

# Strengthening the Position and Function of the Judicial Commission in the Republic of Indonesia State Administration System

- Imran<sup>1</sup> Huala Adolf<sup>2</sup> Gatot Dwi Hendro W<sup>3</sup> RR. Cahyowati<sup>4</sup>  
1. Students of the Law Doctoral Study Program - Faculty of Law, Mataram University  
2. Promoter, Lecturer at the Faculty of Law, Padjadjaran University, Bandung  
3. Co promoter 1, Lecturer at the Faculty of Law, University of Mataram  
4. Co promoter 2, Lecturer at the Faculty of Law, University of Mataram

## Abstract

The presence of the Judicial Commission in the Indonesian State System after the amendment to the 1945 Constitution is to bring a new direction in the nation's journey, especially in the Judiciary field, to maintain and uphold the code of ethics and behavior and the Dignity of the Indonesian Judge Individuals. The purpose of this research is to analyze the position of the Judicial Commission in the Indonesian State Administration according to the 1945 Constitution of the Republic of Indonesia, analyzing the meaning of other authorities of the Judicial Commission, and analyzing the concept of supervision of judges in realizing an independent judicial power. Research method, type of normative research, using the approach of legislation, conceptual approach, philosophical approach, and historical approach. Using primary, secondary and tertiary legal materials. The legal material obtained is processed and analyzed in a prescriptive normative manner. Conclusion, the position of the Judicial Commission in the Indonesian State System is a state institution that has the same position as other high state institutions. The existence of the Judicial Commission in the system of judicial power is auxiliary and supporting body, the meaning of other authorities in Article 24 B of the 1945 Constitution of the Republic of Indonesia is not clearly regulated both at the level of constitutional norms, and the law on Judicial Commission and practice. The supervision of judges to realize an independent judicial power is to reconcile the institutional supervision of judges and the authority of the supervisory institution. Institutionally, the concept of supervising judges externally is carried out by the Judicial Commission through a one-roof policy; the Judicial Commission has the authority to supervise Judges, Supreme Judges of the Supreme Court and Constitutional Justices in the Constitutional Court.

**Keywords:** Judicial Commission, Republic of Indonesia State Administration System

## 1. Introduction

The presence of the Judicial Commission (hereinafter abbreviated as KY) in the Indonesian constitutional system after the amendment to the 1945 Constitution is bringing new directions in the nation's journey, especially in the field of Judiciary.<sup>1</sup> The Judicial Commission is present to safeguard and uphold the Code of Ethics and Conduct and the Dignity of the Indonesian Judge Personnel. The idea of forming a form that has been existed since 1968 has been started from houses, dismissal and the action / sentence of the position of the judges.<sup>2</sup> These ideas and ideas failed to be included in the Law on Judicial Power.

At the 2001 Indonesian MPR annual session which discussed the third amendment to the 1945 Constitution of the Republic of Indonesia in responding to the demands of judicial reform, agreed upon several amendments and discussion of articles relating to the judicial power, including the KY authorized to propose the appointment of supreme judges and have other authority in order to maintain and uphold the honor, dignity, and behavior of judges.<sup>3</sup>

KY cannot be separated from the existence of the Supreme Court (hereinafter abbreviated as MA) as the last stronghold for justice seekers. MA in which there is an element of the judge as the subject of law enforcement and justice actors, while KY is present as a counterweight in the sense that the KY has a duty given by the Constitution to safeguard and uphold the honor, dignity and behavior of Indonesian judges.<sup>4</sup> This judicial power is so very strong in the context of law enforcement and justice as in the provisions of the Law relating to the process and the task of carrying out law and justice. This article explains that judicial power is a very independent power from various other power interests. Free from anyone's intervention, and put the law as commander.<sup>5</sup>

After the 1945 Constitution has changed that the judicial power in this case the Supreme Court and other

<sup>1</sup> Bagir Manan, *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, "Bandung: CV. Mandar Maju, 1995. p. 56.

<sup>2</sup> Moh. Mahfud MD, *Konstitusi dan Hukum Dalam Kontroversi Isu*, Jakarta: Rajawali Perss, 2010. p. 12

<sup>3</sup> These provisions can be seen clearly and completely in the Law on Judicial Commissions.

<sup>4</sup> Jimly Ashiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, Jakarta: Konstitusi Press 2005, p. 67-78.

<sup>5</sup> Taufiqurrahman Syahuri, "Tafsir Konstitusi Berbagai Aspek Hukum," Jakarta: Kencana Media Group, 2011. p. 28

judicial bodies are no longer the only perpetrators of judicial power, but there are other judicial powers that stand alone outside the Supreme Court but are equal in position namely the Constitutional Court (hereinafter abbreviated MK).<sup>1</sup>

In an effort to strengthen an independent and independent judicial power in accordance with the demands of reform in the field of law, various efforts have been made to amend Law Number 14 of 1970 concerning the Principles of Judicial Power with Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning Principles of Judicial Power.<sup>2</sup> Furthermore, on January 15, 2004 Law Number 48 of 2009 concerning Judicial Power was born. The presence of this new law marks the historical tool for laying out judicial power, especially regarding judicial policies judicial and non-judicial, administrative and financial, less than one roof (one roof system) under the authority of the Supreme Court.<sup>3</sup>

The history of the Indonesian state administration recorded a new history in the matter of the issuance of the Constitutional Court's decision dated August 16, 2006 Number 005 / PUU-IV / 2006, regarding the authority to uphold the honor and dignity and maintain the behavior of judges, no longer owned by KY.<sup>4</sup> The Judicial Commission no longer has the authority, among others: against the behavior of judges, submission of sanctions against judges, proposing awards to judges for their achievements and services especially to constitutional judges. Everything was returned to their respective institutions to oversee the behavior of judges, which had not been running properly.

## 2. Method

This type of research is normative legal research or also referred to as doctrinal research<sup>5</sup>. Normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems faced.<sup>6</sup> Using legislation approaches, conceptual approaches, philosophical approaches, and historical approaches. Using primary, secondary and tertiary legal materials. The legal material obtained is processed and analyzed in a prescriptive normative manner.

## 3. Result and Discussion

### 3.1 *Position of the Judicial Commission in the Indonesian State Administration System according to the 1945 Constitution of the Republic of Indonesia*

One characteristic of a rule of law is the existence of a judicial system that upholds the freedom of the judiciary, the nature of impartiality, freedom of duty and independent. A good and advanced country when the justice system runs as the concept above. Justice that meets the expectations of the people is a reflection of the right legal principles in order to meet the demands and expectations of justice seekers.<sup>7</sup> The main factor in realizing these expectations is the high integrity of judges. Judgment is very important in enforcing law and justice in the Indonesian judiciary.<sup>8</sup>

The fundamental problem in law enforcement in Indonesia is the erosion of public trust in law enforcement institutions, namely the judge as the spearhead in the judiciary. This has been going on since the old order; law enforcement that is seen by the public is very discriminatory in law enforcement and justice.<sup>9</sup> Coupled with the behavior of judges who tend to gain personal benefits in cases that are handled in various ways and opportunities by misusing the positions carried. The authority of the judiciary is very much determined by the extent to which the judge's attitude and behavior are both on duty and outside of duty. It also affects the integrity and independence and determination of the judges in holding the morals and promises that have been made through the oath of office.

KY is an independent institution regulated by the 1945 Constitution, the third result of which is included in Chapter IX regarding judicial power. However, even though the Judicial Commission is included in the chapter governing judicial power, the Judicial Commission is not the perpetrator of the judicial power, but the Judicial Commission has functions related to the judicial power as mentioned in Article 24B paragraph (1). In Article 24B

<sup>1</sup> The Indonesian Constitution (UUD 1945) after reformation has undergone four changes, starting in 1999, 2000, 2001 and 2002. More see Jimly Ashsiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta: Sekretariat Jenderal Mahkamah Konstitusi RI, Second Print, 2006. p 34-36.

<sup>2</sup> Abdul Gani Abdullah, *Proses Penyatuatapan Peradilan Agama di Bawah Mahkamah Agung*, Jakarta; Varia Peradilan edisi tahun ke XII No. 268, 2008. p. 23

<sup>3</sup> See Transitional Provisions Article 42-45 of Law Number 4 of 2004 concerning Judicial Power.

<sup>4</sup> Read the full Decision of the Constitutional Court Number 005 / PUU-IV / 2006 concerning Judicial Review of the Law on Judicial Commission

<sup>5</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum*, Jakarta, Ghalia Indonesia, 1983. p. 24

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Kencana, 2005. p. 35

<sup>7</sup> Moh. Mahfud MD. *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, Jakarta: LP3ES, 2007, First edition, p.214.

<sup>8</sup> Jimly Ashsiddiqie, *"Konstitusi dan Konstitusionalisme Indonesia"*, Jakarta: Sekretariat Jenderal Mahkamah Konstitusi RI, Cet.2, 2006, p. 1.

<sup>9</sup> A Patra M Zen, "Mafia Peradilan dan akses keadilan untuk masyarakat kecil", article on April 30, 2007, posted on the Web: [http://apatra.blogspot.com/2007/04/mafia-peradilan-dan-akses-keadilan.html#\\_ftn](http://apatra.blogspot.com/2007/04/mafia-peradilan-dan-akses-keadilan.html#_ftn)

paragraph (1) it is said that The Judicial Commission is independent and has the authority to propose the appointment of supreme judges and has other authority in order to maintain and uphold the honor, dignity and conduct of judges.

The position of the Judicial Commission in the state administration in Indonesia is a high-level state institution of the president and not a special government institution or a special institution that is independent in other terms called a state auxiliaries institution. Thus the institutional status of the Judicial Commission is not the same as, for example, the Commission General Elections (KPU), National Human Rights Commission, National Commission on Violence Against Women, Examination Commission on State Property, Business Competition Supervisory Commission, National Law Commission, Truth and Reconciliation Commission, Corruption Eradication Commission, National Police Commission, Constitutional Commission, Indonesian Broadcasting Commission, and Commission Child Protection, because there are reasons as follows:

1. The authority of the Judicial Commission is given directly by the 1945 Constitution of the Republic of Indonesia, namely Article 24B
2. KY is expressly and without doubt a part of the judicial authority, because the arrangement is in chapter IX of the judicial power contained in the 1945 Constitution of the Republic of Indonesia.

It is thus clear that the position of the Judicial Commission as a State Institution is an institution whose authority is determined by the 1945 Constitution of the Republic of Indonesia, in which the Judicial Commission is in Article 24b paragraph (1) and (2) in relation to other State Institutions such as the Constitutional Court, Supreme Court, Presidential Election, Parliament, Parliament it's parallel. As a state institution whose authority is determined by the 1945 Constitution of the Republic of Indonesia, KY has the right to strengthen its position in the Republic of Indonesia State Administration System, so that the position can make KY a professional institution without intervention by other institutions.

The pattern of relationships that exist between these institutions is functional and not structural relationships. What distinguishes the functional relationship pattern with the structural relationship pattern here is that it is no longer an instructional pattern that is instructive but works according to the function of each institution in which the present constitutional conception is the construction of check and balance which means that there is a control and balancing function in the State Institution.<sup>1</sup>

The position of the Judicial Commission in the judicial power system post-amendment to the 1945 Constitution, namely where the constitutional existence of the Judicial Commission is very legitimate because it is located in one house with the judicial institution with the guarantee of Article 24B of the 1945 Constitution of the Republic of Indonesia. The internal challenges faced by the KY are the ambivalence of regulations concerning the KY in the 1945 Constitution of the Republic of Indonesia and the collegial organizational structure and leadership model.

### *3.2 The meaning of other authorities of the Judicial Commission regulated in Article 24B paragraph (1) of the 1945 Constitution of the Republic of Indonesia*

According to constitutional amendments, KY “has other authorities in the framework of maintaining and upholding the honor, dignity and conduct of judges.” The constitution formulation does not confirm the authority of the Judicial Commission, but the context of the sentence that formulates the purpose of exercising authority is precisely stated “in order to maintain and enforce honor, the nobility of dignity, and the behavior of judges”. This means that the purpose of KY is formulated while the means to achieve the objectives are not formulated. On the other hand, Law No. 22. In 2004 concerning KY, it actually reversed the pattern of constitutional formulation by making goals as a way. Article 13 letter b of Law No.22 of 2004 formulates, KY “has the authority to uphold the honor and dignity of judges” (Article 13 letter b). There is clearly a sharp difference between these two formulas. In the reality of comparison, especially because KY is built on the experience of other countries, as well as related to the interests of the judges themselves, the way to achieve these goals can be limited or broad. It turned out that other authorities were formulated as “tasks” in Law No.22 of 2004, namely monitoring the behavior of judges, proposing sanctions against judges, and proposing awards to judges.

In essence, the authority of the Judicial Commission depends on the context of the history of the judiciary, the perceived needs, as well as the political decisions that underlie the birth of regulation about this institution. For the sake of independence of the judicial authority, supervision of the “technical-judicial aspect” is an internal problem of the judicial power or even the judge who decides the case. Of course it is clear; KY members are not judicial officers. But it can be debated, what is included and does not include “technical-judicial aspects.” Indeed, it is necessary to realize, the authority of the two KYs influences the career of judges. First, because the authority is to protect and uphold the dignity and behavior of judges. Secondly, because of sanctions regarding their careers in the form of written reprimands, temporary terminations, or dismissals. This is a door that is available and has the potential to make a clash between the implementation of the KY authority with an

<sup>1</sup>Aan Eko Widiarto “KY Merupakan Perwujudan Check and balance” AZAS Edition XVIII/Year/XIV/2006, Faculty of Law UMM.

argument “the independence of judges” in the technical-judicial aspect “and cause resistance.

### 3.3 *The Concept of Supervision of Judges in Realizing an Independent Judicial Power*

The Judicial Commission uses a power approach or is based on the power granted to it in accordance with the concept of a rule of law (*rechtsstaat*) adopted by the 1945 Constitution of the Republic of Indonesia. The Judicial Authority is based on Article 24B paragraph (1) of the 1945 Constitution, namely:

**First**, KY is formed to be able to conduct intensive monitoring of judicial power by involving elements of society in the broadest spectrum and not just internal monitoring. **Second**, the Judicial Commission becomes an intermediary (mediator) or liaison between the power of the government (Executive Power) and the power of the judiciary (Judicial Power) whose main purpose is to guarantee the independence of the judicial power from the influence of any power, especially the power of the government. **Third**, with the existence of KY, the level of efficiency and effectiveness of power (Judicial Power) will be higher in many ways; both regarding the recruitment and monitoring of Supreme Court Justices and financial management of judicial power. **Fourth**, the consistency of the decision of the judiciary is maintained, because each decision has a strict assessment and supervision from a special institution (KY). Fifth, with the existence of KY, the independence of judicial power can be maintained, because politicization of the recruitment of Supreme Judges can be minimized by the existence of KY which is not a political institution, so it is assumed to have no political interest.

## 4. Conclusion

1. The position of KY in the Indonesian Government System is a state institution that has the same position as other high state institutions such as the President, MPR, DPR, DPD, BPK, MA and MK. The existence of the Judicial Commission in the judicial power system is a state auxiliary institution (auxiliary and supporting body) that supports the implementation of independent judicial power to uphold the law and justice carried out by the Judicial Commission and Supreme Court. KY is not an institution that carries out judicial power, but state institutions that assist the implementation of judicial power by the Supreme Court and the Constitutional Court.
2. The meaning of other authorities in Article 24 B of the 1945 Constitution of the Republic of Indonesia has not been clearly regulated at the level of constitutional norms, and the law on KY and practice. The absence of such regulation causes institutional conflict between the Judicial Commission and the Supreme Court and the Constitutional Court. At the level of implementing other powers is carried out by the establishment of a Judicial Honorary Council by the Judicial Commission and Supreme Court. While between the Judicial Commission and the Constitutional Court, the Judicial Honorary Council has not yet been formed.
3. The concept of supervising judges in creating an independent judicial power is to reconcile the institutional supervision of judges and the authority of the supervisory institution. Institutionally the concept of external supervision of judges is carried out by KY through a one-roof policy. KY has the authority to oversee Judges, Supreme Judges in the Supreme Court and Constitutional Justices in the Constitutional Court. The concept of supervisory authority needs to be clarified by giving authority to KY starting from downstream to upstream. KY is given the authority to be involved in recruiting prospective judges at the first level, ad-hoc judges at the Supreme Court, Supreme Court Justices, and Constitutional Court Justices.

## References

- Aan Eko Widiarto “KY Merupakan Perwujudan Check and balance” AZAS Edition XVIII/Tahun/XIV/2006, Fakultas Hukum UMM.
- Abdullah, Abdul Gani. 2008. *Proses Penyatuatapan Peradilan Agama di Bawah Mahkamah Agung*. Jakarta: Varia Peradilan edisi tahun ke XII No. 268.
- A Patra M Zen, “Mafia Peradilan dan akses keadilan untuk masyarakat kecil”, artikel tanggal 30 April 2007, dimuat di Web: [http://apatra.blogspot.com/2007/04/mafia-peradilan-dan-akses-keadilan.html#\\_ftn](http://apatra.blogspot.com/2007/04/mafia-peradilan-dan-akses-keadilan.html#_ftn)
- Ashiddiqie, Jimly. 2005. *Hukum Tata Negara dan Pilar-Pilar Demokrasi*. Jakarta: Konstitusi Press.
- , 2006. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Sekretariat Jenderal Mahkamah Konstitusi RI, Second Print.
- Bagir Manan. 1995. *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*. Bandung: CV. Mandar Maju.
- Moh. Mahfud MD. 2010. *Konstitusi dan Hukum Dalam Kontroversi Isu*. Jakarta: Rajawali Perss.
- , 2007. *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*. Jakarta: LP3ES.
- Peter Mahmud Marzuki. 2005. *Penelitian Hukum*. Jakarta: Kencana.
- Ronny Hanitijo Soemitro. 1983. *Metodologi Penelitian Hukum*. Jakarta: Ghalia Indonesia.
- Taufiqurrahman Syahuri. 2011. *Tafsir Konstitusi Berbagai Aspek Hukum*. Jakarta: Kencana Media Group.