

RECONSTRUCTION OF THE NORMS REGULATION OF THE CLERKSHIP AT THE SUPREME COURT FROM THE PERSPECTIVE OF A PANCASILA-BASED STATE

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ARTICLE INFO

Article History:

Submitted 01-Juli-2026

Received 03-Juli-2026

Published 04-Juli-2026

Keywords:

Supreme Court Clerkship;
Normative Legal
Reconstruction; Pancasila Rule
of Law; Merit System; Judicial
Professionalism

Kata Kunci:

Sistem Kapaniteraan
Mahkamah Agung;
Rekonstruksi Norma;
Negara Hukum Pancasila;
Sistem Merit; Administrasi
Peradilan.

ABSTRACT

This study examines the reconstruction of the norms governing the clerkship system within the Supreme Court from the perspective of the Pancasila rule of law, focusing on the regulatory inconsistency concerning the appointment of clerks in appellate and first-instance courts. The issue arises from a policy shift that restricts clerk appointments to judges, creating inconsistencies with the merit system, legal certainty, and career development of judicial clerical personnel. This research employs a normative legal method using statutory, conceptual, and comparative approaches. The findings indicate that such restrictions do not fully reflect the principles of professionalism, as they disregard the competence and experience of judicial clerical officers in case administration. Consequently, the policy limits career advancement opportunities for qualified clerical personnel and reduces the effectiveness of judicial administration. The proposed normative reconstruction emphasizes a competency-, experience-, and qualification-based career system without restricting appointments to a particular professional background. This reconstruction is expected to establish a more professional, equitable, and sustainable clerkship system consistent with the values of the Pancasila rule of law and the merit principle in judicial governance.

ABSTRAK

Penelitian ini mengkaji rekonstruksi norma pengaturan kepaniteraan di Mahkamah Agung dalam perspektif negara hukum Pancasila dengan fokus pada disharmoni pengaturan pengisian jabatan Panitera Pengadilan Tingkat Banding dan Panitera Pengadilan Tingkat Pertama. Permasalahan penelitian berangkat dari perubahan kebijakan yang membatasi pengisian jabatan panitera dari unsur hakim, sehingga menimbulkan konflik dengan prinsip sistem merit, kepastian hukum, dan pengembangan karier aparatur kepaniteraan. Penelitian ini menggunakan metode

penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan perbandingan. Hasil penelitian menunjukkan bahwa pembatasan tersebut belum sepenuhnya mencerminkan prinsip profesionalisme karena mengabaikan kompetensi dan pengalaman aparatur kepaniteraan dalam administrasi perkara. Kondisi ini berpotensi menghambat pengembangan karier tenaga kepaniteraan serta mengurangi efektivitas penyelenggaraan administrasi peradilan. Rekonstruksi norma diarahkan pada penguatan sistem karier berbasis kompetensi, pengalaman, dan kualifikasi profesional tanpa membatasi pengisian jabatan berdasarkan latar belakang tertentu. Rekonstruksi tersebut diharapkan mewujudkan sistem kepaniteraan yang profesional, berkeadilan, dan selaras dengan nilai negara hukum Pancasila serta prinsip meritokrasi dalam penyelenggaraan kekuasaan kehakiman.

INTRODUCTION

Indonesia affirms its identity as a state based on law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This provision implies that all implementation of state power must be based on laws derived from the values of Pancasila. Law is not only understood as a collection of written norms, but also as an instrument to provide justice, legal certainty, and benefits for all citizens. The Indonesian concept of *rechtsidee* places just and civilized humanitarian values along with social justice as the main foundations of state administration. Therefore, every formation and implementation of legal norms must always represent the values of Pancasila in a sustainable manner (Asshiddiqie, 2021).

The Pancasila rule of law has distinct characteristics compared to the concept of the rule of law in various other countries because it integrates the principle of *rechtsstaat* from the Continental European tradition with the concept of *the rule of law* that developed in the *Anglo-Saxon tradition*. This combination is aligned with the noble values of the Indonesian nation, resulting in a legal system with its own identity. This concept requires the supremacy of law, equality of every citizen before the law, protection of human rights, and the existence of an independent and impartial judiciary. Justice, legal certainty, and benefit are three main elements that must be realized proportionally in every legal policy. If any of these elements is ignored, the quality of state administration has the potential to experience inequality and a loss of philosophical legitimacy (Wahjono, 1989).

The view of the Pancasila rule of law has become increasingly comprehensive through various academic studies that position Pancasila as the source of all national legal sources. This concept not only emphasizes the importance of the rule of law but also requires democratic state administration, limitations on power, an independent judiciary, and the protection of human rights. The existence of an independent judiciary is a key element because the judiciary is responsible for ensuring the fair upholding of the law. Therefore, all the instruments

supporting the administration of justice must receive equal attention to support the independence of the judiciary. The institutional structure of the judiciary, including the clerkship, is an integral part of the effort to fully realize the Pancasila rule of law (Subechi, 2012).

The development of national law is not sufficient to simply meet the formal requirements for establishing legislation; it must also align with the values of social justice enshrined in Pancasila. The values of divinity, humanity, unity, democracy, and social justice must underpin every legal product created by the state. Regulations that limit citizens' rights without rational justification have the potential to create injustice and contradict the objectives of national law. Therefore, every legal policy must provide equal opportunities for all citizens to develop according to their competencies and abilities. This approach reflects a national legal orientation that not only pursues legal certainty but also provides substantive justice for all citizens (Prasetyo, 2014).

The consequences of Indonesia's choice to be a Pancasila-based state require that all state institutional systems be organized based on the principles of justice, legal certainty, and professionalism. The quality of justice administration is not only measured by the quality of judges' decisions but also by the administrative governance of cases that supports each stage of the judicial process. Orderly case administration will strengthen the effectiveness of judicial services and increase public trust in the judiciary. Conversely, administrative weaknesses have the potential to hinder the implementation of decisions and reduce legal certainty for justice seekers. Therefore, regulations regarding positions that support judicial administration must be carefully designed to support the realization of a professional and authoritative judicial system (Law No. 48 of 2009).

The Pancasila rule of law also requires fair treatment not only for the public as justice seekers, but also for officials performing legal services. Judicial officials have the constitutional right to opportunities to develop their competencies and pursue career paths in accordance with their abilities. Fulfilling this right is part of the implementation of the principle of equality before the law, guaranteed by the constitution. Therefore, regulating career paths for judicial officials cannot be viewed solely as an administrative matter but also relates to the implementation of constitutional justice. The arrangement of the judicial official career system must be directed towards creating a balance between institutional interests and the protection of state officials' rights (Asshiddiqie, 2021).

The court clerk's office plays a crucial role as a key element in supporting the administration of cases in every judicial system. Its presence ensures that all trial proceedings are properly documented, ensuring that each stage of the case examination can be legally accounted for. The clerk, along with the substitute clerk, is responsible for compiling trial minutes, preparing case files, administering minutes, and ensuring that case documents are systematically organized. These duties demonstrate that the clerk's function extends beyond

administrative duties and significantly contributes to the quality of the administration of justice. Therefore, the professionalism of the court clerk's office is a key factor in determining the success of the administration of justice in Indonesia (Law No. 48 of 2009).

The role of a substitute court clerk is integral to every stage of the trial, as they are responsible for recording the entire course of the case examination completely and accurately. The compiled trial minutes serve as a crucial basis for the panel of judges in formulating legal considerations and formulating a verdict. Accuracy, precision, and the ability to understand the substance of the case are essential requirements to ensure that trial documents do not contain errors that could impact legal certainty. If the recording or document preparation process is carried out inaccurately, the potential for administrative errors increases. Therefore, the competence of court clerks must be developed through continuous development and a clear career path to maintain the quality of judicial administration (Mohamad & Samsudin, 2021).

The nature of clerkship work at each level of the judiciary varies, as it depends on the authority of the respective judicial institution. In first-instance and appellate courts, which function as *judex facti*, substitute clerks primarily support fact-checking, recording witness statements, and preparing trial minutes. Conversely, in the Supreme Court, which functions as *judex juris*, clerkship staff focus more on reviewing case documents, preparing administrative appeals and judicial reviews, and finalizing verdict minutes. These differences in scope demonstrate that each clerkship level requires competencies that develop according to the complexity of case handling. Therefore, a career development system for clerkships must be designed in a hierarchical manner so that staff gain adequate experience before assuming positions at higher levels (Suhariyanto, 2016).

The Supreme Court faces a far greater administrative burden than courts at other levels, receiving thousands of cassation and judicial review applications each year. This high volume of cases demands that clerks possess high administrative skills, consistent accuracy, and a technical grasp of legal document preparation. Even the slightest error at the administrative stage can have implications for legal certainty and undermine public trust in the highest judicial institution. The extensive experience of career clerks is crucial for ensuring the quality of case administration at the Supreme Court. This demonstrates that career development for clerks requires consideration of competence and experience, not merely a specific job background (Suhariyanto, 2016).

Strengthening the quality of the court clerkship is also closely related to efforts to maintain the independence of the judiciary, as guaranteed by the constitution. The independence of the judiciary depends not only on the freedom of judges in deciding cases but also on the professionalism of the apparatus that supports the entire judicial administration process. Apparatus with certainty of status and clear career prospects tend to be better able to maintain integrity and resist various forms of intervention that could potentially harm the judicial process. Conversely, unclear career development can reduce work motivation and

increase the risk of administrative irregularities. Therefore, structuring the court clerkship system is a crucial part of strengthening the independence and authority of the judiciary in Indonesia (the 1945 Constitution of the Republic of Indonesia).

The urgency of improving the quality of the clerk's administration can be seen through the errors in the Supreme Court Decision Number 38 P/HUM/2016 and Decision Number 20 P/HUM/2017 concerning the dispute over the Regional Representative Council's rules of procedure. The decision contained an error in naming the legal subject by listing the Regional Representative Council, even though the party in the dispute was the Regional Representative Council. In addition, the object ordered to be revoked was also written as a law, even though the dispute actually related to rules of procedure. This administrative error gave rise to legal uncertainty and also raised criticism of the quality of administration at the highest judicial institution. This incident indicates that the professionalism of the clerk's apparatus has a very large contribution to the quality of the Supreme Court's legal products (Supreme Court of the Republic of Indonesia, 2016).

The error in the ruling cannot be viewed as a simple administrative error, as the ruling is a component of the legal system with executive power. Mistakes in naming the subject or object of the law have the potential to lead to misinterpretation and hinder the implementation of the ruling. This risk demonstrates that the process of minutes and the preparation of a copy of the ruling require a very high level of accuracy. Therefore, court clerks must have extensive experience and proven administrative skills to minimize the possibility of similar errors. This situation reinforces the importance of a career development system that provides development opportunities for officials who already possess adequate competence and experience (Detik News, 2017).

As a corrective measure, the Supreme Court implemented a *renvoi mechanism*, correcting portions of the ruling deemed erroneous without issuing a new ruling. This policy was adopted because issuing a new ruling was feared to create two original rulings on the same case. However, this mechanism continues to generate debate because the error occurred in a legally binding ruling. Several parties believe that administrative errors with far-reaching consequences remain the responsibility of all elements involved in the decision-making process. This controversy demonstrates that the quality of court clerkship administration is directly related to the legitimacy and authority of the judicial institution (Hukumonline, 2017).

The impact of these administrative errors is not only felt within the Supreme Court, but also affects the broader administration of state administration. Several constitutional law academics believe that this controversy has the potential to create uncertainty regarding the validity of the inauguration of the Regional Representative Council leadership, which was carried out based on the ruling. The ongoing public debate indicates that administrative errors in judicial legal products can have implications for the stability of state institutions. This situation demonstrates that the quality of case administration is not merely a technical issue, but

also related to maintaining legal certainty and public trust. Therefore, improving the competence of court clerks is an indispensable need to strengthen the quality of justice administration (Kumparan, 2017).

Case administration problems are not limited to errors in verdicts, but also include delays in minutes, discrepancies in copies of verdicts, and suboptimal case file management. These various issues demonstrate that judicial administration still faces challenges that require comprehensive improvement. High workloads, limited human resources, and a suboptimal civil servant development system are some of the causes often associated with the emergence of various administrative obstacles. The experience of career court clerks should be an important asset for improving the quality of case administration at every level of the judiciary. Therefore, a career development system that provides space for experienced civil servants will positively contribute to improving the quality of judicial services (Supreme Court of the Republic of Indonesia, 2010).

Public trust in the Supreme Court is greatly influenced by the quality of its decisions and the administrative order that supports their formation. The public assesses not only the substance of legal reasoning but also the accuracy of the drafting of official documents issued by the judiciary. Publicly disclosed administrative errors can undermine trust in the judiciary, even if the substance of a decision has been drafted accurately. Therefore, strengthening the competence of court clerks should be viewed as a long-term investment in maintaining the integrity and authority of the Supreme Court. Establishing a career system that provides career clerks with the opportunity to develop to the highest levels is one step worth considering to strengthen the quality of judicial administration (Suhariyanto, 2016).

Regulations regarding the Supreme Court's clerkship have also undergone changes over several periods, reflecting the dynamics of legal policy. Law No. 14 of 1985 initially only provided opportunities for judges to hold clerkships at the Supreme Court. This provision was subsequently amended through Law No. 5 of 2004, which opened up opportunities for career civil servants in the technical field of cases to develop their careers up to the Supreme Court level. However, this change was reversed through Law No. 3 of 2009, which returned the requirements for clerkships to judges as previously stipulated. This dynamic demonstrates a policy change that has not yet fully provided certainty regarding the direction of career development for clerkship officials (Law No. 14 of 1985; Law No. 5 of 2004; Law No. 3 of 2009).

This policy change poses a problem for career clerks who have built years of competence and experience in case administration. The opportunity, which was initially opened through Law No. 5 of 2004, has been closed again, resulting in the clerkship's career path ending at the high court level. This situation raises questions about the suitability of this regulation with the principles of justice, professionalism, and human resource development within the judiciary. Indeed, extensive experience in handling case administration is a crucial asset to support the execution of clerkship duties at the Supreme Court. Therefore, the regulations regarding

clerkship positions need to be reviewed to better align with institutional needs and the principle of justice for judicial officials (Law No. 3 of 2009).

The development of a competency-oriented clerkship system is expected to strengthen the quality of case administration while increasing the effectiveness of the administration of judicial power. An open career system will motivate officials to continuously improve their professional skills and integrity while carrying out their duties. In addition to providing benefits to officials, this policy also has the potential to strengthen the quality of public service through more orderly, accurate, and accountable case administration. Therefore, restructuring the clerkship system is not only related to the interests of individual officials but also part of an effort to strengthen the quality of the judicial institution and realize the ideals of a Pancasila state based on the rule of law. Based on this, reconstructing norms regarding the filling of Supreme Court clerkship positions is crucial to creating a fairer, more professional system that is aligned with the evolving needs of the administration of justice in Indonesia.

METHOD

This research is classified as normative legal research , focusing on law as a system of norms that is the primary object of scientific study. This approach utilizes written legal materials in the form of statutory regulations, legal principles, doctrines, court decisions, and scientific literature to describe the legal issues studied without involving interviews, field observations, or questionnaires. The selection of this approach is based on the nature of the problem related to the regulatory conflict regarding the Supreme Court's clerkship, thus requiring in-depth and systematic normative analysis. This study not only describes the law as it applies (*das sein*), but also compares it with the law as it should be (*das sollen*), thus producing recommendations for normative reform that have a strong academic basis. Through this pattern of reasoning, the research is directed at compiling a reconstruction of regulations that are more in line with the principles of the rule of law, justice, and legal certainty (Marzuki, 2017; Kelsen, 2011).

To obtain a comprehensive discussion, this study utilizes four complementary approaches: the statute approach , the historical approach , the comparative approach , and the conceptual approach . The statutory approach is aimed at identifying the relationships and conflicts between Law Number 3 of 2009, Law Number 5 of 2014, and Law Number 49 of 2009, both vertically and horizontally. Meanwhile, the historical approach is used to trace the development of the regulation of the clerkship from Law Number 14 of 1985 to subsequent amendments so that the reasons for the formation of norms (*ratio legis*) can be understood more fully. The comparative approach is used to observe the practice of filling clerkship positions and supporting judicial positions in the Netherlands, the United States, and Japan, while the conceptual approach is used to strengthen arguments based on the theory of the Pancasila rule of law, the merit system, and the concept of norm reconstruction. It is hoped that

the combination of these four approaches will be able to produce comprehensive arguments and provide a scientific basis for the formulation of more ideal norms (Ibrahim, 2006).

The legal sources utilized in this study include primary legal materials, secondary legal materials, and tertiary legal materials that complement each other as a basis for formulating arguments. Primary legal materials include the constitution, various laws concerning the Supreme Court, Judicial Power, State Civil Apparatus, General Courts, Supreme Court regulations, decrees, academic papers, minutes of law formation, and court decisions related to the object of study. Secondary legal materials include scientific books, dissertations, theses, national and international journal articles, and the views of legal experts discussing the Pancasila legal state, the clerkship, and the merit system, while tertiary legal materials include legal dictionaries, *the Great Indonesian Dictionary*, legal encyclopedias, and various other supporting references. All of these legal materials were collected through library research and document studies by tracing printed and electronic sources that have a high level of validity, then grouped based on relevance to the focus of the discussion. These stages are carried out systematically so that each legal material used maintains validity, traceability, and conformity to the study needs (Marzuki, 2017).

All collected legal materials were then qualitatively reviewed using *the content analysis method* through the stages of description, interpretation, systematization, explanation, argumentation, and norm reconstruction. At the interpretation stage, various legal interpretation methods were utilized, including grammatical, systematic, historical, and teleological interpretations so that the meaning of each provision could be fully understood before alternative updates were formulated. The applied reasoning pattern was both deductive and prescriptive, starting from the general theory of the Pancasila rule of law and the merit system to an assessment of the Supreme Court's clerkship regulations, then formulating norms that were deemed more appropriate to the development of legal needs. The search for legal materials was carried out through the Library of the Supreme Court of the Republic of Indonesia, the National Library of the Republic of Indonesia, the Pancasila University Library, along with various official databases of laws and regulations and scientific journals so that all references used had an adequate level of credibility. With these stages, this research is expected to produce norm formulations that not only have academic argumentative strength, but are also worthy of being considered in the formation of future legal policies (Sidharta, 2009).

RESULTS AND DISCUSSION

Legal Regulations on the Supreme Court Registrar's Office and Conflicts of Norms from the Perspective of the Pancasila Rule of Law

The development of the regulation of clerkships within the Supreme Court cannot be separated from the long historical dynamics of the formation of the judicial system in Indonesia. The current institutional structure was formed through a process of normative evolution

influenced by colonial legacies, the formation of post-independence national law, and changes in modern legislative policy. From the perspective of a Pancasila-based state based on the rule of law, every change in norms should reflect consistent values of justice, certainty, and benefit for the judicial apparatus. However, the development of clerkship regulations actually demonstrates shifts in policy direction that are not always linear. This condition provides an important basis for examining how clerkship law is formed, implemented, and experiences normative conflicts in practice (Registrarship of the Supreme Court of the Republic of Indonesia, 2025).

During the colonial period, the Dutch East Indies judicial system introduced the position of *griffier*, which was functionally equivalent to the clerk in the modern system. This position was positioned as an administrative element separate from the judge within *the Hooggerechtshof van Nederlands-Indie* structure. The *griffier's* primary functions included recording cases, managing trial administration, and safeguarding authentic court documents. This separation of functions demonstrated a clear dichotomy between judicial power and administrative functions. The legacy of this system later became the conceptual foundation for the establishment of the clerkship in the Indonesian legal system after independence (Briet, 2015).

The normative basis during the colonial period was regulated through *the Regulation on the Legal Organization and the Law on Justice*, which established a formal and hierarchical structure for the judiciary. This regulation reflects the character of Continental European law, which emphasizes written codification as the primary source of legal certainty. In this system, the clerkship was not merely administrative but also held to certain professional standards in case management. This structure was later inherited by the Indonesian judicial system without fundamentally changing the separation of the functions of judges and clerks. Thus, the historical roots of the clerkship have had a strong professional character since its inception (Dandapala, 2025).

Entering the era of independence, the Supreme Court's structure began to be formalized through Law Number 14 of 1985. This regulation placed the clerk as an integral part of the Supreme Court's structure, alongside the judges and the secretary general. In this provision, the clerkship was viewed as a crucial element in supporting the judicial function administratively. The clerkship's organizational structure was also established in a hierarchical manner, starting from the substitute clerk to the Supreme Court clerk. This pattern indicates a fairly systematic administrative career path within the highest judicial environment (Indonesia, 1985).

In Law No. 14 of 1985, the Supreme Court clerk even held the position of secretary general. This merger reflected an integrative approach between the technical judicial functions and the general administration of the institution. However, in practice, the differing characteristics of these two functions presented challenges to organizational effectiveness. The clerk's technical procedural legal functions were not always aligned with the secretariat's managerial functions. This situation later became one of the key reasons for the institutional

separation in subsequent regulations (Indonesia, 1985).

Significant changes occurred through Law No. 5 of 2004, which was part of the judicial reform agenda. This regulation opened a career path for civil servants working in the technical field of justice to hold the position of Supreme Court clerk. This provision emphasized that extensive experience as a technical judicial official was the primary basis for appointment. Thus, the position of clerk was no longer exclusively for former judges. This policy reflected a merit-based approach to career development for judicial officials (Indonesia, 2004).

The merit system in modern civil service arrangements emphasizes the importance of competence, experience, and performance as the basis for promotion. Law No. 5 of 2004 implicitly adopted this principle in the Supreme Court's clerkship structure. This open career path provides opportunities for career clerks to reach the highest positions in the clerkship hierarchy. It also strengthens the professionalization of expertise-based technical judicial positions. Thus, this period can be viewed as an open phase in clerkship career development (Indonesia, 2004).

However, this policy direction changed significantly through Law Number 3 of 2009. This regulation stipulated that Supreme Court clerkships could only be filled by individuals with prior judicial experience. This provision effectively closed career paths for clerks from non-judge backgrounds. This change marked a paradigm shift in clerkships. The policy created stricter structural boundaries for career development (Indonesia, 2009).

The experience-based requirements for judges in Law No. 3 of 2009 have had serious consequences for the judicial clerkship career system. Long-serving career clerks no longer have the opportunity to advance to the highest positions. This has created fragmentation in the judicial human resource development system. Furthermore, the policy has shifted the nature of the clerkship from an administrative-professional to a more judicial one. This shift has created tensions within the judicial institutional structure (Indonesia, 2009).

In Law Number 48 of 2009 concerning Judicial Power, court clerks are categorized as judicial officials distinct from judges. This separation emphasizes that court clerks are not part of the substantive exercise of judicial power. Their function is more focused on administrative aspects and technical support for trials. Thus, conceptually, there is a fundamental difference between judges and court clerks. This distinction is crucial in analyzing subsequent normative conflicts (Indonesia, 2009a).

On the other hand, the 2014 State Civil Service Law emphasizes the application of a merit system in personnel management. This system requires promotions to be based on competence and performance, rather than irrelevant structural constraints. This provision aims to create a professional and fair bureaucracy. However, the restrictions in Law Number 3 of 2009 do not fully align with this principle. This inconsistency has given rise to normative conflicts within the judicial personnel system (Indonesia, 2014).

A conflict of norms is also evident between the Supreme Court Law and the General

Courts Law. At the lower court level, the career path for court clerks remains open and hierarchical. Clerks can advance from the district court to the high court. However, at the Supreme Court level, this path is closed. This discontinuity creates uncertainty in the national clerkship system (Indonesia, 2009b).

Subsidiary regulations, such as Presidential Regulation Number 14 of 2005 and its amendments, strengthen the organizational structure of the court registry. The clerkship is positioned as a state administrative apparatus under the Supreme Court. This regulation emphasizes the clerkship's administrative function within the judicial system. However, the regulation does not change the substantive provisions regarding clerkship requirements. As a result, there is a gap between organizational and career arrangements (Indonesia, 2005; 2022).

Supreme Court Regulation Number 7 of 2015 further clarified the separation between the clerkship and the secretariat. This separation aims to improve the effectiveness of judicial technical functions and general administration. The clerkship structure is regulated in greater detail in a hierarchical organization. However, this regulation remains within the boundaries of higher laws. Therefore, the clerkship's scope of action remains limited by primary legislative provisions (Supreme Court of the Republic of Indonesia, 2015).

An analysis of the overall regulations reveals a fairly complex conflict of norms. This conflict arises between the merit system principle and career path restrictions based on judge status. Furthermore, there is an inconsistency between organizational regulations and personnel regulations. This disharmony impacts legal certainty for court clerks. This situation demonstrates the need for a more coherent reconstruction of norms (Marzuki, 2017).

From the perspective of a Pancasila-based state based on the rule of law, this disharmony in norms has the potential to disrupt the principles of justice and legal certainty. The legal system should provide fair career development opportunities for all officials based on competence. Structural restrictions inconsistent with the principle of merit can be considered a form of systemic injustice. Therefore, more integrative regulatory reform is needed. This reconstruction is crucial to creating a just and professional court clerkship system.

Implementation of the Supreme Court Clerkship Regulations and Comparison with the Opening of Judicial Positions for Non-Judges

The discussion on the implementation of clerkship regulations in judicial practice demonstrates that legal norms never exist in the abstract but always confront complex institutional realities. From an empirical perspective, the actual situation, referred to as *das sein*, demonstrates how regulations are implemented by officials with limited capacity, workload, and institutional pressures. This situation emphasizes that procedural law and judicial administration depend not only on normative texts but also on the quality of the human resources who implement them (Supreme Court of the Republic of Indonesia, 2024). Therefore, examining clerkship practices is crucial for understanding how the quality of decisions and

judicial integrity are shaped in the actual process. This analysis also demonstrates that the clerkship has a direct impact on the legitimacy of judicial institutions. Thus, empirical reality serves as an important bridge for re-examining established norms.

This implementation overview can be understood through three main interrelated aspects of the clerkship structure. The first aspect is the profile and main duties of the substitute clerks at the Supreme Court, which reflect their central function in the decision-making process. The second aspect is the emergence of cases of administrative errors in decision-making, which indicate gaps in the quality control of judicial drafts (Hukumonline, 2017). The third aspect is the career ladder structure of clerks at the lower court level, along with the inherent systemic professional risks. These three aspects form a unified analysis that illustrates that the clerkship is not merely an ordinary administrative task. Rather, it is a strategic element that determines the quality of judicial output.

The substitute clerk at the Supreme Court holds a position closely tied to the judicial decision-making process by the panel of justices. Their primary duties include recording deliberations, drafting decisions, and completing administrative cases through a meticulous process of minutes. In carrying out these functions, the substitute clerk must not only perform technical duties but also understand the legal substance discussed in the case. Required skills include a high degree of accuracy, an understanding of procedural law, and the ability to translate legal reasoning into precise written form. Therefore, this position has a hybrid administrative and substantive character, demanding high professional competence (Registrar of the Supreme Court of the Republic of Indonesia, 2025).

The clerkship's workload is increasingly complex when compared to the volume of cases handled by the Supreme Court each year. Hundreds of thousands of incoming cases demand an efficient and accurate administrative system to prevent backlogs or errors in recording. In such circumstances, the role of substitute clerks becomes crucial, as even small errors can impact the quality of final decisions. This situation demonstrates that the success of the judicial institution is determined not only by judges but also by the clerkship staff working behind the scenes. Therefore, strengthening the capacity of clerks is a structural necessity that cannot be ignored (Supreme Court of the Republic of Indonesia, 2024).

The clerkship structure in Indonesia is very large and spread throughout the judiciary. Data shows that thousands of clerks and substitute clerks work at various levels of the judiciary, forming the backbone of the national judicial administration. This large number reflects the fact that any policy changes in the clerkship will have a broad impact on the entire judicial system. Furthermore, career development policies within this position have direct implications for the professionalism of the judicial apparatus. Therefore, the institutional design of the clerkship cannot be separated from the national judicial reform strategy (Supreme Court of the Republic of Indonesia, 2024).

The differences in the Supreme Court's and Constitutional Court's clerkship policies

demonstrate the varying institutional approaches within the Indonesian justice system. The Supreme Court requires a judicial background for substitute clerks at a certain level, while the Constitutional Court is more open, relying on non-judge civil servants. This difference demonstrates that there is no single model for determining who can fill clerkships. In this context, the Constitutional Court's approach demonstrates that judicial administrative functions can be carried out professionally without necessarily coming from the judicial system. Therefore, the regulation of clerkships is a policy-based process that can change according to institutional needs.

In practice, the presence of clerks with judicial backgrounds also creates unique career dynamics. Some clerks at the Supreme Court can return to the judicial track and even reach the position of chief justice. This demonstrates that clerkships can be part of a career mobility pathway for judges, rather than a stand-alone path. Conversely, pure career clerks do not have equal access to top positions in the Supreme Court. This inequality creates a structural imbalance in the career development of judicial officials (Nursobah, 2021).

A clear illustration of the importance of accuracy in the clerk's office is seen in the case of an administrative error in a Supreme Court ruling related to the judicial review of a statutory regulation. In a particular ruling, an error occurred in the naming of a state institution, which should not have occurred in a final legal document. This error demonstrates the significant impact of the typing and verification process on legal certainty. Although later corrected as an administrative error, the incident still generated significant public attention. This demonstrates that the quality of the clerk's office directly impacts the credibility of the judicial institution (Hukumonline, 2017).

Errors in the verdict also demonstrate the critical importance of quality control in the administration of justice. Court clerks are responsible for ensuring that the content of the verdict is consistent with the results of the panel of judges' deliberations. Discrepancies between the results of the deliberations and the written document can lead to legal consequences and differing interpretations. Therefore, court clerk competence cannot be viewed as simple administrative skills, but rather as complex judicial expertise. This case provides empirical evidence that clerkship is an integral part of the quality of court decisions.

At the judicial level below the Supreme Court, the clerkship has a clear structure but is limited to a specific peak. Clerks can advance from substitute clerk to high court clerk, but there is no direct path to the Supreme Court without first becoming a judge. This creates a structural barrier that differentiates career clerks from clerks who are judges. As a result, extensive experience in judicial administration does not always translate into equivalent career progression at the highest levels. This situation raises discussions about structural equity in the judicial personnel system.

The profession of court clerk also carries a relatively high risk profile due to its position at the center of case information flow. Clerks have access to the confidential and strategic results

of the panel's deliberations before they are announced to the public. This situation opens up the potential for abuse of authority if not balanced by a strong integrity system. Several cases have shown that certain clerks have been involved in bribery and gratuities in case management (Corruption Eradication Commission, 2017). Therefore, this position requires strict oversight and a strong ethical system.

To mitigate these risks, the Supreme Court has established various oversight instruments, such as a code of ethics, a development mechanism, and an internal oversight system. However, oversight alone is insufficient without a fair and transparent career policy. A stagnant career path can impact the motivation and integrity of civil servants. Conversely, a clear career path can be a positive incentive to enhance professionalism. Therefore, risk management in the clerkship must encompass structural aspects, not just administrative oversight.

From a comparative perspective, various models demonstrate that judicial support positions can be filled professionally by non-judges. In the Netherlands, the United States, and Japan, the functions of judicial clerks and assistants are established as independent, competency-based professions. In Japan, for example, *court clerks* have a special educational and training pathway separate from judges. Meanwhile, in the United States, *law clerks* are top law graduates who assist in the preparation of legal opinions (United States Courts, 2025). These models demonstrate that competence is more important than title.

This comparison demonstrates that Indonesia has no shortage of precedents for creating more flexible judicial clerkships. Even within the national legal system, positions such as mediators and ad hoc judges are already open to non-judges. This suggests that closing the judicial clerkship is not a normative imperative, but rather a policy choice. Thus, judicial clerkship reform can be directed toward a more inclusive model without compromising professional standards. This approach can strengthen the overall quality of the judiciary.

In conclusion, the reality of the implementation of the clerkship demonstrates a gap between norms and practices within the judicial system. The clerkship plays a strategic role but still faces limitations in career structures and integrity challenges. Comparisons with other legal systems indicate that the non-judge professional path is a common and effective model. Therefore, updating the clerkship policy is relevant to improving the quality of justice. With a competency-based approach, the clerkship system can develop more adaptively and sustainably.

Reconstruction of Ideal Norms for Opening Opportunities for Senior Career Clerks at the Supreme Court

This discussion stems from the fact that the primary problem in the regulation of the Supreme Court's clerkship does not lie in the absence of norms, but rather in the structural conflict between various legal provisions governing the same field but originating from different regimes. This situation demonstrates that the national legal system does not always

move in a harmonious line, but often presents conflicts between norms that both possess formal legitimacy. In this context, the problem that arises is not simply a legal vacuum, but rather a lack of synchronicity that causes distortions in the application of the basic principles of the rule of law. Therefore, the focus of the analysis is directed at real and legally identifiable normative conflicts, rather than the assumed absence of regulations (Indonesia, 2009; Indonesia, 2023).

In the first layer, normative tension is clearly visible between the provisions regarding the appointment of Supreme Court clerks in Law Number 3 of 2009 and the merit-based civil service management system. The provisions in the Supreme Court regulations actually limit career access for clerks from non-judge lines, thereby closing opportunities for officials with long service in the judicial environment to reach the highest positions. This situation creates an imbalance when faced with the principle of meritocracy that places competence, performance, and integrity as the primary basis for promotion. In practice, such a system creates tension between professional experience and the formal structure that limits career mobility (Supreme Court of the Republic of Indonesia, 2015).

The updated civil service regime through Law Number 20 of 2023 further emphasizes the meritocratic orientation in state personnel management. This regulation establishes a merit system as a fundamental principle, requiring that all positions be filled based on objective qualifications, without discrimination based solely on position origin or administrative background. The definition of a merit system in the law emphasizes that employee placement must consider competence, potential, and performance track record fairly and proportionally (Indonesia, 2023). Thus, non-competency-based career restrictions are difficult to maintain within the framework of modern civil service law.

Furthermore, the principles of civil service governance explicitly emphasize non-discrimination, professionalism, and fairness as the primary foundation. This provision demonstrates that the Indonesian civil service legal system has moved toward a more open and merit-based human resource management model. Therefore, any sectoral norms that still maintain restrictions based on job origin require review, as they potentially conflict with the direction of national policy on bureaucratic reform (Indonesia, 2023). In this context, normative conflicts become increasingly apparent and cannot be ignored.

From the perspective of norm conflict resolution theory, three main principles are recognized: *lex superior*, *lex specialis*, and *lex posterior*. However, the application of these three principles cannot be done mechanically without considering the context of the legal regime of each norm. Irfani emphasized that the use of these principles must be done carefully because differences in legal regimes can hinder the direct application of the principle of derogation between norms (Irfani, 2020). In this case, the differences between the judicial regime and the civil service regime result in the absence of a hierarchical or substantive relationship that allows one norm to automatically override another.

The argument that the Supreme Court Law constitutes *lex specialis* is also not entirely

tenable. This is because the two regulations do not fall within the same legal framework. The Supreme Court Law regulates the institutional aspects of the judiciary, while the civil service law regulates the national personnel management system. This difference in regulatory scope makes the *lex specialis* principle unsuitable as a direct conflict resolution instrument (Irfani, 2020). Similarly, the *lex posterior* principle does not automatically nullify the validity of older norms due to the differences in legal regimes that do not directly overlap.

Within the framework of harmonization of laws and regulations, the Law on the Establishment of Legislation emphasizes the importance of harmony between norms as a prerequisite for the formation of a consistent legal system (Indonesia, 2011; Indonesia, 2022). The discrepancy between the clerkship norm and the merit system indicates that this harmonization principle has not been fully realized in regulatory practice. Therefore, the need for norm reconstruction is not merely academic, but also normative and systemic.

At the next conceptual level, the issue arises regarding the position of the Supreme Court clerk, which occupies two distinct dimensions simultaneously. On the one hand, this position is inherently tied to judicial functions that support the judicial process, including case administration and the authentication of judicial documents. However, on the other hand, administratively, this position remains within the civil service structure, which is subject to the functional position system. This duality creates conceptual tension because a single position must perform both judicial and administrative functions (Holvast, 2016).

Within the functional position framework as stipulated in personnel regulations, the position of clerk is essentially categorized as expertise-based. However, the specific characteristics of the Supreme Court clerkship have not been fully accommodated in the general functional position design. Consequently, a gap exists between the actual nature of the job and the regulatory structure that governs it. This situation has resulted in limited career development paths and suboptimal recognition of the complexity of the clerkship's function within the judicial system (Indonesia, 2023).

From a judicial governance perspective, this lack of clarity in positional positions impacts institutional accountability. When administrative and judicial responsibilities are mixed within a single position structure, the lines of accountability become blurred. This can make it difficult to determine the source of error when errors occur in case administration. In the context of good governance, clarity in positional structures is a crucial prerequisite for ensuring effective accountability (Supreme Court of the Republic of Indonesia, 2020).

Upon further analysis, this situation also creates inconsistencies in the performance appraisal and remuneration systems. Positions that are essentially administrative but filled by officials with judicial status will experience gaps in performance measurement. Conversely, if filled by career officials based on a merit system, performance assessments can be conducted more consistently and measurably. This indicates that the lack of synchronization in the job structure directly impacts the effectiveness of human resource management in the judicial

environment (Hukumonline, 2020).

From the perspective of the fundamental values of the Pancasila state based on the rule of law, this issue must also be examined against the principles of just and civilized humanity and social justice for all people. The second principle requires non-discriminatory treatment in the career development of state officials, while the fifth principle demands a fair distribution of opportunities in access to public office. When career paths are closed without considering competence, there is a potential violation of the principle of substantive justice, which is at the core of Pancasila as a legal ideal (Wahjono, 1979).

Rejecting structural discrimination in filling public office also relates to respect for human dignity as state officials. Restrictions based on job origin without considering performance have the potential to create systemic injustice that contradicts the principles of civilized humanity. In the long term, this situation can undermine the motivation and integrity of officials, as they feel they are not receiving equal opportunities (Rasidi & Al Farizi, 2025).

At the same time, the principle of social justice requires a proportional distribution of opportunities in access to strategic positions. When certain groups of officials with more extensive experience in judicial administration are denied access to top positions, inefficiencies in human resource utilization occur. This impacts not only individuals but also the quality of the judicial institution as a whole (Jurnal Legislasi Indonesia, 2024).

From a legal certainty perspective, the lack of synchronization between various regulations creates uncertainty in the clerkship system. Legal certainty requires consistent norms that can provide predictability for legal subjects. However, in this situation, there is a difference in direction between judicial regulations and personnel regulations, which causes uncertainty in practice (Mertokusumo, 2016). This situation indicates that the existing legal certainty is formal, but does not necessarily reflect substantive justice.

Radbruch asserts that laws that deviate too far from justice cannot be maintained as morally valid. Therefore, when legal norms produce significant injustice, correction is necessary through amendment or reconstruction of the norms (Radbruch in Irfani, 2020). In this context, the inconsistency of the clerkship norm with the merit system principle indicates the need for restructuring to restore the law to a balance between certainty, utility, and justice.

The conflicting norms surrounding the Supreme Court's clerkship are multidimensional, encompassing inter-statutory aspects, differences in legal regimes, and even inconsistencies with the core values of Pancasila and the principle of legal certainty. This situation cannot be resolved with a simple interpretive approach but requires a more comprehensive normative reconstruction to create harmony within the national legal system.

CONCLUSION

Based on the overall discussion that has been prepared, this study concludes that there is disharmony in the regulations regarding the position of Supreme Court Clerk, which still shows

a discrepancy between the provisions of regulations regarding the Supreme Court, the policy of managing the State Civil Apparatus based on *the merit system*, and the regulation of the clerk position as an administrative position within the judiciary. This disharmony has various consequences in the form of unclear legal certainty, limited opportunities for professional development for career clerks who already have high experience and competence, as well as the emergence of inappropriate placement of judges to carry out administrative duties that are different from the function of adjudicating. A review of institutional practices, both in Indonesia and several other countries, reveals a tendency to fill supporting judicial positions that prioritize professional expertise over background as a career judge. Based on these considerations, the idea of changing the provisions by opening the path to appointment of the Supreme Court Clerk to senior career clerks who meet the requirements of work experience, further education, integrity, and pass an objective competency selection. This formulation is expected to be able to create fairer clerkship governance, provide space for equal professional development, while strengthening the quality of judicial administration services.

Based on these conclusions, a number of recommendations are directed at all institutions authorized to update regulations on the clerkship to immediately implement improvements to legal provisions and supporting policies that can accommodate the career development of clerks more openly. The Supreme Court is deemed necessary to improve organizational governance by developing transition mechanisms, strengthening human resource development, refining career patterns, and developing case administration technology to produce increasingly high-quality judicial services. Judicial oversight institutions are also expected to take an active role by strengthening oversight of the selection process and conducting ongoing studies on the development of the clerkship profession to ensure transparency, accountability, and objectivity are maintained. Clerkship professional organizations are also expected to continue expanding their members' capacity-building activities through continuing education, technical training, strengthening professional ethics, and developing competencies to prepare them for future policy changes. Thus, all of the proposed ideas not only offer regulatory improvements but also present a direction for reforming clerkship governance that is more adaptive, professional, equitable, and aligned with the fundamental values of the rule of law in Indonesia.

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