

## **The Essence of Judicial Commission Monitoring in Realizing Dignified Judges**

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**Abstract:** The establishment of Judicial Commission constitutes a strong reaction to the failure of just judicial system. To implement a judicial system, the need for an accountability in a judicial power system is urgent, hence it gives birth to the Judicial Commission. The existence of Judicial Commission in this judicial power system is therefore not merely "accessories" in the process of renewing the law. The Judicial Commission is born as a political consequence of the constitution amendment intended to build a check and balance within the judicial power system and structure, including in judicial power sub-system. The Judicial Commission in maintaining and enforcing judge's honor should comply with the order passed by the judge, has reflected the honor and sense of justice for the society.

**Keywords:** Judicial Commission, Monitoring, Judge, Dignified

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### **I. INTRODUCTION**

The 1945 Constitution of the Republic of Indonesia (hereinafter UUD NRI 1945) states that Indonesia is a State of Law. One important principle of a state of law is that it is guaranteed that the judicial power will be exercised independently, free from any other power's influence.<sup>1</sup> Judicial power is the independent one to organize a trial in order to enforce the law and justice. The explanation of judicial power can be found in regulations of law and one of them is the Law Number 48 Year 2009 concerning Judicial Power.<sup>2</sup>

The Law Number 48 Year 2009 concerning Judicial Power Article 1 paragraph (1) states that "Judicial power is an independent state's power to organize a trial to enforce the law and justice under *Pancasila* and UUD NRI 1945, for the sake of operating the state of law the Republic of Indonesia."<sup>3</sup> Rosyita Indrayati<sup>4</sup> suggests that the principle of a state of law is that the judicial power is exercised independently, free from any influence of other powers to organize a trial in order to enforce the law and justice.

It is always interesting to study how judicial power is exercised. This cannot be separated from the position of this power holder which is highly fundamental in a state of law. It is even truer in Indonesia's case where every constitution once applicable in the Unitary State of Republic of Indonesia or *Negara Kesatuan Republik Indonesia* (thus NKRI) always placed judicial power as an independent power, i.e. it is free from any governmental and other powers alike.

In its development, UUD NRI 1945 has been amended four times. These amendments have brought about extremely fundamental changes to the constitutional system of the Republic of Indonesia and the existence state institutions, i.e. the abolishment of Supreme Advisory Council or *Dewan Pertimbangan Agung* and the birth of a new state institution such as Constitutional Court and Judicial Commission.<sup>5</sup>

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<sup>1</sup> Soekarno Abuharaer, 2012. *Kekuasaan kehakiman Indonesia (Indonesia's Judicial Power)*, Makassar: Arus Timur. p.1

<sup>2</sup> Soekarno Abuharaer, 2012, *ibid.*

<sup>3</sup> See Article 1 paragraph 1 of Law Number 48 Year 2009 concerning Judicial Power.

<sup>4</sup> Rosyita Indrayati, *Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia (Revitalizing the Role of Judges as the Executor of Judicial Power in Indonesia's Constitutional System)*, Jurnal Kertha Patrika, Vol. 38, No.1, 2016, p.117.

<sup>5</sup> Muhammad Fauzan, *Kewenangan Mahkamah Konstitusi Dalam Proses Impeachment Presiden Menurut Sistem Ketatanegaraan Republik Indonesia (The Authority of Constitutional Court in the Process of President Impeachment Based on Constitutional System of the Republic of Indonesia)*, Jurnal Dinamika Hukum, Vol.11, No.1, 2011, Purwokerto, Fakultas Hukum, Universitas Jenderal Soedirman, p.69.

Prior to its amendment, when UUD NRI 1945 was in full effect and force, the provision of judicial power as an independent power was mandated in the Explanation of Articles 24 dan 25 which state that: "Judicial power is an independent power, it means it is free from any influence of the government's power...". Later, in the third amendment of UUD NRI 1945, the arrangement regarding an independent power was no longer mentioned in the explanation, rather it became the content material of Article 24 which says that: "Judicial power is an independent power to organize a trial in order to enforce the law and justice".<sup>6</sup>

In relation to the function of Judicial Commission, it is important to take steps for upgrade intended to create a completely clean and dignified judicial institution to ensure that those people longing for justice can actually obtain it and be treated fairly in accordance with the applicable regulations of law.<sup>7</sup>

According to Ahsin Tohari, the existence of Judicial Commission is required in Indonesia's constitutional system and in several countries because of such things as: *firstly*, the reduction of intensive monitoring to judicial power, since this monitoring is done only internally, *secondly*, the absence of a state institution serving as the bridge between governmental powers (*executive powers*), *thirdly*, the lack of judicial power's adequate efficiency and effectiveness in doing their duties if they are still busy with non-law technical issues, *fourthly*, the inconsistency of judicial institution's award for each award receives less strict evaluation and monitoring from a specific institution, *fifthly*, presumably politically biased recruitment of judges since the institutions nominating and recruiting them are political institutions, namely the president and the parliament.<sup>8</sup>

In its journey in playing the role to execute their authorities and duties, Judicial Commission encounters many obstacles, be it from the imperfect legal norms or, the hardest one, from the so-called judicial mafia. Furthermore, with the Constitutional Court's award dated on August 23, 2006 in the case number 005/PUU-IV/2006, Constitutional Court passes an award which basically states that Constitutional Judges are excluded from the definition of "Judge" as referred to in Article 24B and removes the Judicial Commission's supervisory authority, resulting in the question being brought up in regard to the existence of and role played by Judicial Commission as the institution to maintain the state elements unified.<sup>9</sup>

Binsar M. Gultom suggests that ever since its establishment in 2004, Judicial Commission or *Komisi Yudisial* (hence KY) has not been able to maintain, improve, and uphold judges' prestige and dignity consistently. This is because the philosophy behind Judicial Commission's main duties and functions has not been deeply manifested. This is quite unacceptable considering that Judicial Commission is the institution with the greatest responsibility for maintaining judges' prestige and dignity through the awards it passes (vide UUD NRI 1945 and Article 13 letter b of Law No. 18 Year 2011 concerning Judicial Commission).<sup>10</sup>

In 2008, when the Law Number 22 Year 2004 had not been revised, the Judicial Commission in cooperation with *Lembaga Pendidikan, Penelitian, Penerbitan Ekonomi dan Sosial* (LP3ES) conducted research in eight major cities in Indonesia (Medan, Jakarta, Semarang, Surabaya, Denpasar, Mataram, Samarinda, and Makassar), interviewing 1,200 respondents. Specifically about people's expectation of Judicial Commission, 44% of these respondents expected the Judicial Commission to improve public trust to judiciaries, 27% of them wished the Judicial Commission could reform the judicial system, 14% hoped the Judicial Commission could repair judge's image, and 14% wanted the Judicial Commission to improve judges' quality.<sup>11</sup>

In 2016, the Judicial Commission had received 1,682 reports and 1,899 carbon copies from the society regarding alleged violation of Code of Ethics and Conducts for Judge or *Kode Etik dan Pedoman Perilaku Hakim* (thus KEPPH). This was revealed by the Judicial Commission Chief Aidul Fitri Ciada Azhari in an occasion to deliver the 2016 Performance Achievement Report and 2017 Outlook in Jakarta, Tuesday, January 24, 2017. The reports were delivered in person to the Judicial Commission office (262) and sent via post (1,198). 36 reports were based on information received by the Judicial Commission from many parties. 186 reports were

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<sup>6</sup> Muhammad Fauzan, Eksistensi Komisi Yudisial Dalam Struktur Ketatanegaraan Republik Indonesia Dan Yang Seharusnya Diatur Dalam Peraturan Perundang-Undangan (The Existence of Judicial Commission in the Constitutional Structure of the Republic of Indonesia and What Supposedly be Governed in Regulations of Law). *Jurnal Dinamika Hukum*, Vol.8, No.1, 2008, Purwokerto, Fakultas Hukum, Universitas Jenderal Soedirman, p.43.

<sup>7</sup> Achmad Edy Subianto, Rekonstruksi Kewenangan Konstitusional Komisi Yudisial, *Jurnal Media Hukum*, Vo.22, No.1, 2015, Yogyakarta: Fakultas Hukum Universitas Muhammadiyah Yogyakarta, p.147

<sup>8</sup> Muhammad Fauzan, 2012, *Op. Cit* hlm.123

<sup>9</sup> Imawati Sugiharto, Eksistensi dan Peranan Komisi Yudisial Dalam Sistem Ketatanegaraan Indonesia (The Existence and Role of Judicial Commission in Indonesia's Constitutional System), *Jurnal Cermin*, Vol. 43, No.1, 2009, hlm. 35

<sup>10</sup> Binsar M. Gultom, 2015, *Pandangan Kritis Seorang Hakim dalam Penegakan Hukum Di Indonesia (A Critical View of a Judge in Law Enforcement in Indonesia)*, Jakarta: PT. Gramedia Pustaka Utama, hlm.9

<sup>11</sup> Busro Muqoddas, M, 2009, *Empat Tahun Komisi Yudisial (Four Years of Judicial Commission)*, Jakarta: Sekretariat Jenderal Komisi Yudisial, hlm. 121

delivered via liaison office and 1,899 were carbon-copied. 416 of these reports were declared to have been completed and registered for a follow-up, 170 reports fell beyond the Judicial Commission's authority, 224 reports were forwarded to the Supervisory Board of Supreme Court, 13 reports were forwarded to other institutions, 379 reports were requests for monitoring, 164 reports were closed for either failing to complete or being revoked by the ones reporting and 40 reports were achieved since they have no complete plaintiff's address. Out of 416 reports which could be followed up, 218 had been analyzed and 198 were still being analyzed. Plus 117 reports from 2015 which had been finished, a total of 335 reports have been completely analyzed in 2016. Based on the decision of a panel or plenary session, Judicial Commission states that 118 reports had been followed up and 302 reports could not be followed up. Regarding the follow-ups done to the reports, the Judicial Commission had investigated 570 people, consisting of 93 defendants, 112 plaintiffs, 337 witnesses and 28 defendant's lawyers. Based on the results of these investigations, the Judicial Commission had recommended for 57 judges to be sanctioned, i.e. 19 judges were sanctioned lightly, 19 judges were sanctioned moderately and 11 judges were sanctioned heavily. Also in 2016, the Judicial Commission together with the Supreme Court had held Judge Honorary Council or *Majelis Kehormatan Hakim* (hence MKH) sessions three times, i.e. dismissing respectfully Judge Falcon on April 13, 2016, dismissing respectfully Judge Elvia Darwati on December 13, 2016 and the award for Judge Pangeran Napitulu on December 13, 2016 was suspended after the defendant failed to be present at MKH for illness.<sup>12</sup>

Judging from this performance of Judicial Commission the existence of Judicial Commission is still obviously needed in order to maintain judge's honor as the Justice's pride guaranteed constitutionally. Therefore, it is interesting for the writer to conduct this research in order to analyze further the duties and authorities of Judicial Commission on its monitoring side and, furthermore, the writer would offer an ideal monitoring concept for the Judicial Commission in order to maintain the existence of an institution as the guarantor of a clean and quality trial.

## II. RESEARCH METHOD

To discuss this dissertation research, in the research method part, the writer in conducting the research uses a normative law research method. Normative law research<sup>13</sup> is doctrinaire law research, also called as literature research or documentary study. It is called as doctrinaire law research since it is conducted or intended only to written regulations or other law materials. As literature research or documentary study, this research is mostly conducted to secondary data available in the library.

## III. DISCUSSION

### The Ideal Judicial Commission Monitoring Concept

#### 1. Limitations of Judicial Commission Judge Monitoring

Judge's freedom in a judiciary is basically a *safeguard of the rule of law*.<sup>14</sup> This principle is also followed universally as reflected in the *Basic Principles on the Independence of the Judiciary* which is adopted by the *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, in Milan from August 26 to September 6, 1985, and approved by the Resolution of General Assembly of the United Nations Number 40/32 dated November 29, 1985 and Number 40/146 dated December 31, 1985.<sup>15</sup>

The enforcement of *rule of law* is a prerequisite for a democracy system to grow and develop which is built according to the constitutional system of UUD NRI 1945. It is impossible for democracy to grow and develop when the *rule of law* is not enforced with respect, dignity and trustworthiness. In the effort of maintaining and enforcing judge's honor, the Judicial Commission will consider whether or not the each award passed has reflected the judge's honor and sense of justice in the society. Meanwhile, in maintaining and enforcing the nobility of judge's dignity, the Judicial Commission should monitor whether or not the judge profession has been practiced according to the professional ethics and gained public recognition, as well as monitoring and supervising to keep those judges remain in their humanity, conscious, as well as prevent

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<sup>12</sup> <https://m.tempco.co/read/news/2017/01/24/063839284/ky-terima-1-682-laporan-masyarakat-sepanjang-2016>, accessed on February 2, 2017.

<sup>13</sup> Peter Mahmud Marzuki, 2005, *Penelitian Hukum* (Law Research), print.2., Jakarta: Kencana Prenada Media Grup, pp.155-164

<sup>14</sup> Terry Hutchinson, *Researching and Writing in Law*, Lawbook.co., Pyrmont-NSW-Sydney, 2002, p. 29, also see Peter Mahmud Marzuki, "Jurisprudence As Sul Generls Discipline", *Jurnal Hukum Yuridika*, Volume 17, No. 4, July 2002. pp.309-310.

<sup>15</sup> Titik Triwulan Tutik, *Pengawasan Hakim Konstitusi Dalam Sistem Pengawasan Hakim Menurut Undang-Undang Dasar Negara RI 1945* (The Monitoring of Constitutional Judge in the Judge Monitoring System According to the 1945 Constitution of the Republic of Indonesia), *Jurnal Dinamika Hukum*, Volume 12, Number 2, 2012, p.299.

themselves from doing something improper. Judges are demanded to uphold the honor, noble dignity, as well as manners in exercising their authorities and executing their duties.<sup>16</sup> A judge's independence in a judiciary is essentially the main prerequisite for realizing the ideal state of law and constitutes a guarantee for the enforcement of law and justice.<sup>17</sup>

Honor is the good name or reputation which should always be maintained and kept at all cost by the judges in performing the court function. A judge's honor is mainly seen in the award he/she passes and the considerations underlying it, or the entire decision-making process which are based not merely on regulations of law, but also the sense of justice existing in the society. Nobility of dignity which constitutes the noble humanity prestige or pride should not just be owned, but also be maintained and kept by judges through their noble conducts and behaviors. Only through these noble conducts and behaviors will the judge's honor and nobility of dignity be kept and enforced.<sup>18</sup>

Nobility indicates that the profession of a judge is something noble, or the judge profession is a *officium nobile*. Meanwhile, dignity indicates the level of humanity essence, as well as pride. Judicial Commission does the monitoring in order for judges to have good conducts, hence they can be a symbol of the importance of a good conduct system infrastructure in a constitutional system based on UUD NRI 1945. The Judicial Commission serves as one of those state institutions of auxiliary nature (*auxiliary organ*) to the judicial power institution. Structurally, the position of Judicial Commission is equal to the Supreme Court and Constitutional Court.<sup>19</sup>

In Indonesia, the idea of establishing a court supervisory institution had once been proposed before the Judicial Commission was formed. For example, there had been some ideas of forming a Judge Inquiry Consideration Assembly or *Majelis Pertimbangan Penelitian Hakim* (MPPH) and Judge Honorary Board or *Dewan Kehormatan Hakim* (DKH). This MPPH which had been suggested since 1968 was to function to provide some considerations and to make the final decisions on the advices and/or suggestions related to the appointment, promotion, transfer, dismissal, and demotion of the reported judges, be it by the Supreme Court and by the Minister of Justice. Unfortunately, the idea failed to be included in the Law Number 14 Year 1970 concerning the Main Provisions of Judicial Power. Meanwhile, the Honorary Board of Judge (DKH) which was set forth in Law Number 35 Year 1999 was authorized to monitor judge's conduct, give some recommendations regarding the recruitment, promotion, and transfer of judges, as well as to prepare a code of conduct for judges.

Initially, the existence of Judicial Commission as an institution to enforce this code of conduct for judges was within the Supreme Court structure. However, as the time went and the needs change, and also due to the influence of the world's developing trend at late 20th century and early 21st century with the emergence of ideas to establish judicial commissions as 'external institutions' of courts in many countries, Indonesia then adopted that Judicial Commission idea by incorporating its existence into UUD NRI 1945.

This incorporation of Judicial Commission in the provision of constitution made this institution highly 'luxurious', and to some it was regarded as exaggeration, because it was influenced by temporary emotion as a result of great public dissatisfaction to court performance, particularly Supreme Court, during critical times which was then responded to by making a massive reform which was topped by the agenda to amend the constitution in 1999-2002.

In the MPR's 2001 annual session to discuss the third amendment of UUD NRI 1945, the discussion on the monitoring of judges had been an urgent issue, thus it was finally agreed upon that an amendment and addendum will be made to the article related to the Judicial Commission in article 24 B, the paragraphs of which read as follows:

1. The Judicial Commission is of independent nature, authorized to propose the appointment of a supreme court judge and has other authorities to maintain and enforce the honor, noble dignity, and conducts of judges.
2. Members of Judicial Commission should possess the required knowledge and experience in the field of law and have the integrity and flawless personality.
3. Judicial Members are appointed and dismissed by the President with an approval from the House of Representatives.

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<sup>16</sup> Ismail Rumadan, *Membangun Hubungan Harmonis Dalam Pelaksanaan Fungsi Pengawasan Hakim Oleh Mahkamah Agung Dan Komisi Yudisial Dalam Rangka Menegakkan Kehormatan, Keluhuran Dan Martabat Hakim* (Building a Harmonious Relation in the Implementation of Judge Supervisory Function by the Supreme Court and Judicial Commission in the Effort of Upholding the Honor, Nobility and Dignity of Judges), *Jurnal Konstitusi*, Vol.5, No.2, 2016, p.213.

<sup>17</sup> A.V. Diecy finds three benchmarks of the existence of *rule of law* namely: (1) law supremacy (*rule of law*); (2) equality before the law; and (3)

<sup>18</sup> Ismail Rumadan, 2016, *Ibid.*

<sup>19</sup> Ismail Rumadan, 2016, *Ibid.* pp.213-214.

4. The structure, domicile, and membership of Judicial Commission are governed with laws.

The reform spirit has brought Indonesia to many changes to the order of the state. The wish to enforce democracy is realized through many efforts, one change after another which accompany their journey made by Indonesia as a state, changes of leadership and government system which frequently occurs indicate that Indonesia as a state is finding its real identity.

With the amendment of UUD NRI 1945, new state institutions are established. Also, the direct presidential election system, the principle of checks and balances among state institutions, regional autonomy and the various changes that now occur are a form of spirit to form an Indonesian state government that protects the whole Indonesian nation and the whole of Indonesia's territory and to promote the general welfare, to educate the nation's life and to participate in the implementation of world order based on independence, eternal peace and social justice as stated in the Preamble to UUD NRI 1945 paragraph IV.

The spirit to build the nation is also manifested by the establishment of an independent state institution, namely the Judicial Commission. The Judicial Commission is one of those state institutions explicitly set forth in UUD NRI 1945, i.e. in article 24B. The Judicial Commission is authorized to propose the appointment of supreme court judges and has other authorities to maintain and uphold the honor, noble dignity as well as conduct of judges. This means that the Judicial Commission is authorized to control and compensate (checks and balances) in the conduct of judicial power. Therefore the fact that this Judicial Commission exists gives a hope for justice seekers to create a clean and dignified judicial institution. With such authority, the Judicial Commission is expected to earn public trust to the judiciaries.

Another authority to maintain and uphold the honor, noble dignity as well as conduct of judges in practice has been understood that the existence of a Judicial Commission in a constitutional system is an agency tasked to monitor judge's conduct, since when the judge's conduct can be monitored, the positive impact desired is that for a judge to behave well which reflects noble dignity as a someone who passes judgement.<sup>20</sup>

The authorities of the Judicial Commission referred to in UUD NRI 1945 are explained in Law Number 22 Year 2004 on Judicial Commission. Before the Constitutional Court decides to conduct a judicial review to Law Number 22 Year 2004, especially regarding the arrangement in respect of upholding the honor, noble dignity and to keep the judge's conduct, it was carried out by the Judicial Commission by supervising judge's conduct. The Judicial Commission is expected to realize an independent and accountable judicial power. Thus, the existence of the Judicial Commission is considered something important as an external supervisor of the judiciary institutions because the internal supervision of Supreme Court as the highest court in the judiciary system can not yet be done optimally, leading to the judge's conduct as a judicial power being less controlled.

A total of 31 judges submitted proposal for a judicial review of Law Number 22 Year 2004 on the Judicial Commission to the Constitutional Court which finally through Decision of Constitutional Court Number 005/PUU-IV/2006 rendered some authorities in the monitoring of judge and Constitutional Court judges ineffective.

The Constitutional Court Decision Number 005/PUU-IV/2006 has suspended the monitoring function. Likewise, the monitoring of Constitutional Judges was returned to the Honorary Council. This is an action which harmful for the judge's conduct control function. At a glance this decision seeks to alter the irregularities that have occurred, but a little bit closer look at it reveals that this is actually a resistance to the supervisory function of the relevant institutions. The internal supervision can only be applied to an institution that has been sterilized and has high commitment and awareness of its duties and authorities.

Based on the decision of Constitutional Court in this Judicial Review of Law Number 22 Year 2004, elongated debates occurred in the society and among experts. On one hand, many have stated that this was good news to judicial corruption perpetrators. On the other hand, this decision should actually be a momentum for all stakeholders within Indonesia's judicial system to reflect on what they had done. This Constitutional Court decision have some juridical implications we have to face in the development of governmental system in Indonesia, particularly the implication it has on the reform in judicative institutions.

The Constitutional Court Decision No. 005/PPU-IV/2006 has affirmed the Judicial Commission's authority to maintain the honor, dignity and conduct of judges. In the Constitutional Court's legal consideration, it is stated that the Judicial Commission Law does not govern in detail the supervisory procedure, who are the subject and object of this supervision and what instruments are used as the supervisory standard, thus the provisions on monitoring in this Judicial Commission Law is blurred and creates legal uncertainty. In addition, the concept of monitoring in this Judicial Commission Law which is based on the

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<sup>20</sup> Muhammad Fauzan, Pasang Surut Hubungan Antara Mahkamah Agung Dengan Komisi Yudisial Dalam Sistem Ketatanegaraan Republik Indonesia (The Fluctuating Relationship between Supreme Court and Judicial Commission in the Constitutional System of the Republic of Indonesia), *Jurnal Dinamika Hukum*, Volume 12, Number 1, 2012, p.125.

paradigm as if the relationship between the Supreme Court and the Judicial Commission is of *checks-and-balances* one between branches of power in the context of the *separation-of-powers* school of thought is inappropriate. This is because it is unjustifiable for a supporting organ (in this case KY) to wish to do a checks and balances to the main organ (Supreme Court)<sup>9</sup>. Therefore, the Constitutional Court in its decision also mandates that there should be an integral improvement in harmonizing and synchronizing it with other laws and regulations in the field of judicial power. Thus, the scope of external monitoring of judges should be clearly defined, including its parameters. Furthermore, it can be ascertained which judge's action is deviating the norms and which one is not both within and beyond their office realm.

Since Constitutional Court strips the Judicial Commission of some of its authorities through its decision issued in 2006, the Judicial Commission and a number of state elements who are the proponents of clean, transparent and accountable judiciary have made many attempts to restore the Judicial Commission's role. One of them is the revision of Law Number 22 Year 2004.

The supervisory system steps taken by the Judicial Commission should be as follows:

1. Judicial Commission performs an intensive monitoring of judicial power by involving elements of society in as wide spectrum as possible and not merely monitoring internally.
2. Judicial Commission becomes a mediator or intermediary between governmental power (*executive power*) and judicial power, aiming mainly to ensure that the judicial power is independent from any power, particularly judicial power.
3. Due to the existence of Judicial Commission, the efficiency and effectiveness level of judicial power will be higher and higher in many things, be it the one dealing with recruitment and monitoring of supreme court judges or financial management of judicial power.
4. The consistency of judiciary's decisions will be maintained because every decision receives tight evaluation and monitoring of a specific institution (Judicial Commission); and
5. Due to the existence of Judicial Commission, the independence of judicial power can be continually kept because any attempt to politicize recruitment of supreme court judges can be minimized by it since it is not a political institution, hence it is assumed to have no political interest.

This should run well because the selection of the supreme court judges is still influenced by political institutions, i.e. the House of Representatives. Under Article 24A paragraph (3) UUD 1945, DPR only has the right to approve, not to nominate the supreme court judges who have been selected by the Judicial Commission as set forth in Article 13 point a Law Number 18 Year 2011 concerning Amendment of Law Number 22 Year 2004 on Judicial Commission, and Article 18 paragraph 4 Year 2011 is not pursuant to what the amended UUD NRI 1945 reads.

The Judicial Commission in performing its duties to maintain the noble dignity of judiciaries as well as the code of ethic and conduct of judges should never be tempted to evaluate the juridical procedures which falls under the authority of Supreme Court of RI which performs the highest-rank monitoring task over judiciaries in Indonesia. The Judicial Commission should stay committed to maintaining the independence of judicial powers so that those matters of juridical procedural in deciding on cases will remain a judge's authority. When summoning a judge to appear before the Judicial Commission, it is recommended that the summons letter to the judge specifies the content of alleged violation of Code of Conduct the relevant judge has committed. Likewise, when asking questions to this judge it is suggested not to do it like an interrogator who would usually put some pressure to the judge and presume that he/she is guilty.

The judge's decision that has been the basis of an examination of whether or not there has been a violation of the Code of Conducts by the judge shall not question why the judge decides so or the reasons for the judge's consideration in deciding the case. If this the case, then the Judicial Commission does not contribute well to the realization of independence of the judicial power towards the great judiciary.

## **2. Building an Ideal Judicial Commission Supervision Model**

In order to create a clean and authoritative judicial institution, the Judicial Commission as a state institution authorized to exercise the supervisory function of the grand judge and judge to the judiciary in all courts under Supreme Court and the judge Constitutional Court is constitutional. In order to create a clean and authoritative judicial institution, the Judicial Commission as a state institution authorized to exercise the supervisory function over the supreme court judges and those judges in judiciaries in all courts under the Supreme Court and the judge Constitutional Court is of constitutional nature. The Judicial Commission's supervisory authority ranges from preventive supervision to repressive supervision as specified in the provisions of Article 24 A paragraph (3) and Article 24 B paragraph (1) of UUD NRI 1945 which are implemented in Article 13 point b, Articles 20, 21, 22, and 23 of Law No. 22 Year 2004 on Judicial Commission. This supervisory function by Judicial Commission is reaffirmed by the provision of Article 34 paragraph (3) of Law No. 4 Year 2004 on Judicial Power. This provision of Article 34 paragraph (3) governs that:

”In order to maintain the honor, noble dignity and conduct of the supreme court judges and (other) judges, the supervision is carried out by the Judicial Commission as stipulated in the law.”

Based on Constitutional Court Decision Number 005/PUU-IV/2006, the Judicial Commission (KY) has no authority to supervise Constitutional Court Judges, however they still have the authority to monitor Supreme Court Judges. The Judicial Commission still cannot supervise optimally those judges because the sanction passed to those judges violating the code of conduct is merely a recommendation to the Supreme Court. Meanwhile, the one authorized to pass the sanction is the Supreme Court.

The Judicial Commission’s authority to perform the supervisory functions described above constitutes an effort to deal with many forms of authority abuse in judiciaries which begins from monitoring the judge’s conduct in order for them to uphold the honor, noble dignity of judges. Therefore, when this supervisory function by Judicial Commission runs effectively, it will certainly promote the commitment and integrity of judges to continually perform their authorities and duties as the main executors of judicial power according to the judge’s code of ethic and code of conduct as well as the applicable regulations of law. It is here that the important role of the Judicial Commission is played in the effort of supporting law enforcement in Indonesia.

In essence, the supervisory function performed by the Supreme Court and the one carried out by the Judicial Commission share the same noble goals of maintaining the dignity and honor of judges who assume the noble human’s dignity in order to perform their duties in examining, adjudicating and deciding on a case professionally according to their duties and authorities. This professionalism in performing their duties shall be accountable both horizontally to the society and vertically to God the Almighty.

The devotion to God the Almighty which underlies the Judge’s guideline principles in behaving means that their conduct shall constitute an embodiment of their respective religions and beliefs based on a just and civilized humanity. This devotion will drive the judge to behave well and responsibly as taught by their individual religions. Along with the noble duties and extensive authority in upholding the law and justice, judges frequently encounter challenges and temptations. Therefore, the Judge’s Code of Conduct is a consequence of the authority inherent to the position of Judge, unlike any ordinary citizen.

This Judge’s Code of Conduct is a guide to moral virtues for Judge, both in carrying out their professional duties and in building relations in their community off the court. Judges as human beings who have moral obligation to interact with their social community are also bound by norms of ethics and should adapt to the habits prevailing in this society. However, to ensure that an independent and impartial court is manifested, it is also necessary to fulfill the need for adequate facilities and infrastructure for Judge, both as law enforcers and as common citizens. Therefore, it is the community and the state’s job to provide security for the judges and the court, including the adequacy of welfare, feasibility of facilities and budget. Nevertheless, although the above conditions have not been fully realized, it can not be an excuse for Judge not to hold fast to the purity of duties and responsibilities as enforcers of law and justice that satisfy the seeker of justice and the society.

The Supreme Court is of course highly concerned about a proper and effective external control by the Judicial Commission. When the monitoring conducted by the Judicial Commission can be properly implemented and achieve its goals, the purpose of supervision of judge’s conduct by Supreme Court is also achieved. In addition, the very presence of external controls encourages internal control units to safeguard and enhance the accountability and the quality of controls they undertake. Redefining and improving coordination and harmonious cooperation with the Judicial Commission is an important agenda, and it can be done through:<sup>21</sup>

1. A relationship of equivalent partnership by improving cooperation, including the implementation of joint supervisory activities.
2. The establishment of common standards and guidelines in the supervision and examination of alleged violations of judge’s code of conducts, including: coordination mechanism in judge’s conduct supervision activities both between the Judicial Commission and the Supreme Court, as well as between the Judicial Commission and the judiciaries under Supreme Court, recommendation of disciplinary punishment by the Judicial Commission and determination of disciplinary punishment by the Supreme Court, mechanism of the establishment and examination by the Judge’s Honor Council, assurance of rights and legal certainty of the parties subjected to the supervision or examination, and minimum standards of implementation of supervisory and inspection activities in order to accommodate the principle of objectivity and accountability of supervisory activities.
3. Affirmation of the independence of judges and courts by drafting an amendment to Supreme Court Law, Judiciary Law and Judicial Commission Law and performing strategic activities to encourage the elimination of provisions containing such elements as:
  - a. judgment in the statement of judge’s decision,

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<sup>21</sup> Mahkamah Agung RI, 2010. Cetak Biru Pembaruan Peradilan 2010-2035 (Blueprint of 2010-2035 Judiciary Reform), Jakarta: Mahkamah Agung RI. p. 75

- b. imbalance in the processes of supervising and disciplining judges, and
- c. potential multi-interpretation related to the authority of supervision owned by MA's internal and external supervisory institutions.

At practical domain, the supervisory model that should be done is the one which is done aiming at not looking for a mistake (watch dog). Rather, it should be intended to ensure that the judges' performances have complied with the judge's code of ethic and conduct. In terms of maintaining and upholding the honor, noble dignity and conduct of judges, KY should not just focus on punishing any violation of KEPPH, rather they should also focus on the effort of minimizing the number of judges committing such violation and not neglect the effort of improving the judge's capacity and welfare. Such an effort can be done by the Supreme Court.

The Judicial Commission's performance deals not only with enforcing the code of conduct, rather it should also undertake preventive efforts, as well as those efforts to uphold judge's dignity through the provision of facilities, as well as guarantee the security of judges in performing their daily duties. This is because many judges have not felt any guarantee of their safety and security in performing their duties as a judge. Thus, in performing their duties as a judge, having received, adjudicated and decided on a case has fulfilled the expectation and sense of justice of those longing for justice.

This supervision by the Judicial Commission in principle aims at making the supreme court judge and other judges in exercising their authority and duties are actually based on and compliant with the applicable regulations of laws, truths, and sense of justice of the society and uphold the professional judge's professional code of conduct. When the supreme court judge and other judges exercise their authority and perform their duties properly, the relevant judges have upheld the honor, dignity, and conduct of judges. Such a circumstance certainly not only supports the creation of legal certainty and justice, rather it also supports the establishment of a clean and authoritative judicial institution, leading to the rule of law or law enforcement to go as expected.

The recommended Judicial Commission Monitoring Model is the one where the Judicial Commission of the Republic of Indonesia becomes an independent judicial power balancer to ensure that the judicial power is accountable, as accountability of judiciary is essential to facilitate public access to the performance of the judiciary so as to satisfy the community's sense of justice. This recommended Judicial Commission should serve as a buffer and balancer of judicial power and as supervisor of the law enforcement apparatus, hereinafter referred to as Judicial Court or *Mahkamah Yudisial*. The Judicial Commission as a buffer and balancer of judicial power has the authority of selecting and appointing, promoting and transferring, and developing (improving education, welfare, and security) judges as well as organizational management and administration of judiciary, financial management of judiciary, public data and information management, supervision of performance of judicial and judge bodies, as well as judicial court decision-making excluding judicial procedure. The Judicial Commission as supervisor of law enforcement apparatus has authority to conduct supervision over police, prosecutor and judiciary including judges and clerks. This way the existence of the Judicial Commission becomes an absolute necessity for the state of Indonesia.

#### **IV. CONCLUSION**

The ideal Judicial Commission Monitoring Model is the one where the Judicial Commission should be an independent balancer of judicial power to ensure that the judicial power is accountable, as accountability of judiciary is essential to facilitate public access to the performance of the judiciary so as to satisfy the community's sense of justice. This recommended Judicial Commission should serve as a buffer and balancer of judicial power and as supervisor of the law enforcement apparatus, hereinafter referred to as Judicial Court or *Mahkamah Yudisial*. The Judicial Commission as a buffer and balancer of judicial power has the authority of selecting and appointing, promoting and transferring, and developing (improving education, welfare, and security) judges as well as organizational management and administration of judiciary, financial management of judiciary, public data and information management, supervision of performance of judicial and judge bodies, as well as judicial court decision-making excluding judicial procedure.

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