

The Reinforcement Role and Function of the Judicial Commission (KY) in Constructing Clean and Impartial Judicature

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CHAPTER I

PREFACE

A. Background

Based on The Constitution of 1945, the article. 24 the justice authorization peak to the Supreme Court is the independent authority from the influence of government authority, but in fact the justice authority independent practice is always influenced the government authority which is centered on President, especially the case which is concerning to the government interest. The government hegemony is so strong to the justice authorization performance that causes a princip " *Fair and impartial judiciary* " It is always fail in the fact. Dualism in founding of justice authorization where judicial is done by The Supreme Court and judicature administration founding is under the government (departement of justice) as an evident that has become one of main causes widely of government influence to the justice authorization performance. Since the reformation era, we clarify the principle of judge freedom independent in showing the justice authorization management in one roof under founding the Supreme Court.

The condition of judiciary becomes one of points in (MPR) Indonesia Republic of People's Consultative Assembly discussion, it is needed a publishing People's Consultative Assembly (MPR) decision number: X/MPR/1998 about the point of constructing reformation in saving and normalization of national life as state direction. Many agendas begin to be conceived, such as separating between judiciary and executive function and fix separating function and authority of law upholder apparatus. For realization the case, there is an important change in the body of judiciary power through the laws number 35, 1999 about the change on the laws number 14, 1970 about the judiciary power.

Similar to this case, appear an apprehensive that an independent of judiciary power is taken to conduct/ erase corruption practises, collusion and nepotism in the environment of judicature in common that often happen. The agenda of eradication corruption, collusion and nepotism practises in the judicature environment is assessed so important because the judiciary image reaches the lowest trust level in the society. Forming of Corruption eradication comission (KPK) is one of responses from corruption eradication in judiciary, based on the law number 30, 2002 one of Corruption eradication Comission authority (KPK) is to investigate and presecute a corruption case that happens in judicature.

Because of several amendement to 1945' Constitution, so the laws number 35, 1999 about the change on the laws number 14, 1970 about the main point of the judiciary power, has adapted and changed many times, by legalizing the laws number 4, 2004 and the last laws number 48, 2009, about the justice power.

One of six agendas of reformation that proposed is a law supreme maintenance, respecting the Human Rights (HAM), even corruption, collusion, and nepotism eradication. The demanding is as the form of society disillusion to practise of state conducting that is described by deviation, including in the process of judiciary conducting. Judicial Comission was born as a response from reformation idea that happened in 1998.

The aspiration of laws maintenance and the laws system can only be built if the justice power performance can invite or interest public, because the agenda of independent judicature also develops an aspiration to run reformation to judges of the supreme court. For taking care the power of judge as implementer of justice power that has a freedom, on the third 1945 constitution amendment, formed a comission that called Judicial Comission (KY), it has authority to propose the candidate of supreme court judges and the other authority in taking care and maintenance the honor, majesty, prestige and behavior of judges as regulated in article 24 B, 1945 Constitution.

The 1945 Constitution states that Indonesia is the constitutional state. In accordance, one of important principle in the constitutional state, there is a guarantee of justice power implementation that is freedom, free from other power effect to conduct judicature in maintenance the law and justice. Judge has a relation to law or constitutional state. Because the law will be built where there is court as a place to bring to justice and in a court has a judge who roles as an executor to a decision fairly. For this, it needs code of judge profession ethic, it is written regulation that must be done or guided by every Indonesia judges in running profession duty of a judge.

The purpose of the judge profession ethical code is as a founding instrument and forming of judge character and supervision to judge behavior. Beside as the social control medium, preventive of judicial interference, and preventive of misunderstanding appearance and conflict between members and society. The purpose of ethical code is to give an assurance of judge morality increasing and functional independent for judges and grow the society trust to justice institution.

By the judge profession ethical code that become the a guide for Indonesia judges in running a profession duty, hopefully to create a justice and the truth, in relation as society member that must be able to give a sample and model in obedient and loyal to law, but the fact some judges deviate or contra to the ethical code nowadays.

The fact can be seen from mass media or private information that can be an experience by seeing directly. But, mass media doesn't expose because the infraction of ethical code doesn't reach to public. If there is infraction, it can be solved by a comission which formed by IKAHI center board and IKAHI region board, they will monitor, investigate, found and recommend judges' attitude who collide with or suspected to collide with profession ethical code.

The content of judge profession ethical code is regulations about a good judge ethical, so the source of ethical code is as a good source that cen be trusted. Moral values that are taught by religion, it can produce a good moral values as a source of ethical code. Therefore, it needs a base for judges to apply profession ethical code in daily partcice. In this case because ethical code just as a rule.

The Judicial Comission is on the structure of judicial institution in Indonesia doesn't cover in supervising judges in their duty. It is needed a firm law, a good morality judge, and a basic faith and religion for a judge in runing the profession ethical code. But, nowadays it is in contrary to the fact that justice is unclear and full of law mafia which makes value and purpose vanish in the society.

In judiciature, there are some infractions of judge profession ethical code themselves. " Sadden, Worry About " or other terms that is suitable to paste copy practice in a judge verdict to try a case as it is uncovered by the judicial comission.

How can it possibly happen, but a judge verdict infected by "virus" paste copy, indeed it has entrusted a destiny and quality maintenance law in Indonesia, and on other side, it is difficult to image how can the justice seeker get the judge verdict which infected by a paste copy practice.

Metro TV News, April 15, 2011 the Judicial Comission found some reports that stated a judge did paste copy practice in handling the case. It shows a slump of law maintenance as the effect unprofessional law maintenance. For time being, there are about 300 reports which are on the judicial comission, including last year reports. Alhamdulillah, all reports have been investigated and followed up " Taufiqurohman Sahuri, the judicial comission (KY) comissioner said, in Jakarta Friday, 15 April.

According to him that the reports are from society even from the partnership of law aid institution and (ONP) non government organization. This finding appears after Judicial Comission held a meeting with society elements nowadays. Taufiq said 80% from 300 reports could be followed up by investigating those judges. Meanwhile the Judicial Comission (KY) can not investigate othres 20% because, the Judial Comission can not find strongly infraction of judges' attitude. While delivering questions, what are judges' attitude found, spontaneous Taufiq mentioned that there were many paste copy of judges model. " In same cases are the judges who did a consideration and verdict by copying the available forms, change the name and date. Yeah, *paste copy* " He said.

The risk of the judges' attitude of paste copy according to the judicial comission (KY), causes some mistakes of judges verdicts, there are some considerations and verdict injunction which are irrelevance. So, seeing this condition, the Judicial Comission plays an important role in maintenance the judges profession ethical code that make bad of Indonesia judiciature.

The Judicial Comission (KY) is as the state institution independently and in implementing of its power is free from interference or other authority influence, it must take a clear action to these judges. If necessary the judge who did an infraction must be given a strong sanction in order to become therapy shock for other judges.

B. Problem Formulation

1. How is the position of The Judicial Comission in the structure of Indonesia government form ?
2. What is the position of The Judicial Comission as Judiciature Institution ?
3. How is the effect of The Judicial Comission in constructing a clear judiciature system ?

CHAPTER II DISCUSSION

A. The position of the Judicial Comission in the structure of Indonesia government form.

After amendment of 1945 Constitution, so in the plan of state institution structure adjustment after that the change needs to be done. The idea to apply the strong separation principles, the power separation from state institutions becomes the important thing in a law state. The separation of power executive, legislative and judicial, constitution, and audit which create in institution of state boards as the same level to do controlling and balancing (Check and balance) each other.

The thinking to build a new state institution involves the theoretical thinking of state structure , is the thinking about law state that influenced by a state structure system on a state and nation, as we know that Indonesian is a state which was born as ex Dutch colony for a half of century (350 years). A state which follows continental europe system, there is a characterictic from F.Julius Stal who proposed a specific

characteristic from a state that follows continental Europe system as follows :

1. Human rights protection.
2. Trias Politica (power separation)
3. Government based on legislation regulation.
4. There is the judiciary of state administration.

Beside continental Europe system is also known the law system of Anglo Saxon (Rule of Law), in a state which follows the law system of Anglo Saxon has characteristic as follows :

1. There is Law Supremacy.
2. Equality before the law.
3. There is human right assurance that regulated by constitution.

Looking at this characteristic from the law system, there is a difference and similarity, but if it is studied firmly, so there is not difference significantly from both of these law system.

Based on paragraph 1 article 3, 1945 constitution stated that “ Indonesia is the law state “, it can be the law as the highest, the law must become a guide in having state and nation. All state activities must be based on law.

A country (state) which applies a continental Europe law state system, refers to legality aspect in the plan of written legislation regulation is as the law assurance, beside the state which applies Anglo Saxon the law system, the approachment is based on the justice which is also based on law widely, the justice is not based on the written stipulation only but also to the justice sense which develops in society.

In general, it can be said that the Judicial Commission is as a new phenomenon in state structure of Indonesia. The judicial commission was born in 1970s in several states. In Indonesia the judicial commission can be said that it was late if it compared to other state.

In many states, the judicial commission is really built and activated as Auxiliary Agency for justice power supervision. As Auxiliary agency, the duty of the judicial commission is to receive reports from society about deviation and the attitude of the judges' indiscipline. If the judge is estimated to do deviation so, the judicial commission helps making a certain recommendation.

In the history line of Indonesia structure state, the idea of forming an institution is like the Judicial Commission is not a new thing. In discussing the plan of legislation about the judges main power in 1968, it had been proposed the idea about The Judge Research Judgment Chamber (MPPH). MPPH functions giving judgment (consideration) and taking the last decision about suggestion and propose that concerning about appointing, promotion, mutation, dismissal and an action or position punishment for the judges, but this idea is fail struggled.

The judicial commission is pushed to create a roof union for judiciary management in 1998, that can be seen in decision (People's Consultative Assembly) MPR RI No.X/MPR/1998 about fundamental of development reformation in the plan of saving and normalization national life as state direction, in chapter IV part C stated it needs a confirm separation between judicial and executive function.

Integrated work team is formed by president's decision (Keppres) No X/MPR/1998, recommended forming a council of judges honor (such as Judicial commission) to supervise judges' attitude, give a recommendation about recruitment, promotion and mutation the judges even compose or arrange *rule of conduct* for the judges to balance a roof union. Then the recommendation is adopted in common explanation of legislation No 35, 1998 about the change on legislation No 14, 1970 about the main of the justice power.

Before the law No 35, 1999 was done, in annual meeting of People's consultative assembly (MPR) 2001 discussed the change of constitution, agreed the change and article addition that concerned about justice power, included in it about forming the judicial commission that is given an authority to propose an appointment an excellence judge and take care the judge status as stated in article B, 1945 constitution.

Then the second the judicial commission authority is adopted in two laws that concern to justice authority that stated in January 15, 2004 about MA (The Supreme Court). Then, the process of composing the law No 2004 about Judicial Commission (KY), the draft of basic concept of the laws plan about the judicial commission that proposed by The house representative , taken from the law plan draft which composed by The supreme court and the research institution and advocacy to independent judiciary (LeIp) that has regulated detail some aspects about the judicial commission.

One thing supports appearing an idea about the important of forming judicial commission is a fail of judiciary system that exists before, estimated fail to create the better judiciary system.

As we know, to improve the judiciary condition, the way to transfer administration aspect founding authority, financial and organization from justice department and human rights (HAM) to The supreme Court (MA). The way is not able to solve the problem, even at the certain level can be bad effect. There are some things that support the conclusion, they are :

1. Unite roof without changing recruitment system, mutation, promotion and supervision the potential judge to create monopoly justice authority by The supreme court.
2. The Supreme Court (MA) is not able to run the new duty and repeat the mistake that is done by

Justice department and Human rights (HAM), this case is based on consideration that The supreme court (MA) is not able to do the duty and authority, such as judges recruitment, mutation, promotion including chairman and the vice chairman appointment.

3. Judicial Commission (MA) has organizational problem till now it can not be improved, for example the weakness of organization management and the case, personal integrated and so on.
4. The weakness of internal supervision effectively and efficiently.
5. The sanction (punishment) is not done for the judge who has proved guilty because so strong to defend *esprit de corps*.

Apprehensive above is based by the fact that along time ago, The supreme court didn't use an objective measurement to determine mutation and promotion judges, supervision to judges as well, The supreme court can not do efficiently. Management ability of human resources (SDM), financial and the case management has still weakness, beside the weakness above the quality and personal integrated in MA is still doubted. The Judicial Commission (KY) forming in structure of Indonesia justice power in order that society out of formal parliament institution can be involved in the process of appointment, performance assesment and possibility dismissal judge. The case is aimed to take care and up holder a prestige, majesty, honor, even judges' attitude in the plan to bring a reality the truth and justice based on Allah the almighty.

By the honor and prestige, majesty, the justice power that's expected free and impartial can be shown, also balanced by the accountable principle of the justice power, even in the point of law and ethical. It's needed an independent institution supervision to the judges themselves. Therefore, the supervision institution is formed out of The Supreme court (MA) structure, through this institution, society aspiration is out of formal structure that can be involved in process of judges of the supreme court appointment also involved in the assesment process to ethical and dismissal to ethical deviation judges.

Meanwhile, there are some main reasons for the Judicial Commission (KY) forming in the law state:

1. The Judicial commission (KY) was formed in order to monitoring intensively to justice power by involving society elements in spectrum widely and not only internal monitoring.
2. The Judicial Commission (KY) became a mediator or connector between an executive power and judicial power that became main purpose is ensure judicial power independent from other power effect especially government power.
3. Because of the Judicial Commission (KY), the efficiency and effectivity judicial power will better in several ways, even in recruitment and monitoring the judge of the supreme court, also financial management of judicial power.
4. The verdict consistency protected of judiciary institution, because every verdict gets a firm assesment from a special institution.
5. The Judicial Commission (KY) presence, justice power independent can be protected, because the politicization to the judges' supreme recruitment can be minimalized because of the Judicial Commission (KY) existence that is not a political institution, it doesn't have political interest.

The existence of the Judicial Commission (KY), according to Adnan Buyung Nasution because of a serious condition in the field of judiciary, where some judges, policemen, and prosecutors who should stand the law and justice, with slogan or declaration upright justice even the sky will fall out, but in the fact is not like this. They follow some plays in judiciary mafia.

The basic law in the forming the Judicial Commission (KY) are :

1. The 1945, Constitution of Indonesia Republic the article, 24 sub-article 3 :
The candidate of the judge supreme court is proposed by the Judicial Commission to The house of representative to get an agreement and then stated as the Judge Supreme court by the President.
Article 24 B :
 - 1.1 The Judicial Commission (KY) is independent that has an authority to propose an appointment of judge supreme court and other authority in the plan take care and defend prestige, majesty, honor and judges' attitude.
 - 1.2 The member of the Judicial Commission (KY) must have knowledge and experience in the filed of law and have good integrated and attitude.
 - 1.3 The member of the Judicial Commission (KY) is appointed and dismissed by the President on The house of representative (DPR) agreement.
 - 1.4 The structure, position and membership of the Judicial Commission (KY) are ruled by legislation.
2. The law No 22, 2004 about the Judicial Commission (KY).
3. The law No 3, 2009 about the change on the law No 14 1985 about The supreme court.
4. The law No 48, 2009 about the judge power.
5. The law No 49, 2009 about the second change on the law No 2, 1986 about the general judiciary.
6. The law No 50, 2009 about the second change on the law No 7, 1989 about the Religion

Judiciary.

7. The law No 51, 2009 about the second change on the law No 5, 1985 about State Administration Judiciary.

8. The law No 18, 2011 about the change on the law No 22, 2004 about the Judicial Commission (KY).

According to stipulation article 1 stated that the Judicial Commission (KY) is the state institution as stated in 1945 constitution of Indonesia republic.

More in the article 2 stated that the Judicial Commission (KY) is as an independent state institution and in running its duty is free from interference or influence other power.

From explanation above can be seen that the position of the Judicial Commission (KY) in the structure of Indonesia state including in state institution as level as the president and it is not a special government institution or independent special institution which is called *state auxiliary institution*.

The idea informing a special commission which does certain functions concerning to justice power is not something new. In discussing the plan of law about main point of justice power in 1968, proposed an institution which called the Judge Research Judgment Chamber. The Chamber functions giving judgment and taking the last decision about suggestions and proposal concerning equipments, promotion, mutation, dismissal, and an action or punishment to judges who proposed by The Supreme Court or The Ministry of Justice.

B. The position of the Judicial Commission as the Judicial Institution.

The Judicial Commission (KY) is State Institution whose power given by constitution (Constitutional basic power), means as independent state institution, in running its duty is based on 1945 Constitution. The authority which is exclusive and difference the Judicial Commission (KY) from other institutions. By the construction, the Judicial Commission (KY) has a strong legitimation in the structure of state.

Principally, the main function of the Judicial Commission (KY) is to show judge authority which is free through candidate of the Judge supreme court, even supervision to judges as transparent and participating to upright prestige, majesty, honor and taking care of judges' attitude. By these authority and function of the Justice Commission (KY) has important thing and strategy role in developing a state system nowadays, because all determinations or policy which made by state holders can be measured in prestige, majesty and honor to judges' attitude.

The special the Judicial Commission (KY) authority is ruled in article 24B, sub-article 1, 1945 constitution the third amendment, the article resumes, functions, the duty and authority of the Judicial Commission (KY) in create a formula (Pattern). Based on main regulation, The law No 18, 2011 about the change on the law No 22, 2004 about the Judicial Commission (KY) describes a strategy function of the Judicial Commission (KY) through the article 13, stated that, "the Judicial Commission (KY) has authority : (1). propose an appointment of the judges supreme court and Ad-Hoc judges in The Supreme Court to The house of representative, (2). keep and build prestige, majesty, honor and judges' attitude, (3). Determining ethical code and a guide of judges' attitude (KEPPH) with The Supreme Court, (4). Take care and build ethical code.

As the free institution from power influence, judicial institution can run the honest, objective, inside, and fair judiciary process. In a nation and a state life judicial institution is as a hope abusement and the last trust for citizen to get a judiciary.

The peculiarity of judicial comparing to legislative and executive is the substantive of institution product. The Legislative product in the form of Laws and executive product in the form of policy or government regulation is based on "society importance" or "general importance". Meanwhile judicial refers to its verdict (law verdict), on behalf of justice on Allah the almighty". Because of its character, the judge is identified as "The lord assistant". With the position, it means that deviation of power and function had been done by the judge, is abasement/ abusement on function and true mission "The lord assistant".

From this fact that several judges took the wrong a decision, so it needs a state institution that can supervise the judges performance, is the Judicial Commission (KY) has purposes to take care and build prestige, majesty, honor, and judges' behavior and keep quality and consistence of judiciary institution verdict, because it is supervised intensively by independent institution. Because of the Judicial Commission (KY) creates a hope of society even the last trust to get justice (Landing of the last resort).

According to Jimly Assidique, forming the Judicial commission (KY) in structure of Indonesia justice power is that the society of out structure of formal parliament institution can be involved in an appointment, performance assesment process, and possibility judges' dismissal.

In running the duty and authority of the Judicial Commission (KY) as a board *Landing Of The Last Resort* to become the last trust to show a hope citizen in reaching a limited justice, this case is based on by The Law No 18, 2011 about the change on The Law No 22, 2004 about the Judicial Commission (KY) explains the Judicial commission strategy function through article 13 stated that "the Judicial Commission (KY) has authority : (1) propose the judge of supreme court and The Ad-Hoc judge in The Supreme Court (MA) to The House of Representative (DPR), (2) keep and hold prestige, majesty, honor, and judges' attitude, (3) determine ethical code or a guide of judges' attitude (KEPPH) with The supreme Court (MA), (4), keep and hold implementation

ethical code or a guide of judges' attitude. And article 21 is : For the important in implementing authority as stated in article letter b, the Judicial commission has a duty to propose bringing down sanction to the judge to the chairman of the Supreme Court (MA) and the Constitution Court (MK).

Because there is an instruction from the law No 18, 2011 about the change on the law No 22, 2004 about The Judicial Commission, that is the Judicial Commission as **LANDING OF LAST RESORT** in running the duty and a limited authority.

Based on the writer, The Judicial Commission should be given an authority widely in monitoring the judge performance so, the judge as the independent board and impartial judiciary is really kept its quality, and can support a development in free judiciary system, clean and authority, and it should be given a firm authority in proposing or appointing Ad-Hoc judge in The supreme court (MA). Ad-Hoc judge means, whoever the judge Ad-Hoc can be chosen or selected by The judicial commission (KY)? The Corruption criminal action (Tipikor) Ad-Hoc judge or which Ad-Hoc judge ?).

C. The Effect of Judicial Commission in constructing the Clear Judiciary System.

One of the Judicial Commission (KY) formed is to build a clear judiciary system, of course it has a relation to ethical code and judge profession ethical code where ethical code and judge profession ethical code as an indicator to the judge in every running the duty in taking decision.

The judicial commission in running its duty and its authority based on report and finding from Indonesia society. This case is regulated in the law No 2, 2005 about the way the judge supervision.

Therefore The judicial commission in implementing a sanction is regulated in article 14, as follow :

1. The Judicial Commission in plenary meeting has authority to assess or evaluate type and quality of infraction to prestige, majesty, honor and judges' attitude by looking at judge ethical code, and decide the sanction type based on the legislation regulation.
2. The type of sanction as meant in sub-article (1) is : a). Written warning, b). Temporary dismissal, c) dismissal. By the sanction or punishment it will be seen clearly that the judicial commission is very influential in constructing a clear judiciary system, in order the judge in taking a decision based on what are in a firm regulation or a verdict, " For Justice which based on Allah the almighty "

Every country has many state institutions to manage and rule the way government power, in order to every interaction that happened between national and other national with the state doesn't happen disharmonious that will cause conflict that disturb in conducting government in a state.

As we know that Indonesian archipelago has many state institutions that run the duty and authority each other every state institution is responsible to society as having the highest authority in a democratic country. This responsibility can be obligation and duty that must be done by a state completeness instrument in order to create a state which ensures all Indonesia nationals as instructed by 1945 constitution.

The state institutions are The people's consultative assembly (MPR), The house of Representative (DPR), The region representative chamber, President/ Vice President, The board of finances inspection, The Supreme Court and The supreme constitution. Every state institutions has duty and authority which are different based on the stipulation of legislation adjustment. Eventhough after amendment, 1945 Constitution is done by the peoples' consultative assembly (MPR), has changed widely that cause some new state institution, but this case doesn't mean the duty, power and responsibility of the old state equipment instrument has gone and lost, but the new state institution is useful to complete the certain power vacuum that is not belonged yet by the state institution before.

1. The Relation between The Judicial Commission (KY) and The Supreme Court (MK).

There are some stipulations in 1945 constitution regulates the line between the Judicial Commission and the Supreme Court. The stipulation can be a functional relation :

- a. The Supreme Court appointment.

The article 24, sub-article (3), 1945 constitution said that the Judicial Commission (KY) has authority to propose the candidate of judge supreme court to the house of representative to get an agreement. The stipulation is emphasized in article 24 B, sub-article (1) 1945 constitution determines that the Judicial Commission (KY) is independent, has a main authority to propose the appointment of the supreme court judge, also has the other authority in the plan of keeping and standing prestige, majesty, honor and the judges' attitude.

As we know, before forming the Judicial Commission (KY), the mechanism of full filling the candidate judge supreme court and constitution is different. The judge constitution is proposed by the supreme court (MA), the house of representative (DPR) and president, then the justice of the supreme court (MA) is elected through fit and proper test in the house of representative (DPR).

Keeping the independent of The supreme court (MA), the Judicial Commission (KY) is formed that has the authority to propose appointment of the judge supreme (MA). The problem is that the

Judicial Commission (KY) has power to recruit only., while full of authority of approving is in side of the house of representative (DPR), it's not the same with the authority of president to determine. It can be said that the authority is possessed by the Judicial Commission (KY) is very weak from its function, because the Judicial Commission (KY) just process in election or recruit the candidate of the judge supreme only, one day it can be canceled by the house of representative (DPR) or the president even the supreme court (MA) as related institution, if there is an indicator like or dislike.

b. Supervision

The article 24 B, sub-article (1), 1945 constitution determines that the judicial commission (KY) is independent, has the main authority to propose the appointment of the judge supreme, also has other authority in the plan of keeping and standing prestige, majesty, honor and the judges' attitude.

By phrase " In the plan keeping prestige, majesty, honor and the judges' attitude " the authority of KY as stated by the stipulation. Eventhough in certain limit can be meant as supervision, it is not only an authority to supervise to judiciary institution but also to the judge functioner individual, as the justice power agent, the Supreme Court (MA) and judiciary under it, even the Constitution Court (MK) as the power that free (the article 24, 1945 constitution), so in running the duty and judicial authority of judiciary institution is not supervised by other state institution.

The presence of the Judicial Commission (KY), this commission can be position as an external supervisor and independent MA and the judges in MK. Because it is formed by the house of representative (DPR) agreement. So the Supreme Court (MA) can concentrate handling some double cases. The effect of the authority in doing the judge supervision, the Supreme Court (MA) and the Judicial Commission (KY) should be able to work together. In this case, finding and the evaluation result of the Judicial Commission (KY) should be able to respond positive by the Supreme Court (MA) can follow up it etc. Concerning to the mechanism the Supreme Court (MK) and the Judicial Commission (KY) can sit together to finish or solve the their problem.

The presence of the Judicial Commission (KY) becomes the important thing from justice authority has got a fight against from the judge supreme, it seems when the Judicial Commission (KY) feels difficulty to get an explanation from the Supreme Court (MA) about the case that can get an attention from society. The Judicial Commission (KY) gets difficulty to do supervision to the judge who suspected doing infraction ethical code or a criminal action based on a report from society, because of corps spirit from the same Profession (judges supreme) to protect members, for time being internal supervision that is done by the Supreme Court (MA), it cannot run effectively and even tend to be avoided by the Supreme Court (MA). Then this case peaks on proposing *Judicial review* by the judge supreme to the Constitution Court (MK) about the judicial commission law has succeeded making the Judicial Commission (KY) has lost a part of its authority.

2. The relation the Judicial Commission (KY) and the Constitution Supreme (MK)

According to the article 20, the law of the judicial commission (KY), that the KY has a duty to do supervision to the judges' attitude in the plan to build honor and prestige, majesty and keep the judges' attitude. The judge, according to the article 1 number 5 is the justice of the supreme court and judges in judiciary board in the judiciary environment which is under the Supreme Court (MA) and the judge of constitution supreme as mentioned in 1945 constitution.

As the result of judicial review to the Indonesia Republic Law No 22, 2004 about the Judicial Commission (KY), according to the constitution court (MK) is seen systematically and from interpretation side based on *original intent* the decision formula 1945 constitution, stipulation about the Judicial Commission (KY) in the article 24 B, 1945 constitution doesn't relate to stipulation about the constitution court (MK) which is regulated in the article 24 C, 1945 constitution. The evidence that strengthens the reasons, they are : (1) the evidence risalats of Ad-Hoc I committee, The work board of the house of representative (DPR), (2) stipulation the law of the supreme constitution (UUMK) and UUKK that is formed before the law of judicial commission (UUKY). In UUMK supervision function to constitution judge's attitude is decided by the honor chamber, (3) the constitution judge is not the judge as fix profession position, but because of its position judge, and (4) in all mechanism of the constitution judges elction and appointment which is ruled in 1945 constitution is not involved the role of Judicial commission (KY).

The law supervisor and Indonesia society is very surprising when MK with its verdict lost a part of the Judicial commission (KY) authority, because in the same condition judiciary mafia that obtained by the supreme court (MA) tries to be eradicated and it is not suitable with the spirit of eradicating judiciary mafia from all sectors. MK is estimated that it doesn't support the efforts that is supported since period of reformation.

3. The relation between The Judicial Commission (KY) and The house of representative (DPR).
Based on the article 24 A sub-article (3) 1945 Constitution, 138 Jo. The article 24 B sub-article (1) that the Judicial Commission (KY) has authority to propose the candidate of the judge supreme to the house of representative (DPR) to get an agreement. The Judicial Commission (KY) authority is only to recruit then propose to get an agreement from the supreme judge candidate , while the full authority to select the judge supreme is on the house of representative (DPR).

The article 24 B sub-article (3) 1945 constitution, 139 that the members of KY appointed and dismissed by the president with the house of representative agreement. In an appointment and dismissal the judicial commission (KY) is needed because the authority that possessed by the house of representative as decision the word verdict in the form giving an agreement to state agenda. If the appointment and dismissal the members of KY doesn't have an agreement from the house of representative, so automatically the appointment or dismissal the members of KY is fail based on the law. The relation between KY and the house of representative (DPR) can be said as partner in searching the quality of the judge supreme, has high integrity and full of experience even the knowledge widely in the field of law.

4. The relation between the President and the Judicial Commission
According the article 24 B sub article (3) that the member of the Judicial Commission (KY) appointed and dismissed by president with the House of representative agreement. Concerning to the duty and the president authority to the Judicial commission (KY), so there are two duties and authorities, it is appointment of judicial commission member and dismissal the member of judicial commission.

The appointment mechanism of the judicial commission member (KY) has same phases, they are : (1) The president formed the election committee the member of judicial commission, (2) The election committee consists of government elements, the practitioner of law, the academician of law, and the society member, (3) decide and deliver the member candidate of judicial commission as many fourteen (14) candidates, by looking at the composition the judicial commission member as meant in the article 6 sub article (3) in the last long period is thirty (30) days.

The election committee has duty as follow : (1) inform registration the recruitment of candidate judicial commission in the period of fifteen days, (2) do registration and election of administration and quality election and integrated the member candidate of judicial commission in the period of sixty days since the announcement the last registration.

After accepting the member candidate of judicial commission from election committee , president propose names of candidate member judicial commission to the house of representative then the house of representative chooses and decides as many seven persons of judicial commission member.

The dismissal mechanism of the judicial commission member (KY) covers two things, they are a honorable dismissal because of something : (1) pass away (death), (2) him/herself proposal, (3) continually of bodily and spiritual diseases, (4) the end of his/ her position. The dishonorable dismissal on an agreement from the house of representative with the reasons : (1) collide with position oath, (2) suspected to get a sanction or punishment because of his/her guilty in criminal based on a judiciary verdict that has got the power of fix law, (3) do a despicable action, (4) ignore his/her duty and work continually, (5) collide with double position based on the law regulation.

The relation between the equipment of a country is working relation between institutions that formed in order to do the state functions. Based on classical theory about a state at least some important state function such as the function to make a legislation regulation policy (legislative function), the function to run regulation or the function to government implementation (executive function), and the function to bring to justice (judicative function).

The tendency practice of state structure in Indonesia by some experts of state structure law and the experts of political is said to separate power system between the three state function (separation function).

The tool of state equipment based on a state law classical theory cover executive power, in this case can be the president or the prime minister or the king, the legislative power, in this case can be called a parliament or other name is the house of representative, and the judicative power such as the supreme court (Supreme Court). Every an instrument of state equipment can possess other bodies to help its function. The executive power, for example is helped by the vice and ministries that usually lead one certain department. The types of state institution that adopted every country is different, it is based on the development of state structure political history and also suitable to the need of society in the state.

Pasca the verdict of the Constitution supreme (MK) No. 005/PUU.IV/2006 on judicial review the law No 22, 2004 about the judicial commission (KY) that erased supervision function by the judicial commission is hoped not cause horizontal conflict between the Judicial Commission (KY) with The supreme court (MA) or Constitution Court (MK) and the house of representative (DPR) or The president. Running the duty and function based on what has been explained in a legislation as an effective step in wreathing communication ideally between state a institution in a state structure system in Indonesia.

CHAPTER III CLOSING

A. Conclusion

The Judicial Commission is as an institution that instructed by 1945 Constitution of Indonesia Republic that has Vision and Mission. The Judicial Commission (KY) vision is stated as follow : formed of the judicial commission that's clean, transparent, participative, accountable and competent in bringing into the clean, honest, and professional judge. The judicial commission(KY) mission are to: (1). Increase the capacity of the judicial commission institution become clear, transparent, participative, accountable and professional institution. (2) give the service to society and justice seeker effectively and efficiently. (3) prepare and recruit the candidate of the judge supreme, the candidate of the ad-hoc judge in the supreme court, and clean, honest, and professional judge. (4) keep honor, prestige, majesty, and the judges' attitude as effective, transparent, participative and accountable. (5) stand ethical code and the judges' attitude guideline (KEPPH) as fair, objective, transparent, participative and accountable.

The mission and vision of the judicial commission is as an effort or a will in developing the judiciary system which is clean, free, and prestige.

Beside a factor from the Judicial Commission as **LANDING OF THE LAST RESORT** to build the judiciary system which is clean, freedom, and prestige, it found some other supporting factors, such as it is regardless from law role play participation in this case the society role play itself. This factor will build a judiciary system which is clean, free and prestige.

The exist of the judicial commission is as the state institution that is independent, has the authority to propose the judge supreme appointment and other authority in the plan to keep and stand the prestige, majesty, honor and the judges' attitude. The authority and its duty is instructed in constitution, it is the third amendment 1945 constitution Chapter IX the article 24 B. The position of the Indonesia judicial commission is parallel or equivalent with the other state institutions which regulated in 1945 constitution, this case caused the state structure system, it is not known as the state highest institution and the state high institution. It has been the power separated of the exist state institutions. In its relation, then arranged as detail about the judicial commission authority and the duty in the law of Indonesia Republic No 22. 2004 as the last has been changed with the law of Indonesia Republic No 18, 2011.

The judicial commission as *state auxiliary organ* in the justice power has a partnership with the supreme court (MA) and The judicial commission (MK) based on the article 24 B, 1945 constitution which explain that the judicial commission has the authority to propose the appointment of the supreme judge (MA) and has the other authority in the plan keeping honor, prestige, majesty and the judges' attitude, also MA judge, the judiciatures judge is under the supreme court (MA) and the constitution court MK judge. The relation among the president, vice president and the house of representative can be seen in the article 24 B sub-article (3) mention that the member of the judicial commission appointed and dismissed by the president with the house of representative agreement.

B. Suggestion

1. The writer suggests to the house of representative and the president to take steps perfectly to the law No 18, 2011 about the change on the law No 22, 2004 about the judicial commission. Because according to the writer the law of the judicial commission (KY) in the article 13 a is not same or even more contrary to 1945 constitution of Indonesia Republic with the Ground Norm of Indonesia Republic State, it is 1945 constitution. It is not same or contrary , the writer can explain that 1945 constitution of Indonesia Republic never gives the authority or instructed to the Judicial commission to propose the appointment of Ad-hoc judge eventhough in the Supreme Court (MA). (checked the article. 24 A sub-article (3) and the article 24 B, 1945 constitution of Indonesia Republic). But in the article 13 a the law No 18, 2011 about the change on the law No 22, 2004 about the Judicial Commission (KY), mentioned firmly that the constitution supreme (MK) has the authority to propose the appointment Ad-Hoc judge to the house of representative.
Thus, the article 13 a the law of the judicial commission No 18, 2011 is contrary to the 1945 constitution of Indonesia Republic. Based on Lex Superior Derogatur Legi Inferiori, means a legislation regulation that is lower, it can not be contrary to the legislation regulation is higher. If it happens so the legislation regulation which is lower, it is invalid on behalf of the law. The principle is as a reflection one of the principles which is known in Indonesia law system.
2. Hopefully the relation among the Judicial Commission (KY), with the Supreme Court (MA) and Constitution Court (MK) can be binded up well and work together in standing the justice authority image, working by paying attention to ethical code also respect to the position of other state institution. The relation among the Judicial Commission (KY), the House of Representative (DPR), and the President or vice President respect each institutions without politic intervention or the personal interest factor. If each state institution such as The Judicial Commission (KY),The

Supreme Court (MA), The Contitution supreme (MK), The House of Representative Court DPR and President can run the duty and their responsibility with their constitution instruction and pay attention to ethical code well. So it can minimalize causing dispute the state which makes negative image to democracy system in Indonesia.

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