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The Quality Implementation of the Judicial Commission Organization as Justice Institution in Indonesia

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Abstract:

The Judicial Commission's position in the constitutional system of the Indonesian Republic is still having a position which is not clear substantially (laws and regulations). This position can be examined from the increase in number of violations of the ethics code committed by judges between 2014 and 2015. In the Supreme Court release, the number of violations in 2014 was 209 and in 2015 was 265. In addition, there are some disharmonies between laws and regulations in the judicial power, including Laws on Judicial Power, Laws on the Supreme Court, Laws on the Constitutional Court and Laws on Judicial Commissions (including the Law on Prosecutors and Laws of the Police) which becomes the supporting organ (Auxiliary State's Organ) of judicial power. They become the background of weaknesses in the enforcement of the judge's ethics code. Furthermore, the leadership character in the Supreme Court and Judicial Commission puts forward the ego that one feels superior to the other. That becomes the other side of the judicial commission's track record in carrying out enforcement of the code of ethics. It is very important to immediately reactivate the position of the Judicial Commission in enforcing efforts to maintain and uphold the honor, dignity, and behavior of judges through legal power as a justice institution of judge's ethics code. This effort certainly needs to be motivated by the synchronization of norms that apply to the enforcement of ethics code for one-stop judicial power under the judicial commission, ranging from the police, attorney, to judges both Supreme Court judges and Constitutional Court judges.

Keywords: Institution, judicial commission, and ethics code

1. Background

Law, according to Herman J. Pietersen, is a normative building. In this sense, law is conceptualized as an instrument of state or political concerned with justice, with rules of conduct to regulate human behavior. According to this view, the law is an instrument to uphold justice in the form of behavioral guidelines with its main function to regulate human behavior.¹

In a broad sense, the legal position as described above is also not much different as is happening in Indonesia today. Law is an infrastructure for making order which strategically triggers the emergence and development of an existing order within a country. Of course, the existence of the law and also including the constitution (basic law) is much needed.

In the science of constitutional law applies the doctrine of 'Legal Fiction Theory' which states that a country is considered to have a constitution since it was formed. The formation of a country lies in the actions that officially state that the country has been formed, that is through the transfer of sovereignty (transfer of authority) and the parent country, such as the invaders to the colonies.

This can be done through declarations and proclamations, or through revolutions and power struggles through a coup. Jurisdictionally, a country or government can be declared legal since it was formed. However, the legality is still formal and one-sided. Therefore, the degree of legitimacy still depends on the recognition of other parties.¹

The basic principle that exists when a country gets recognition from other countries is when a country implements State principles fundamentally, including the formation of State institutions. One of the mentioned institutional powers is judicial power.

The function and purpose of judicial power according to the Tokyo Principles are:

- guarantee that everyone can live safely under the law,
- promote, within the limits of the judicial function, the protection of human rights in its society, and
- carry out the law impartially between citizens and citizens, and between citizens and the country.¹

Refers to a character, this function can certainly be said to be a function of judicial power which is very important in a country. The independence and freedom of judges in making law breakthroughs that have a value of justice, usefulness, and legal certainty, become a basic value that the function of a country is present in carrying out the people sovereignty in accordance with the rule of law. And one of them is run by the judges under the authority of the judiciary.

In carrying out its functions, the judges have 6 important principles which is used as a reference as stated in The Bangalore Principle, namely:

1.1. Independence Principle

The independence of judges is a guarantee for the upholding of law and justice, and the prerequisites for the realization of the Law State's ideals.

1.2. Impartially Principle

Impartiality is a principle attached to the nature of the judges' function as the party expected to provide a solution to each requested case.

1.3. Integrity Principle

Judge integrity is an inner attitude that reflects the integrity and stability of each judge's personality as a person and as a state official in carrying out his leadership duties.

1.4. Propriety Principle

Propriety and politeness are norms of personal and interpersonal morality that are reflected in the behavior of every judge, both as individuals and as state officials in carrying out their professional duties, which gives rise to respect, authority and trust.

1.5. Equality Principle

Equality is a principle that guarantees equal treatment of all people based on fair and civilized humanity. This principle does not distinguish humans based on differences in religion, ethnicity, race, color, sex, marital status, physical condition, socioeconomic status, age, political views, and so forth.

1.6. Diligence Principle

The competence and diligence of judges is an important prerequisite in the implementation of a good and reliable judiciary. The competences are reflected in the professional abilities of judges gained from education, training or experience in carrying out the duties. While diligence is the personal attitude of the judge that reflects the meticulousness, caution, accuracy, and sincerity in carrying out the professional duties of the judge.¹

In the practice of judicial power by judicial authority (one of them is the Supreme Court), The Supreme Court released a data that mentioned a significant increase in violations of judges' ethics code from year to year.

	Year	Number of Violations		Total
		Judge	Staff	
1	2014	112	97	209
2	2015	118	147	265

Table 1: Violation of the Code of Ethics in the Supreme Court¹

The table above shows a significant increase in violations of the ethics code from 2014 to 2015. From this fact, it can be concluded that the system of enforcing the judge's ethics code is still ineffective. In the provisions of the Republic of Indonesia's Constitution, in addition to the Supreme Court, the Judicial Commission is also given the authority to carry out the function of enforcing the ethics code.

The 1945 Constitution of the Indonesian Republic, in this case, includes Article 24B paragraph (1) which states that the Judicial Commission is independent and has the authority to propose the appointment of Supreme Court Judge and to maintain and uphold the honor, dignity, and behavior of judges. Whereas the Supreme Court is mentioned in Article 24 paragraph (1) which states that the judicial power is an independent power to administer justice for upholding the law and justice. Furthermore, it is explained in paragraph (2) which states that judicial power is runnedper by a Supreme Court and the judiciary beneath it in the environment of general court, religious court, military court, state administration court, and by a Constitutional Court.

The meaning contained in the Republic of Indonesia's Constitution above, indicates that the Judicial Commission is not only functioned to supervise. More than that, the Judicial Commission functions to maintain the dignity and nobility of judges so that the supervision system that is implemented can be different from other state institutions.

In its position, the Judicial Commission ideally has a strategic role, but in practice, the Judicial Commission is not supported by the strengthening of legislation as an ethics code enforcement agency. The real implication is Law Number 18 of 2011 about the Judicial Commission, which does not confirm the position of the Judicial Commission in its function in

enforcing the ethics code to be obeyed by the judges. Some concrete facts show that the judges refused to be called by the Judicial Commission in the process of enforcing the ethics code.

Therefore, it is necessary to have a strategic role in the function of the Judicial Commission, in this case the granting of legal power through legislation instruments. This research will explain the possibility of legal power to make the Judicial Commission as a judicial institution of ethics code.

2. Study

As an institution of power in the law enforcement sector on ethics, The Judicial Commission has an important role in maintaining the nobility and dignity of the institution of judicial power. If properly implemented, this will be in line with States of law's principles.

Since the founding of Indonesia, the founding fathers have established Indonesia as a state of law, as mandated in the general explanation of the pre-amended 1945 Constitution, which states that: The State of Indonesia is a state based on law (*rechtsstaat*) and not based on power (*machtsstaat*). Article 1 paragraph (3) of the 1945 Constitution after the amendment also stipulates that the State of Indonesia is a state of law. So epomo interpreted the formulation and concluded that the state must obey the law, legal regulations, and also applies to all state bodies and equipment. Furthermore, he said that the states of law guarantee the existence law orderly in society, which means that the state provides legal protection to the community. There is a reciprocal relationship between law and power. Therefore, according to Plato, good state administration is a governance based on good legal arrangements. And the administration of the government based on law is one of good alternative in the administration of the state.²

The concept of Indonesia's legal state has its own features related to the culture and pluralistic Indonesian society style. Therefore, the concept of the Indonesian rule of law must be adapted to the social structure of Indonesian society in accordance with the current situation and must be able to keep up with the times based on the ideals of the modern Indonesian state.²

Apart from all of these things, the role of law is strongly influenced by political policy. Mahfud MD said, the function and role of law is greatly influenced and often intervened by political power. Character development of product of law is always influenced or determined by the development of political configurations. A democratic political configuration will produce a responsive/populistic product of law, whereas when the political configuration shifts to the authoritarian side, it will produce conservative/orthodox/elitist or oppressive products of law.² This is the background of the presence of the Judicial Commission as an ethical justice institution in Indonesia.

The role of the Judicial Commission is emphasized in the efforts to build a good image of the judicial power institution who experienced a slump in carrying out their duties and authority all this time. The number of immoral cases carried out by judicial power institutions in Indonesia should get a solution that judicial power needs to develop its thinking construction through the establishment of a clear and non-overlapping enforcement system of ethics code.

The establishment of the Judicial Commission is a logical consequence that arises and unites the roof of the judiciary in the Supreme Court. It turns out that the unification of the roof has the potential to create a monopoly on judicial power by the Supreme Court. In addition, it is feared that the Supreme Court will not be able to carry out the authority of administrative, personnel, financial and court organization which has been carried out by the department. Even a pessimistic view states that the Supreme Court is not possible to carry out the function of roof unification properly because the Supreme Court also hasn't been able to take care of itself.²

Based on the release of the Judicial Commission in Jakarta on December 26th, 2019, The Judicial Commission has received 1,544 public reports and 891 copy letters from January 2nd to December 23rd, 2019 based on the review of the following picture:



Figure 1: The Number of Community Reports

Further data obtained by the Judicial Commission is data of violations committed by Judges based on a review of the Judicial Commission as shown below:



Figure 2: Follow-up from Community Reports by the Judicial Commission

The data above is not only interpreted as a monitoring program carried out by the Judicial Commission, but the position of the Judicial Commission which makes the role of judicial power is not at one point, the Supreme Court. The tendency of power at one point will certainly have the potential to increase the abuse of power.

If the thought is compared to the Judicial Commission, the principles applied in various countries are not very different. In 1999, Wim Voerman, a jurist from the Netherlands conducted research on institutions similar to the Judicial Commission in several European Union countries. In one of the study's conclusions, Voerman suggested that an important incentive to establish judicial commissions in almost all countries studied was to advance judicial independence.²

In line with Voerman, research conducted by A. Ahsin Thohari concluded that the main reasons for the emergence of judicial commission ideas in various countries were:

- Weaknesses of monitoring that intensify the judicial authority, because monitoring is only done internally;
- There is no liaison institution between the government, in this case the department of justice and judicial power;
- Judicial power is considered to have insufficient efficiency and effectiveness in carrying out its duties if it is still preoccupied with non-legal technical issues;
- The low quality and the lack of consistency in decisions of judicial institutions, because they are not intensively monitored by actual independent institutions; and
- The pattern of judges recruitment is too biased with political issues because the institutions that propose and recruit them are political institutions, that is the president or parliament.²

So through the judicial commission, of course the role of judicial power as a law enforcement institution will have clear certainty in guarding the nobility and dignity of judges. To be sure, some issues that become problematic in maintaining the dignity of judges are not only conceptualized in the judge figure, however, it is also being objectified by the prosecutor's law enforcement agency and the police as mentioned in the Constitution Article 24 paragraph (3), that is other institutions related to judicial authority.

But in practice, these institutions do not receive the proper supervision of the ethics code by the Judicial Commission. The judicial commission only oversees Supreme Court judges and does not include Constitutional Court judges. Therefore, it needs to be understood that the Judicial Commission should have an important role in maintaining judicial power, starting from upstream to downstream.

The background to the amendments of 1945 Constitution related to judicial authority clearly shows that the Judicial Commission is placed as a vital state institution to maintain the dignity of judges and monitor them, so that they are not littered with the practices of judicial mafia or judicial corruption that cannot be effectively monitored. Resistance in the Supreme Court is a result of corruption in the judiciary that has occurred for decades. Conflicts between the Supreme Court and the Judicial Commission may also be caused by work styles and leadership that are out of sync, for example the assessment that the Judicial Commission is too over acting.² The conflicts certainly start from the unclear rules in the laws and also the lack of awareness in carrying out ethical enforcement as it should.

2.1. Repositioning of Judicial Commission Position

Before explaining the aspects of the judicial commission repositioning, firstly, this journal will explain the relevance of the relationship between ethical law. Basically, according to Rosjidi Ranggawidjaja, the norms can be divided into ethical

norms and legal norms. Ethical norms include moral norms, religious norms, and norms of decency. These norms come from human beings themselves that is the desire to live properly. However, ethical norms sometimes come from outside, for example from God Almighty through prophets. Sometimes, the rule is born because of human relations, because humans have two dimensions, namely the dimension of personal life and the dimension of interpersonal life. So, there are rules that relate to human personal life such as the rules of religious belief. There are also rules relating to interpersonal life, including moral norms, norms of decency, religious norms, and legal norms.²

In the perspective of Maria Farida Indrati Soeprapto, legal norms have different characteristics from other norms: (a) There is coercion from outside, that is a threat to violations (usually in the form of physical sanctions that can be enforced by state instruments); (b) General, applies to anyone. Furthermore, Maria Farida stated, there are several categories of legal norms based on their form and nature, namely:

- General legal norms, and individual legal norms, if viewed from the intended address (address at);
- Abstract legal norms and concrete legal norms, if viewed from the regulated matter;
- Einmahlig's legal norms, in terms of its applicability; and
- Single legal norms and paired legal norms, viewed from its form.²

In line with the explanation above, ethical enforcement is very important to animate and influence the importance of law enforcement. It can even be said that the quality of law is applied based on the level of ethical enforcement carried out to uphold justice in a country.

Justice is the main target of law, so law enforcement must be aimed to achieve justice, both as individuals and justice for society or social justice. Not only formal justice, but also substantial justice, and even social justice. Therefore, it is important for judges to consider the living law as a social aspect that needs to be considered in deciding cases based on community justice. The living law can be said as a social pressure that can be considered by the judge in deciding a case. H.L.A. Hart in *The Concept of Law's* book says that: *'What is important is that the insistence on importance. Seriousness of social pressure behind the rules is the primary factor determining whether they are thought of as giving rise to obligation...'*².

From this thought, if we examine normatively the contents of the law, there are several laws and regulations governing law enforcement, they are:

	The Law Name
1	Law of the Republic of Indonesia Number 48 Year 2009 about Judicial Power
2	Law of the Republic of Indonesia Number 16 Year 2004 about the Republic of Indonesia's Attorney
3	Law of the Republic of Indonesia Number 2 Year 2002 about Indonesian Republic Police
4	Law of the Republic of Indonesia Number 18 Year 2003 About Lawyers
5	Law of the Republic of Indonesia Number 12 Year 1995 about Correctional Facilities

Table 2: Laws Regulating Judicial Power

Legislation related to lawyers, prosecutors and the police, including correctional institutions related to them consideration of appellation in the 1945 Constitution Article 24 paragraph (3) which discusses other bodies related to judicial authority. In the Law of the Republic of Indonesia Number 48 Year 2009 About Judicial Power, in the explanation of Article 38 Paragraph (1), what is meant by 'other bodies' includes the police, prosecutors, lawyers, and correctional institutions.

However, institutions which greatly influence judicial authority are not one-stop in issues relating to the enforcement of ethics code. This is very unfortunate, considering the role of other powers is very influential to the judiciary power if in accordance with the provisions of Article 24C paragraph (1). The Judicial Commission is independent, authorized to propose appointment of justices, also maintain and uphold the honor, dignity, and behavior of judges.

The illustration explains that the position of the Judicial Commission if interpreted in article 24 C paragraph (1), the definition of a judge is a judge in the sense of judicial power. Therefore, other bodies related to judicial authority should also be maintained its dignity by the Judicial Commission.

This view is in line with the power sharing system in which the division of power function in the state system is carried out in order to provide effectiveness in the administration of state functions. This is done so that there is no overlap when carrying out the functions of the state. Thoughts related to the distribution of power actually existed long ago since the state began to be organized and modernized. One of the most well-known figures associated to the distribution of power in the state system is Montesquieu. But Tan Malaka does not like the distribution of power like Montesquieu's theory because it has several weaknesses that can hamper the operation of the state system in the welfare of society. There are three weaknesses to the state that divides power within the country's system:

- Democracy of the parliamentary system elects parliamentary representatives once in 4, 5 or 6 years, so that the elected representative will occupy parliament for too long, even though the thoughts and needs of the people have changed.

- If the government is distinguished from law makers and law enforcers, then there will be an increase in power over the implementation of the law with departments and bureaus, so that the power is in the hands of the executive.
- There are mutually beneficial relationships between parliament, various banks and companies, so that parliament collects taxes from the public for war or to fulfill the wishes of the capital who are never satisfied in seeking profits.³

The willingness to build morale systemically in judicial power is an important issue in the development of judicial power in Indonesia. This is what really needs to be aspired, creating legal justice that starts from the moral development of law enforcement.

The explanation above can be discussed based on 3 important points contained in Law Number 22 Year 2004 About Judicial Commission, which is explained in 3 important philosophical, sociological and juridical foundations of the legislation formation which states that:

- The Unitary State of the Indonesian Republic is a state of law that guarantees an independent judicial authority to administer justice, in order to enforce law and justice based on the 1945 Constitution of the Indonesian Republic;
- The Judicial Commission has an important role in realizing an independent judicial power through the nomination of Supreme Court Justices and transparent and participatory supervision of judges, in order to uphold the honor and dignity of dignity, and to maintain the judge's behavior;
- Based on the provisions of Article 24B paragraph (4) of the 1945 Constitution of Indonesian Republic, the composition, position and membership of the Judicial Commission is regulated by law.

3. Conclusion

The position of the Judicial Commission is clearly regulated in the Article 24 of the 1945 Constitution of Indonesian Republic, which has the main function of maintaining the nobility and dignity of judges. The presence of the Judicial Commission is motivated by the amendment process of the 1945 Constitution related to judicial authority. The amendment clearly shows that The Judicial Commission is a vital state institution to maintain the dignity of judges and monitor them so that there is no influence from the abuse of power or judicial corruption that has not been effectively monitored internally.

Future repositioning of The Judicial Commission is the legislation related to lawyers, prosecutors and the police, including correctional institutions related to the consideration of appellation in the 1945 Constitution Article 24 paragraph (3) which discusses other bodies related to judicial authority. In the Law of the Republic of Indonesia Number 48 Year 2009 About Judicial Power, in the explanation of Article 38 Paragraph (1), what is meant by 'other bodies' includes the police, prosecutors, lawyers, and correctional institutions. This is clear if the presence of the Judicial Commission seeks to maintain the nobleness and dignity of judges, then the Judicial Commission must also maintain judicial authority from upstream to downstream.

Based on the explanation above, the government needs to correct the Law of the Indonesian Republic Number 48 Year 2009 About Judicial Power, Law of the Indonesian Republic Number 16 Year 2004 About The Republic of Indonesia's Attorney, Law of the Indonesian Republic Number 2 Year 2002 About the Police of Indonesian Republic, Law of the Indonesian Republic Number 18 Year 2003 About Lawyers, and Law of the Indonesian Republic Number 12 Year 1995 About Correctional Facilities that are harmonized related to the role of the Judicial Commission.

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