench is not eroded to the detriment of his or her family
  3. **Objectivity:** Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the public. The process also should be transparent to the public.



# Proposal

4. ***Separation From Politics:*** Decisions on judicial compensation should not be a basis for expressing Legislative or Executive Branch dissatisfaction with specific court decisions.

David B. Rottman, Ph.D. William E. Raftery, Amy E. Smith

**JUDICIAL COMPENSATION IN NEW YORK: A NATIONAL PERSPECTIVE**

**A REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK,**

**National Center for State Courts, 2007**





# Proposal

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## Perlu dipertimbangkan:

UU yang khusus mengatur Jabatan Hakim dengan materi muatan yang berkaitan dengan kesejahteraan hakim (misal, prinsip penggajian, sistem remunerasi atau kompensasi, benefit, jaminan kesehatan dan keselamatan, dan lain-lain)

Fungsi tambahan KY sebagai judicial compensation and benefit commission sebagaimana praktik di Kanada