Judicial Review of Judicial Commission Role in Code of Ethics and Judges Code of Conduct Implementation

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Judicial Review of Judicial Commission Role in Code of Ethics and Judges Code of Conduct Implementation

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***Abstract*—** Judicial Commission as an institution that created for dealing with fraud in the court especially in the judicial world until so far it has not shown significant result as expected by the justice seeker community.

Judicial Commission in carrying out its duties often experience various problems, one of which is an inhibiting factor, especially at the recommendation phase of implementing sanctions against the judge to the Supreme Court. The Supreme Court up to this year has often easily ruled out these recommendations because there is no clear timeframe or time limit on when the Supreme Court must process the recommendations. The existence of Judicial Commission as an independent institution should be accompanied by authority that can support its position and duties as the guardian of the judiciary dignity. Weak response from the Supreme Court proves that Judicial Commission in practice often experiences obstacles and is very easy to be ruled out. The focus of the monitoring program cannot be done independently, and the integrity of judges is getting worse in the public eye

Although the number of reports indicates a significant increase, the follow up that can be carried out by the Judicial Commission is very limited. Efforts to synchronize tasks and authorities between Judicial Commission and Supreme Court from those recorded in 2005 until now have proven unsuccessful. Therefore, it is clear here that systems change is needed so that the Judicial Commission can carry out its duties in maintaining the judicial dignity, standards and values efficiently and effectively. For this reason, it is expected that a revision of Law No. 8 of 2011 concerning the Judicial Commission is to be done again in order to strengthen the authority of the Judicial Commission so that people that are seeking justice can get the justice they are looking for.

Keywords- *Judicial Commission, Code of Ethics, Judge's Code of Conduct*

I. INTRODUCTION

Indonesia as a state of law offers two types of dispute resolution, litigation and non-litigation. Litigation path in Indonesia until now still raises many doubts and pessimisms from the public. This is caused by the behavior of law enforcement officials who are not professional, do not behave fairly, and have an affair in Indonesia. This fact is proven by the period of January to June 2019 there were 58 judges who were proven to violate the Code of Ethics and the Code of Conduct for Judges (KEPPH) according to data obtained from the Judicial Commission in accordance with what was reported by CNN Indonesia, Jakarta (CNN, 2019).

The Judicial Commission in carrying out its duties and authority acts as an independent state institution. The Judicial Commission was formed as a form of deep concern regarding the bleak face of the judiciary and justice that has not been established in Indonesia. The Judicial Commission was formed with two constitutive powers, namely to propose the appointment of a Chief Justice and have other powers in order to

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maintain and uphold the honor, dignity, and behavior of judges. The Judicial Commission is an agency ethics rather than legal institutions (Hoesein, 2016). The mission of the Judicial Commission is to prepare and recruit candidates for Supreme Court Justices, Ad Hoc Judges in the Supreme Court and judges who are clean, honest and professional, maintain the dignity and dignity and behavior of judges in an effective, transparent, participatory and accountable manner, uphold KEPPH fairly, objectively, transparent, participatory and accountable, increase public trust in judges, and increase the institutional capacity of the Judicial Commission to be a clean, transparent, participatory, accountable, and competent institution. The role of the Judicial Commission can also be added or expanded to help reduce the burden on law enforcement duties has been the burden of the judiciary (Hutagalung, 2017).

The Judicial Commission has proven to be an institution that is trusted by the community in terms of the large number of community reports received by the Judicial Commission. According to data obtained from the Judicial Commission website there are 740 public reports related to alleged violations of KEPPH and carbon copies from January to June 2019 (Komisi Yudisial Republik Indonesia, 2019). Judicial reform efforts in Indonesia are unfortunately hampered, which then shows where of the 58 Judicial Commission decisions and proposed implementation of sanctions. The Supreme Court only followed up on the Judicial Commission's proposal to 3 judges, all of which were submitted to the Honorary Panel of Judges (CNN, 20[illegible]).

Based on the chronological description of concern above, the writer interested in discussing and trying to find solutions to the face of Indonesian justice which is getting worse so that in the future the public does not consider that injustice in court is common through a study entitled Judicial Review of Judicial Commission Role in Code of Ethics and Judges Code of Conduct Implementation.

II. Research Method

This study uses normative research methods that focus on the prevailing legal norms and the study of legal norms carried out by examining secondary data and comparing laws with other legal theories and regulations. Normative legal research is a process to find a legal rules, legal principles and doctrines of the law to address the legal issues at hand (Istanto, 2007). Normative research has purposes to study law as an object of study is saying false and true based on legal norms (Sulistiowati et al, 2009). Normative research includes: The study of the principles of law, the systematic study of law, research on the level of synchronization law, the legal history research, law of comparative research (Christiani, 2016).

Data analysis was carried out qualitatively with a descriptive model, namely providing arguments for the results of research that had been carried out, providing a descriptive (assessment) of right or wrong or what should be according to law to the facts or events of the research results.

III. Judicial Commission

The basic Judicial Commission was formed through a third amendment to the 1945 Constitution of the State of the Republic of Indonesia. The basic purpose which was the impetus for the formation of the Judicial Commission was based on concerns over the dismal judicial conditions and justice in Indonesia that was not upright. The Judicial Commission is formed and given two constitutive powers, namely proposing the appointment of Supreme Court justices and having other powers in order to maintain and uphold the honor, dignity, and behavior of judges. The Judicial Commission has experienced dynamics in carrying out their duties, testing of Law Number 22 of 2004 to the Constitutional Court (MK) by a number of Supreme Court Justices giving birth to the Decision of the Constitutional Court No. 005 / PUU-IV / 2006. The ruling renders some authority in the supervision of judges and Constitutional Court judges invalid. Regarding

constitutional judges, the verdict became a debate because the applicant never submitted it (Komisi Yudisial Republik Indonesia, 2019).

The revision of Law Number 22 of 2004 then improved the situation which also resulted in Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commission. Other legal basis that subsequently strengthened the position included Invitation Number 49 of 2009 concerning Second Amendment to Law Number 2 of 1986 concerning General Judiciary, Law Number 50 of 2009 concerning Second Amendment to Law Number 7 of 1989 concerning Religious Courts, and Law, Law Number 51 of 2009 concerning Second Amendment to Law Number 5 of 1985 concerning State Administrative Court.

Law Number 18 of 2011 provides various new duties and powers for Judicial Commission, including:

1. Select the appointment of an ad hoc judge in the Supreme Court.
2. Make efforts to increase the capacity and welfare of judges.
3. Take legal and other steps to maintain the honor, dignity and conduct of judges.
4. Do wiretapping in collaboration with law enforcement officers.
5. Make a forced summons to witnesses.

IV. Understanding of the Code of Ethics and the Code of Conduct for Judges (KEPPH)

According to Kieser, professional ethics as a life attitude is the ability to meet the needs of professional services from clients with involvement and expertise as a service in the context of community obligations as a whole to members of the community who need them accompanied by careful reflection. Professional ethics contained in the code of ethics is a philosophy about the responsibilities and obligations in carrying out the noble profession well. High morality from the bearer of professional ethics is expected.

The law in practice (*das sein* / actual) with the law in theory (*das sollen* / which should be) often looks different from the contrast. The law is not just a death article contained in a statutory regulation, but has been brought to life by a living interpreter called a judge (Ahsin, 2004).

Court proceedings are settled with the judge as the main actor in the court proceedings. The delivery of this role must be carried out while maintaining the honor, dignity, and ethics and behavior of judges (Surat Keputusan Bersama Ketua Mahkamah Agung RI dan Ketua Komisi Yudisial RI, 2009). This aims to create an independent, neutral (competent), competent, transparent, accountable and authoritative court capable of upholding the authority of the law, the protection of the law, legal certainty and justice. These objectives are *conditio sine qua non* or absolute requirements in a country based on law (Surat Keputusan Bersama Ketua Mahkamah Agung RI dan Ketua Komisi Yudisial RI, 2009). The judge's obligation to maintain the dignity and dignity of his judge, as well as the behavior of judges gave birth to KEPPH which is a single unit.

The basic principles of the Code of Ethics and the Code of Conduct for Judges are implemented in ten rules of conduct including behaving fairly, behaving honestly, behaving wisely and wisely, being independent, having high integrity, being responsible, upholding self-esteem, being highly disciplined, behaving modestly, and being professional.

V. Discussion

Judicial Commission is an important irreplaceable state institution whose existence is very much needed. This not only applies to Indonesia but other countries such as the Philippines, Thailand, Italy, the Netherlands, France, New South Wales, Peru and the State of Wiscounsin (Komisi Yudisial Republik Indonesia, 2014). The main reason is due to several things, including (Ahsin, 2004):

1. Weak incentive monitoring of judicial authority, because the nature of monitoring is only done within the internal scope.
2. There is no institution that liaises between executive power and judicial power.
3. Judicial power is deemed not to have sufficient efficiency and effectiveness in carrying out its duties and authorities if there are still technical problems that are not in the legal field.
4. There is no consistency in court decisions or contradictory decisions, which are because each decision does not receive a strict evaluation and supervision from a special institution.
5. The pattern of judge recruitment is closely related to political problems and maneuvers, because the institutions that propose and recruit them are political institutions, namely the president and parliament.

Based on some of the reasons above by considering the independence of the judicial commission, it is better that in carrying out its supervisory duties, Judicial Commission no longer needs to merely provide recommendations on the implementation of judicial sanctions that violate KEPPH to the Supreme Court, but Judicial Commission as an independent institution can conduct investigations, court proceedings, up to the application independent sanctions like the Corruption Eradication Commission. Judicial Commission's position as a truly independent institution in the context of explaining its authority should be free from institutional intervention or other powers (Komisi Yudisial Republik Indonesia, 2014).

This system change is needed because the law should move dynamically to follow the development of society. The law is always far behind the development of community needs (Christianto, 2011). Therefore, progressive law is needed, if seen from the development of community needs as seen from the many reports of the community against judges in Indonesia the action must be implemented immediately. The weak and slow response of the Supreme Court to the recommendations of the Judicial Commission implementation cannot be tolerated and can create confusion regarding the legal clarity that should be offered by the rule of law.

The existence of Judicial Commission in Indonesia can also be seen from the state of the implementation of judicial power which is always influenced by government and other powers including the power of money, which has encouraged the thought of the need for an institution that can guarantee judicial power to be able to run in accordance with the objectives of the law, namely community justice (Fauzan, 2008). The presence of the Judicial Commission is demanded to avoid the intervention of executive power, namely the President into the Supreme Court through the mechanism of appointing Supreme Court Justices to the Judicial Court, so that the Supreme Court is free from the influence of executive power so that an independent judicial power can be created (Harjono, 2001). Judicial Commission is also expected to be able to minimize the political interference of the DPR in selecting and determining the Supreme Court justices in the Supreme Court (Jimly, 2005). Judicial Commission's presence as an external supervisory body for judicial power is to involve the Indonesian people outside the official structure of the parliamentary institution in the process of appointing, evaluating performance and possibly dismissing judges. As an external supervisory body of judicial authority in court trials, there are still many judges who run the trial examination process in violation of the Code of Ethics and KEPPH. The tendency of the violation if the case being handled does not attract the attention of the court community is undisciplined and appears to show arrogance of power and does not position a neutral one. The Judge's authority who led the proceedings wisely and objectively was still far from the expectations of the community (Syahrizal, 2019). In the future, it is expected that the achievement of an independent and impartial judicial power (independent and impartial judiciary) which is at the same time balanced by the principle of accountability. The presence of the Judicial Commission is expected to provide new hope for justice seekers to realize a clean and authoritative judicial institution (Devica, 2007).

VI. CONCLUSIONS AND RECOMMENDATIONS

Judicial Commission in carrying out its duties often experience various problems, one of which is an inhibiting factor, especially at the recommendation stage of implementing sanctions against judges to the Supreme Court. The Supreme Court until this year has often easily ruled out these recommendations due to the absence of a clear timeframe or time limit regarding when the Supreme Court should process the recommendation.

The existence of Judicial Commission as an independent institution should be accompanied by authority that can support its position and duties as the guardian of the dignity of the judiciary. Weak response from the Supreme Court proves Judicial Commission in practice often experiences obstacles and is very easy to be ruled out. The focus of the monitoring program cannot be done independently and the integrity of judges is getting worse in the eyes of the public.

Although the number of reports indicates a significant increase, the follow up that can be carried out by Judicial Commission is very limited. Efforts to synchronize tasks and authorities between Judicial Commission and Supreme Court from those recorded in 2005 until now have proven unsuccessful. Therefore, it is clear here that a system change needs to be made so that the Judicial Commission can carry out its duties in maintaining the dignity and judge's dignity efficiently and effectively.

For this reason, it is hoped that a revision of the Judicial Commission Law will be revived in the context of strengthening the duties and authority of the Judicial Commission so that people seeking justice can get the justice they are looking for and not drowning in power, especially the power of money.

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