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RECONSTRUCTION OF THE JUDICIAL COMMISSION'S AUTHORITY IN PROMOTING JUDGES WITH INTEGRITY

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ABSTRACT

The authority of the Judicial Commission (KY) to supervise judges is diminishing due to opposition from the Supreme Court judges and constitutional judges. Cases of corruption and bribery involving Supreme Court judges and constitutional judges indicate that external oversight by the KY is crucial to maintaining judges' honor, dignity, and behavior. This research discusses the importance of external supervision in realizing the integrity of judges. The research uses a normative juridical approach, which examines norms or legal rules as a structure of norm systems related to a legal event. The data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Based on the analysis, it is concluded that: 1) Supervision of judges, both internally and externally, is necessary and crucial to prevent them from abusing the freedom or independence given to them. Various cases of bribery and corruption involving judges indicate that without external supervision, there will be a risk of abuse of power. 2) KY, as an external supervisor, also needs to be given authority to select not only Supreme Court judges but judges at all levels of the judiciary within the Supreme Court. 3) KY conducts external monitoring of all judges, including judges to the Supreme Court and constitutional judges, to ensure the integrity of the judiciary. In order to ensure the optimal operation of KY's authority, KY representatives need to be established in provinces and districts/cities since judges are distributed throughout Indonesia both in provinces and districts/cities.

1. Introduction

Article 1 of Paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945) states that Indonesia is a state based on the rule of law. The consequence of a constitutional state is that the government ensures that everyone has access to justice.¹ A constitutional state is not merely a state based on laws; otherwise, the legislative body could enact laws according to their desires, the executive could implement laws, and the legislative could enforce laws. A constitutional state extends beyond laws; it includes constitutions, charters, and conventions worldwide that meet the qualifications of legislative and executive powers and establish independent judiciary institutions as guarantors.²

One characteristic of a constitutional state is the separation of powers, aiming to prevent power concentration in a single institution or position. Concentrated power tends to be absolute and prone to abuse; as stated by Lord Acton, "Power tends to corrupt, but absolute power corrupts absolutely."³

The state power is divided among the executive, legislative, and judiciary/judicial powers. A constitutional state mandates that the judiciary power must be independent, impartial, and free from other powers.⁴ The goal of judicial independence aligns with the goal of a constitutional state, which births judicial power, ensuring an independent judiciary within the rule of law.⁵ Judicial power freedom implies that no interests should influence judges in carrying out their judicial duties, including political or economic interests.⁶ Independent judicial power should be understood as free from intervention by any party, by anyone, including those causing judges to feel intimidated when examining and deciding a case.⁷ In resolving cases, judges interpret and apply the law. In cases where the judge is tasked with resolving cases that lack justice, they may devise new legislation to ensure fairness.⁸

1 Paripurna Sugarda and Muhammad Rifky Wicaksono., Power to the People: Enhancing Competition Law Enforcement in Indonesia through Private Enforcement. *Asia Pacific Law Review*, Vol.26 No.2, July 3, 2018

2 Jonathan Mance., The Frontiers of Executive and Judicial Power: Differences in Common Law Constitutional Traditions, *Asia Pacific Law Review*, Vol.26 No.2, July 3, 2018

3 Prasetyo Hadi Prabowo., Telaah Kritis Terhadap Berbagai Teori Hukum Yang Berlaku Di Negara Sedang Berkembang, *Justice Pro: Jurnal Ilmu Hukum*, Vol.4 No.2, December 30, 2020, page.96–102; Suraji Suraji., Sejarah Panjang Korupsi Di Indonesia Dan Upaya Pemberantasannya, *JKAP (Jurnal Kebijakan Dan Administrasi Publik)*, Vol.12 No.2, December 15, 2015, page.135–48

4 Agus Nurudin., Upholding the Impartiality of Judges in Judicial Systems, *Hasanuddin Law Review*, Vol.6 No.1, 2020, page.80–88

5 David Boies., Judicial Independence and the Rule of Law, *Washington University Journal of Law & Policy*, Vol.22 No.1, January 1, 2006, page.057–070.

6 Nur Agus Susanto., Independensi Kekuasaan Kehakiman Dan Efektivitas Sanksi Untuk Kasus Hakim Penerima Suap, *Jurnal Yudisial*, Vol.4 No.1, 2011

7 Agus Nurudin., Upholding the Impartiality of Judges in Judicial Systems, *Hasanuddin Law Review*, Vol.6 No.1, 2020, page.80–88

8 Leoni Ayoub., Judicial Activism in the Evolution of a Judicial Function for the International Courts: The Role of Compétence de La Compétence, *Netherlands International Law Review*, Vol.69 No.1, May 1, 2022, page.29–55

Judicial power freedom should not be absolutely understood, as it may lead to deviant behavior by judges.⁹ Therefore, there is a need for balance in maintaining judicial power¹⁰ through external supervision. In Indonesia's constitutional state, judicial power freedom is guaranteed by Article 24 of the 1945 Constitution, although it does not explicitly specify whether it refers to the personal freedom of judges, institutional freedom, or both. There are two opinions: first, judicial power freedom is institutional, separate from the executive and legislative branches, and second, it refers to the personal freedom of judges in resolving cases. The National Law Commission states that judicial power freedom includes both personal and institutional freedom.¹¹

Judicial power is exercised by the Supreme Court (MA, *Mahkamah Agung*) and the Constitutional Court (MK, *Mahkamah Konstitusi*). Additionally, the Judicial Commission (KY, *Komisi Yudisial*) is a supporting institution for judicial power. Structurally, KY holds the same status as MA and MK. However, functionally, KY is an auxiliary institution for judicial power. KY does not exercise judicial power functions like MA and MK; it is not a law enforcement agency but an ethical norm enforcement agency.¹² The function of KY is to uphold the dignity, honor, and authority of judges and maintain the independence of judges in making decisions in court.¹³ In a constitutional state, issues of honor, dignity, and the behavior of judges are highly strategic factors in supporting efforts to achieve a clean judiciary.¹⁴

The authority of KY based on the 1945 Constitution is to propose the appointment of Supreme Court judges and to have other powers to maintain and uphold the honor, dignity, and behavior of judges. The term "judges" in this provision can be interpreted as judges in any judicial environment, including constitutional judges. The process of appointing judges is a crucial part of maintaining the independence of the judiciary and preserving public trust in the judiciary.¹⁵

KY has faced various dynamics and challenges regarding its authority. There have been indications of efforts to weaken the presence and existence of KY.

9 Achmad Mitftah Farid, Hibnu Nugroho, and Dwi Hapsari Retnaningrum., Pelaksanaan Fungsi Pengawasan Terhadap Perilaku Hakim Oleh Mahkamah Agung, *Soedirman Law Review*, Vol.2 No.1, February 12, 2020

10 Andriani Larasati., Kontestasi Kewenangan Komisi Yudisial sebagai Element of External Auditor dalam Proses Rekrutmen Hakim Agung, *Jurnal Hukum Lex Generalis*, Vol.1 No.3, June 29, 2020, page.21–38

11 Ujang Bahar., Strengthening the Roles of Judicial Commission, *Padjadjaran Jurnal Ilmu Hukum (Journal Of Law)*, Vol.5 No.2, September 26, 2018, page.387–401.

12 Verri Octavian., Kewenangan Komisi Yudisial Dalam Pengawasan Terhadap Prilaku Hakim Pasca Judicial Review, *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan*, Vol.9, February 12, 2019, page.117

13 Galih Erlangga and Dian Agung Wicaksono., Implikasi Putusan Pengujian Undang-Undang Terhadap Kemerdekaan Kekuasaan Kehakiman Pada Mahkamah Agung, *Jurnal Yudisial*, Vol.9 No.2, August 8, 2016, page.113–30

14 Meylin Sihaloho., Seleksi Pengangkatan Hakim Dalam Sistem Peradilan Indonesia: Kajian Putusan Mahkamah Konstitusi Nomor 43/PUU-XII/2015, *Jurnal Wawasan Yuridika*, Vol. 33, No. 2, 2015, page.204–18

15 Pan Mohamad Faiz., A Critical Analysis of Judicial Appointment Process and Tenure of Constitutional Justice in Indonesia, *Hasanuddin Law Review*, Vol.1 No.2, August 30, 2016

Law Number 22 of 2004 concerning the Judicial Commission, as amended by Law Number 18 of 2011, has been subject to several judicial review requests regarding KY's authority, and most of these requests have been granted. Decision Number 005/PUU-IV/2006 by the Constitutional Court has reduced and limited KY's authority to oversee Supreme Court judges and Constitutional Court judges. This means that the judges subject to KY oversight are limited to judges in the first instance and appellate courts within the judiciary under the Supreme Court. This has resulted in KY lacking significant authority to monitor judges. Therefore, KY has not been optimal in law enforcement efforts, especially in carrying out its function and authority to conduct external oversight of judges.¹⁶

The opportunity for KY to oversee Constitutional Court judges resurfaced in Law Number 4 of 2014 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2013 on the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law. Article 27A of Paragraphs (1) and (2) stipulate that the drafting of the Code of Ethics and Guidelines for the Behavior of Constitutional Court Judges and the formation of the Ethics Council of Constitutional Court Judges are done jointly by the Constitutional Court and KY. However, Article 27A of Law Number 4 of 2014 was also subject to judicial review, and Decision Number 1-2/PUU-XII/2014 by the Constitutional Court, annulled KY's authority to be involved again in both preventive and repressive oversight of Constitutional Court Judges. This provision in Article 27A was later amended with the enactment of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. Article 27A of Paragraph (2) of Law Number 7 of 2020 stipulates that the Ethics Council of the Constitutional Court members consist of one constitutional court judge, one KY member, and one legal scholar. This provision was also subject to judicial review and was granted through Decision Number 56/PUU-XX/2022 by the Constitutional Court. Consequently, KY no longer has the authority to oversee constitutional court judges.

The removal of KY's authority to oversee Supreme Court judges and Constitutional Court judges often sparks discussions, especially when bribery and corruption involving judges occur. Cases such as those involving Supreme Court judges Sudrajad Dimiyati and Gazalba Saleh, as well as Chief Justice of the Constitutional Court Akil Mochtar and Constitutional Court judge Patrialis Akbar, serve as a mirror highlighting the importance of oversight over judges in all judicial environments, including Supreme Court and Constitutional Court judges. This ensures that judges, as representatives of God on Earth, maintain integrity and act justly. These cases involving judges demonstrate that the issue of corruption in Indonesia is increasingly acute, spreading not only within the executive and legislative branches but also within the judiciary.¹⁷ This also

16 Bambang Sutiyoso., Penguatan Peran Komisi Yudisial Dalam Penegakan Hukum Di Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol.18 No.2, April 15, 2011, page.266–84

17 Mispansyah Mispansyah., A Comparison Approach in Corruption Eradication: An Empirical Examination, *Hasanuddin Law Review*, Vol.4 No.2, September 1, 2018, page.219–32

indicates that judges are influenced not only by power but also by money. Therefore, the quality of a judge depends on their capacity and integrity.¹⁸

Several studies related to KY's authority have been conducted, as written by Hasanuddin Hasim in his thesis. He stated that there are obstacles for KY in conducting oversight, including the reluctance of judges to attend when summoned, lack of participation from the public in monitoring, recommendations for sanctions from KY not being followed up by the Supreme Court, and KY's lack of authority to conduct wiretapping.¹⁹ Similarly, when KY conducts oversight and finds a violation of the ethical code by a judge, KY does not impose sanctions but only recommends the imposition of sanctions against the judge in question to the Supreme Court.²⁰

The authority currently held by KY is limited to proposing the appointment of Supreme Court judges to the People's Representative Council (DPR, *Dewan Perwakilan Rakyat*). Indeed, this authority is not very relevant because the appointment proposal process like this is typically carried out by a specially formed temporary committee (ad hoc committee), not by a permanent state institution with authority directly derived from the constitution (constitutionally based power).²¹ The diminishing authority poses an increasingly challenging task for KY to achieve judges with integrity and maintain a clean and authoritative judiciary. Cases of bribery and corruption involving Supreme Court judges and Constitutional Court judges can serve as grounds to strengthen KY's authority. Therefore, this research aims to grant KY the authority to oversee all judges, including Supreme Court judges and judges within the judicial system under the Supreme Court, as well as Constitutional Court judges.

2. Research Methods

This research is a legal study aimed at seeking scientific truth²² Regarding the research object,²³ which is the authority of the KY. The researcher's approach is normative juridical, which examines principles, norms, regulations, and doctrines. Normative legal research examines legal principles or rules as a system related to a legal event.²⁴ The data used consists of secondary data,

18 Iwan Satriawan et al., A Comparison of Appointment of Supreme Court Justices in Indonesia and Malaysia, *Journal of Indonesian Legal Studies*, Vol.7 No.2, December 21, 2022, page.633–76

19 Hasanuddin Hasim., *Peran Komisi Yudisial Dalam Pengawasan Hakim Dan Pelaksanaan Kode Etik Pedoman Perilaku Hakim*, Yogyakarta: Master's thesis, Universitas Islam Indonesia, 2016

20 Dadan Taufik Fathurohman., *Rekonstruksi Regulasi Kewenangan Komisi Yudisial Dalam Menjaga Keluhuran Marwah Dan Martabat Hakim Yang Berdasarkan Nilai Keadilan*, Semarang: Doctoral thesis, Universitas Islam Sultan Agung, 2023

21 MPR RI, *Kajian Akademik Penataan Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia*, Badan Pengkajian MPR RI, 2019.

22 Irwansyah and Ahsan Yunus, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, 4th ed., Mirra Buana Media, 2020.

23 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri /Ronny Hanitijo Soemitro / OPAC Perpustakaan Nasional RI.*, Ghalia Indonesia, 1982, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=337019>.

24 Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum : Normatif & Empiris*, Pustaka Pelajar, 2010, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=717229>.

which includes primary legal materials and secondary legal materials. Secondary data collection was conducted through a literature review and document study. The obtained secondary data was analyzed using a normative method and thereafter presented in the form of descriptive data.

3. Results and Discussion

3.1 The Judicial Power

The judicial power is a power that is independent from the influence of other powers. The principle of independence of the judicial power in Law Number 48 of 2009 concerning judicial power includes:²⁵

3.1.1 Free from interference by the state and others.

3.1.2 Free from coercion, directives, or recommendations from extrajudicial parties, except in cases permitted by law.

The judiciary power exercised by the Supreme Court and other judicial bodies is one of the state institutions that has existed since the Dutch East Indies era. The Supreme Court for the *Dutch East Indies* government was called *Het Hoogerechtshoof vor Indonesia*, which served as the court of cassation. As the highest court, its authority was:²⁶

3.1.3 Supervising the administration of justice in Indonesia to guarantee its proper and equitable progress

3.1.4 Supervising judges and the judiciary

3.1.5 Issuing warnings when necessary

3.1.6 Requesting reports and explanations from all courts

In *fiqh siyasah*, judicial power is equal with *al-sulthah al-qadha'iyyah*, held by the qadhi or judge. Initially, judicial authority was held simultaneously by the caliph. However, the caliph also appointed qadhis tasked with adjudicating disputes within the community. For example, Khalifah Abu Bakar appointed Abu Darda as qadhi in Madinah, Syuraih in Basrah, and Abu Musa al-Asy'ari in Kufah. These *qadhis* were appointed to lead the field of justice and law. Sometimes, the selection of a qadhi was entrusted to regional authorities. For instance, during the time of Khalifah Ali, the authority to appoint a qadhi was delegated to al-Nakha'i when he was sent to Egypt. The practice of judiciary in the history of Islamic statehood indicates that the caliph was the head of the judiciary, while the qadhis were his representatives in various regions due to the vastness of the territories and the distance from the center of power.²⁷

The judicial power in the Indonesian constitutional system is autonomous. The autonomy of the judicial power in Indonesia is guaranteed by Article 24 of Paragraph (1) of the 1945 Constitution, which states that the judicial power is

25 Dachran Busthami., *Kekuasaan Kehakiman Dalam Perspektif Negara Hukum di Indonesia, Masalah-Masalah Hukum*, Vol.46 No.4, October 30, 2017, page.336–42.

26 Muhtadi Muhtadi., *Problematika Yuridis Sistem Alokasi Hukum Dalam Pengawasan Hakim [The Juridical Problems of Allocation Legal System in the Judge Control]*, *Fiat Justisia: Jurnal Ilmu Hukum*, Vol.9 No.2, 2015

27 Ahmad Sukardja, *Hukum Tata Negara Dan Hukum Administrasi Negara: Dalam Prespektif Fikih Siyasah*, 2nd ed., Sinar Grafika, 2014

independent to administer justice in upholding the law and justice. This provision emphasizes the fundamental principle of judicial power, namely judicial independence. Essentially, judicial power must be independent in the sense of being structurally free from interference from other branches of power, namely the legislative and executive branches. In resolving disputes, the proper administration of justice depends on adherence to the fundamental values underlying the judicial system, namely judicial independence, procedural justice, efficiency, accessibility, public trust in the judiciary, and constitutional values, which include constitutional protection of the judiciary.²⁸

Countries worldwide also uphold the independence of judicial power as regulated in their constitutions. For example, in the Basic Law for the Federal Republic of Germany (Grundgesetz: GG), Article 92 grants judicial power to judges, and the independence of judges is guaranteed by Article 97 GG.²⁹ In England, the independence of the judiciary can be traced back to the enactment of the Act of Settlement 1701 in the English Parliament. Judicial independence and impartiality can ensure the supremacy of the law.³⁰ However, there are also countries where judicial independence is weak. For example, in China, despite taking steps to enhance the authority and independence of the judiciary, there are still structural weaknesses. In the Chinese judicial system, institutional judicial power is not independent, as its decisions are influenced by the policies of the Communist Party of China (CPC).³¹

Functionally, in conducting examinations, adjudicating, and deciding cases, judges are not influenced or interfered with by various extrajudicial forces, such as political power, economic power, or public opinion. Judicial bodies, as executors of judicial power, have full autonomy to examine, adjudicate, and decide on cases under their jurisdiction. Consequently, judicial bodies must be separate institutionally and functionally from other branches of state power.³² The current regulation regarding judicial power is stipulated in Law Number 48 of 2009 concerning Judicial Power. The absolute independence of the judicial power following the amendment of the 1945 Constitution is closely related to

28 Shimon Shetreet., The Duties of Fairness and Impartiality in Non-Judicial Justice, *Asia Pacific Law Review*, Vol.21 No.2, December 1, 2013, page.197–222

29 Sebastian Glaser and Sarah Hartmann., CJEU: Germany's Public Prosecution Authorities Cannot Be Regarded as a 'Judicial Authority' with Regard to EAWs—The Truth or a Misconstrual of the Legal Reality?, *German Law Journal*, Vol.23 No.4, May 2022, page.650–60

30 H P Lee and Michael Adams., Defining Characteristics of 'Judicial Power' and 'Court' - Global Lessons from Australia, *Asia Pacific Law Review*, Vol.21 No.2, December 1, 2013, page.167–96

31 Zheng Tang., Judicial Enforcement of Intellectual Property Rights in China - from Technical Improvement to Institutional Reform, *Asia Pacific Law Review*, Vol.27 No.2, July 3, 2019, page. 176–97

32 Aidul Fitriadi Azhari., Paradigma Kekuasaan Kehakiman Sebelum Dan Sesudah Reformasi, in *Meluruskan Arah Manajemen Kekuasaan Kehakiman* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2018), https://www.komisiyudisial.go.id/frontend/publication_detail/54/meluruskan-arahan-manajemen-kekuasaan-kehakiman.

the implementation of a presidential system of government, which necessitates the separation of powers among the branches of state authority.³³

The independence of judicial power is manifested through the assurance of external oversight by the Judicial Commission (KY). Oversight by the KY is based on the Code of Conduct for Judges. This code has been established jointly by the Supreme Court (MA) and the KY without diminishing the freedom of judges to examine and adjudicate cases. The implication is that the KY can analyze court decisions that have acquired legal force as the basis for recommendations, such as judge reassignments.³⁴

Judges, as enforcers of law and justice within the judicial power, must be professional and have integrity. In order to select professional judges and uphold their profession as enforcers of law and justice, the existence of the Judicial Commission (KY) is hoped for amidst the public's widespread dissatisfaction with the judicial system thus far.

3.2 Actors of Judicial Power (Supreme Court "MA" and Constitutional Court "MK")

The actors of judicial power in each country around the world vary according to the constitutional system applied in that country. Judicial power in Indonesia, based on Article 24 paragraph (2) of the 1945 Constitution, is exercised by a Supreme Court and subordinate judicial bodies within the general, religious, military, administrative, and constitutional courts.

3.2.1 Supreme Court (MA)

The authority granted to the Supreme Court is to adjudicate at the appellate level for cases resolved within the general judiciary, religious judiciary, military judiciary, and administrative judiciary. The Supreme Court serves as the state's highest court among the judicial bodies within these four judicial domains. This means that cases resolved within all these judicial domains ultimately culminate in the Supreme Court.

In addition, the Supreme Court also has the authority to review regulations below the law against the law.³⁵ In Article 7 of Paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations as amended for the second time by Law Number 13 of 2022, regulations below the law include Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regulations. Other regulations also fall under the authority of the Supreme Court for review. The Supreme Court employs the law as the benchmark when conducting such reviews. This means that only laws can be

33 Azhari.

34 MPR RI, *Kajian Akademik Penataan Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia*.

35 Ahmad Siboy et al., *Judicial Review in Indonesia: A Simplification Model*, *Lex Scientia Law Review*, Vol.6 No.2, December 20, 2022, page.359–90

used as benchmarks for regulations below the law.³⁶ Another authority of the Supreme Court is to propose three candidates for Constitutional Court judges.

The requirements to become a Supreme Court justice based on Article 24A of Paragraph (2) of the 1945 Constitution of the Republic of Indonesia are to have integrity and an impeccable personality, to be fair, professional, and experienced in law. The Judicial Commission proposes candidates for Supreme Court justices to the DPR for approval and then appointed as Supreme Court justices by the President.

3.2.2 Constitutional Court (MK)

The Constitutional Court (also referred to as the constitutional body or constitutional council) is an independent state institution established constitutionally to uphold or safeguard the constitution. The authority granted to the Constitutional Court as stipulated in Article 24C of the 1945 Constitution of the Republic of Indonesia includes adjudicating at the first and last instance, with its decisions being final, to review laws against the constitution, adjudicating disputes over the authority of state institutions granted by the constitution, adjudicating the dissolution of political parties, and resolving disputes regarding the results of general elections.

In addition to these four authorities, the Constitutional Court has one obligation: to issue a decision on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the constitution. The Constitutional Court comprises nine judges, with three nominated by the Supreme Court, three by the DPR, and three by the President.

3.2.3 Judicial Commission (KY)

3.2.3.1 Formation of Judicial Commission

In 1998, there was a reform movement; one of its agendas was enforcing the rule of law, respecting human rights, and eradicating corruption, collusion, and nepotism (KKN). These demands were manifestations of the people's disappointment with various deviations in the practice of state administration, including in the judicial process. In the administration of justice, judges are the main actors. The position and role of judges are crucial because, with their authority, judges can transfer someone's ownership rights, revoke the freedom of citizens, declare the government's arbitrary actions against the people invalid, and even order the deprivation of someone's right to life. Of course, all of this must be done in the context of upholding the law and justice.³⁷

The KY is one of the new state institutions born during the reformation period through the Third Amendment of the 1945 Constitution. In the MPR Session of

36 Bambang Sadono, *Penataan Sistem Ketatanegaraan*, Badan Pengkajian MPR RI, n.d., https://mail.mpr.go.id/img/jurnal/file/040422_2019%20_%20Bambang%20Sadono%20-%20Penataan%20Sistem%20Ketatanegaraan.pdf.

37 Soni Irawan and Saut Parulian Panjaitan., Tugas Pengawasan Komisi Yudisial Terhadap Perilaku Hakim Pasca Berlakunya Undang-Undang Nomor 18 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, *Lex LATA*, Vol.4 No.1, September 7, 2022

2001, the establishment of KY was agreed upon and subsequently enshrined in Article 24A of Paragraph (3) and Article 24B of the 1945 Constitution. The spirit behind the formation of KY stemmed from concerns over the bleak condition or face of the judiciary in Indonesia. The presence of KY serves as an ethical institution empowered to safeguard the dignity of judges and the dignity of the judiciary. The inclusion of KY in the state system brings a new direction to the journey of the Indonesian nation, particularly concerning the appointment of judges and upholding the dignity of judges.³⁸ With the establishment of KY, oversight of judges is no longer solely the responsibility of the Supreme Court (MA) but also falls under the purview of KY. If oversight were conducted solely internally by the MA, concerns about conflicts of interest might arise.³⁹

The establishment of KY and its inclusion as constitutional content is deemed appropriate because the fundamental idea behind the formation of KY is the recognition of the judiciary being highly corrupt and rife with practices that severely undermine the values of justice, such as systematic case trading, leading to the emergence of the term "judicial mafia." When internal oversight fails to control these practices, they become more prevalent. Implementing an integrated monitoring system, both internal and external, is necessary to be more effective in preventing violations by judges. Therefore, KY was formed to develop an external oversight system.⁴⁰ Furthermore, the presence of the KY is also based on the belief that the Supreme Court judges in the MA and all judges are key figures in the struggle to uphold the law and justice. Moreover, Supreme Court judges sit at the highest level of the judiciary. In order to guarantee a trustworthy judiciary and sustain the premise that Indonesia is a rule-of-law state, it is essential to prioritize issues of dignity, honor, and the conduct of all judges. Through the KY institution, it is hoped that a judiciary institution in line with the people's expectations can be realized and that the enforcement of the law and the achievement of justice through judges' decisions with preserved honor, dignity, and behavior can be achieved.⁴¹ Therefore, the presence of the KY is crucial in efforts to combat the latent danger of corruption that has infiltrated and involved individuals within the judicial institutions, as well as in the endeavor to cultivate morally upright judges who uphold ethics.⁴²

Article 24B of Paragraph (2) of the 1945 Constitution states that the requirements to become a member of the KY are to have knowledge and

38 Zainal Arifin Mochtar, Idul Rishan, and Ayu Atika Dewi., Indonesian Judicial Commission in Appointment Ad Hoc Judges: In Search of Constitutional Modality, *De Jure: Jurnal Hukum Dan Syariah*, Vol.14 No.2, December 30, 2022, page.211–25.

39 Fairuz Zahirah Zihni Hamdan, Dwi Rahayu Kristianti, and Vincentius Verdian., Limitation of Misconduct of Judges: Increasing The Synergy of Supervision of Judges by The Judicial Commission and The Supreme Court, *Yuridika*, Vol.38 No.2, 2023, page.371–88

40 Sari., Desain Konstitusional Komisi Yudisial Dalam Sistem Ketatanegaraan Indonesia, *Indonesian Journal of Legislation*, Vol.7 No.1, 2011, page.62–80.

41 MPR RI., *Panduan Dalam Memasyarakatkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Ketetapan MPR RI*, Sekretariat Jenderal MPR RI, 2017, <https://simpus.mkri.id/opac/detail-opac?id=5724>.

42 Jawahir Thontowi., Kedudukan Dan Fungsi Komisi Yudisial Republik Indonesia," *Jurnal Hukum Ius Quia Iustum*, Vol.18 No.2, April 15, 2011, page.285–302

experience in the field of law as well as to possess integrity and an unblemished personality. The President carries out the appointment and dismissal of KY members with the approval of the DPR. Article 24B paragraph (4) of the 1945 Constitution mandates the enactment of a Law regulating the composition, position, and membership of the KY. To fulfill this mandate, the DPR and the President subsequently enacted Law Number 22 of 2004 concerning the Judicial Commission on August 13, 2004. In addition to fulfilling the mandate of the 1945 Constitution, the underlying consideration for the enactment of Law Number 22 of 2004 is that Indonesia is a state based on the rule of law that guarantees an independent judiciary to administer justice and uphold the law based on the 1945 Constitution. The KY plays a crucial role in realizing an independent judiciary through the nomination of supreme court justices and transparent and participatory oversight of judges to uphold their honor and dignity and maintain proper conduct. Following Law Number 22 of 2004, the KY was established, marked by the swearing-in of seven KY members before President Susilo Bambang Yudhoyono on August 2, 2005.

3.2.3.2 Authority of Judicial Commission (KY)

The KY's function is related to the judiciary but is not a judiciary actor. KY is an institution that upholds ethical norms for judges. The KY is also not involved in matters related to the organization, personnel, administration, and finances of judges. The KY in Indonesia differs from other countries, such as the Netherlands. The Netherlands Council for the Judiciary (KY Belanda) is given authority over technical policies and policymaking in the field of judiciary. The KY in the Netherlands and other European countries generally have authority in managing the judiciary's organization, budget, and administration, including promotions, transfers, recruitment, and imposing sanctions on judges.⁴³

The authority of the KY based on Article 24B of Paragraph (1) of the 1945 Constitution is to propose the appointment of Supreme Court justices and to have other authorities to maintain and uphold the honor, dignity, and conduct of judges. The KY carries out its authority and duties in the form of preventive oversight through the selection of Supreme Court justices as constitutional authorities and the provision of a duty to propose the appointment of Supreme Court justices. In addition to preventive oversight, the KY also has authority and duties for repressive oversight as a constitutional authority and duty arising from the phrase "... has other authorities in order to maintain and uphold the honor, dignity, and conduct of judges." The term "judges" in this provision can be interpreted to include all judges in any judiciary. The further authority of the KY is regulated in Article 13 of Law Number 22 of 2004, which proposes the appointment of Supreme Court justices to the DPR and upholds the honor, dignity, and conduct of judges.

The KY only conducts selection for candidates for Supreme Court justices, not for other judges. The authority of the KY should be broader, including

43 Suparto Suparto., The Comparison Between the Judicial Commission of the Republic of Indonesia and the Netherlands Council for the Judiciary, *Unifikasi: Jurnal Ilmu Hukum*, Vol.6 No.1, August 26, 2019, page.40–52

conducting selection for the appointment of judges in District Courts, Religious Courts, and Administrative Courts.⁴⁴ In the United States, judicial selections are made by nominating commissions that are given the authority to select judges, including those for the Supreme Court, and the selection is based on merit. This is in accordance with the provision in the American Judicature Society (nd, 1) that the merit selection process is "the best way to select the best judges" because the nominating commission will choose applicants "based on their qualifications, not on political and social connections."⁴⁵ Although issues regarding judges carrying out judicial functions independently arise after their appointment, the method of appointing judges is a crucial and dominant factor in ensuring substantive independence of judges, an independence that heavily relies on independent character, integrity, inner balance, legal knowledge, and sharp intelligence of individuals who will hold judicial office.⁴⁶

To exercise its authority in upholding the honor and dignity and maintaining the conduct of judges, the Judicial Commission (KY) has to oversee the conduct of judges. For this purpose, KY is tasked with proposing sanctions against judges to the Supreme Court (MA) and/or the Constitutional Court (MK) leadership. Sanctions are proposed to the Supreme Court for Supreme Court justices and to the Constitutional Court for Constitutional Court justices. Based on the authority granted by Law Number 22 of 2004, both judges within the Supreme Court and Constitutional Court, in carrying out their duties, are under the supervision of KY, as the term "judge" refers to Supreme Court justices and judges in judicial bodies in all court environments under the Supreme Court, as well as Constitutional Court justices as referred to in the 1945 Constitution. The execution of supervisory functions by KY must not diminish the independence of judges in examining and adjudicating cases.⁴⁷

During its journey, Law Number 22 of 2004 submitted a request for judicial review to the Constitutional Court by 31 Supreme Court judges because it was deemed to give authority to the KY that exceeded its limits and was deemed to be contrary to the 1945 Constitution of the Republic of Indonesia. The Constitutional Court, through Decision Number 005/ PUU-IV/2006, granted the request for judicial review, thereby reducing some of the KY's authority in supervising judges. Based on the Constitutional Court's decision, the KY no longer has the authority to supervise Supreme Court judges and Constitutional Court judges.

44 Hendi Gusta Rianda., Recruitment of First Level Court Judges in a State Administration Perspective in Indonesia, *Constitutionale*, Vol.1 No.1, September 25, 2020, page.27–38, <https://doi.org/10.25041/constitutionale.v1i1.2014>.

45 Ryan J. Owens et al., Nominating Commissions, Judicial Retention, and Forward-Looking Behavior on State Supreme Courts: An Empirical Examination of Selection and Retention Methods, *State Politics & Policy Quarterly*, Vol.15 No.2, June 2015, page.211–38.

46 M. Ehteshamul Bari, The Natural Death of the Supreme Judicial Commission of Bangladesh and the Consequent Patronage Appointments to the Bench: Advocating the Establishment of an Independent Judicial Commission, *International Review of Law*, No. 1, January 1, 2014.

47 Helmi Nuky Nugroho., Dinamika Wewenang Komisi Yudisial Ditinjau Dari Perspektif Undang-Undang Komisi Yudisial, *Kosmik Hukum*, Vol.17 No.2, January 29, 2018

After the Constitutional Court Decision Number 005/PUU-IV/2006, Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission was established. In contrast to Law Number 22 of 2004, judges in Law Number 18 of 2011 are not included as constitutional judges whose ethical behavior is supervised by the KY. The definition of a judge is a judge and ad hoc judge at the Supreme Court and the Judiciary Body. Meanwhile, the Judicial Body is a judicial administrator under the Supreme Court in the general court environment, religious court environment, military court environment, state administrative court environment, and special courts within the judicial environment.

Supervision of the implementation of the code of ethics for constitutional judges is carried out internally by the Honorary Council of the Constitutional Court as stated in Constitutional Court Regulation Number 1 of 2013 concerning the Honorary Council of the Constitutional Court, which was then followed by the establishment of Constitutional Court Regulation Number 2 of 2013 concerning the Ethics Council for Constitutional Judges. When Law Number 18 of 2011 was enacted, which amended Law Number 22 of 2004, the KY had additional authority, namely proposing ad hoc judges to the Supreme Court to obtain approval from the DPR. Apart from that, the KY also has the authority to establish a Code of Ethics and/or Code of Conduct for Judges with the Supreme Court and maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges.

The opportunity for supervision of Constitutional Court judges by the KY arose again with the enactment of Law Number 4 of 2014 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law. Article 27A of Paragraph (4) of the law states that to enforce the Code of Ethics and Code of Conduct for Constitutional Judges, the Constitutional Court along with the KY formed a permanent Honorary Council of Constitutional Judges. Article 27A paragraph (4) then requested a judicial review from the Constitutional Court, and Constitutional Court Decision Number 1-2/PUU-XII/2014 canceled the KY's authority to re-engage in supervision, both preventive and repressive, of Constitutional Judges.

In 2020, Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court was established. Article 27A paragraph (2) of Law Number 7 of 2020 determines that members of the Honorary Council of the Constitutional Court consist of one constitutional judge, one member of the Judicial Commission, and one academic with a legal background. Under Article 27A of Paragraph (2), letter b, a request for judicial review was made to the Constitutional Court. The request was approved with Decision Number 56/PUU-XX/2022, resulting in the absence of members from the KY element in the Honorary Council of the Constitutional Court. One of the MK's considerations is that the supervision of constitutional judges carried out by the KY is considered to be contrary to the 1945 Constitution because the MK's authority as a judicial institution is unable to realize its independence and impartiality. Another reason is that if the membership of the Honorary Council

of the Constitutional Court still involves the KY in assessing (supervising) the performance of constitutional judges, the Constitutional Court continues to place or make the Constitutional Court the object of supervision by the KY. With this Constitutional Court Decision, the KY's authority is limited to supervising judges in the judiciary under the Supreme Court.

Several Constitutional Court decisions reviewing the law on the Judicial Commission and the law on the Constitutional Court, namely Decision Number 005/PUU-IV/2006, Decision Number 1-2/PUU-XII/2014, and Decision Number 56/PUU-XX/2022, making the authority of the Judicial Commission increasingly reduced and limited.

3.3 Reconstruct the Authority of the Judicial Commission in Creating Judges with Integrity

The formation of a KY in a country with the authority given to it is determined by various influencing factors. Therefore, there is no similarity between KY in one country and KY in another country. In this regard, several issues related to the position of the KY in the constitutional structure, the function of the KY as a supervisory institution, and the KY's supervision mechanism must receive adequate explanation.

The KY in the Indonesian constitutional system can be said to be different from other commissions because the KY's authority is given directly by the 1945 Constitution of the Republic of Indonesia, namely Article 24B, while the authority of other commissions is regulated outside the constitution. Apart from that, KY is also part of judicial power, although its position is as a supporter, not an actor of judicial power. The position of KY is that of an auxiliary institution.⁴⁸ This is demonstrated by placing the KY regulations in Chapter IX of Judicial Power contained in the 1945 Constitution of the Republic of Indonesia.⁴⁹ The existence of the KY is also a logical consequence of Indonesia as a state of law, one of the manifestations of which is an independent judicial power with judges who adhere to moral values, have integrity and a personality beyond reproach, are honest, fair, and uphold the values of professionalism. Unfortunately, the authority given to KY places him only as a supervisor who is designed to look for judges' mistakes rather than as an equal working partner who can also reward achievements and even fight for their welfare.

The authority of the KY in Indonesia is different from that in Italy. In the Italian constitution, apart from having the authority to appoint and dismiss as well as disciplinary action on judges, the Superior Council of the Judiciary also has the authority to transfer and promote judges. Thus, KY's role is not only in the preventive-repressive realm but also consultative-protective. That is why, in some countries, the nomenclature for the Judicial Commission is the Judicial Service Commission. The expansion of authority that deserves consideration is the transfer and promotion of judges. In countries that provide limited authority

48 Jesi Aryanto., Pengawasan Hakim Agung Dan Hakim Konstitusi Oleh Komisi Yudisial," *Adil: Jurnal Hukum*, Vol.3 No.2, 2012, page.283–312

49 Sari, "Desain Konstitusional Komisi Yudisial Dalam Sistem Ketatanegaraan Indonesia. *Indonesian Journal of Legislation*, Vol.7 No. 1, 2011

to the Judicial Commission, there is also the authority to transfer and promote judges, for example, in Southern European countries such as France, Italy, Spain, and Portugal.⁵⁰

The desire to strengthen the authority of the KY can be done by reconstructing the laws regarding KY and those related to KY. This reconstruction certainly cannot be separated from the relationship between institutions in the realm of judicial power, namely the Supreme Court and the Constitutional Court. The three institutions in the realm of judicial power must build synergy so that judges, as actors of judicial power, have integrity and can resolve cases fairly.

3.3.1 The synergy between the Judicial Commission and the Supreme Court

The relationship between KY and MA is a partnership, not competition, let alone a feud. Establishing this relationship has a significant role in realizing an independent judicial power, free from the influence of other powers, and upholding law and justice. However, KY and MA are often involved in a less-than-harmonious relationship. For example, when 31 Supreme Court judges submitted a judicial review regarding the authority of the KY until the Constitutional Court Decision Number 005/PUU-IV/2006 was issued. One of the consequences of the Constitutional Court's decision is that the articles relating to supervision regulated in Law Number 22 of 2004 have no binding force.

The authority granted by the 1945 Constitution of the Republic of Indonesia to the KY is to maintain and uphold the honor and nobility of the dignity and behavior of judges. For this reason, the KY encourages the selection of competent judges with integrity and creates a clean and authoritative judiciary. In order to ensure the selection of competent and ethically sound judges, it is essential to begin with a rigorous and thorough recruiting or acceptance procedure for judges who possess both integrity and expertise. KY's involvement in the judge recruitment process should ideally be for supreme court judges and carried out at all levels, namely judges at first-level courts, high court judges, and supreme court judges. This model is similar to that applied in Italy; the Italian KY has the authority to appoint and dismiss judges, including suspending and transferring judges.⁵¹

In order to empower the KY's authority in the recruitment of both entry-level and senior judges, it is not necessary to amend the 1945 Constitution of the Republic of Indonesia. Instead, this can be achieved by enacting a specific law on the Position of Judges, which includes provisions regarding the KY's role in the recruitment process. In addition, it is imperative to modify the stipulations of Article 3 of Paragraph (2) of the KY Law by establishing KY representatives in Provinces and/or Regencies/Cities.

50 *Ibid.*

51 Studi Perbandingan Komisi Yudisial di Beberapa Negara, diterbitkan atas kerjasama Pusat Analisis dan layanan Informasi, *Studi Perbandingan Komisi Yudisial Di Beberapa Negara, Diterbitkan Atas Kerjasama Pusat Analisis Dan Layanan Informasi* (Studi Perbandingan Komisi Yudisial di Beberapa Negara, diterbitkan atas kerjasama Pusat Analisis dan layanan Informasi, 2014), www.komisiyudisial.go.id.

Regarding the KY's current authority to select Supreme Court judges, applications for candidates for Supreme Court justices whom the KY has selected require DPR approval. The DPR again carried out a selection process or fit and proper test to give approval. This requires more explicit regulation regarding the meaning of DPR approval. Ideally, the DPR would no longer select candidates for Supreme Court judges but would simply approve the candidates submitted by the KY.

In maintaining and upholding the honor, dignity, and behavior of judges, the KY is a partner of the Supreme Court. However, after the Constitutional Court Decision Number 005/PUU-IV/2006, the KY only had the authority to issue recommendations to the Supreme Court regarding the problematic behavior of judges without having any executorial power. The KY's authority is only in the form of providing recommendations, making the KY complementary or complementary to enforcing the judge's code of ethics.⁵²

As a follow-up to the Constitutional Court's decision, when Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission was issued, Article 22D paragraph (1) was added, which states that: "In the event of an alleged violation of the Code of Ethics and/or The Code of Conduct for Judges is declared proven, the Judicial Commission proposes imposing sanctions on Judges who are suspected of committing violations to the Supreme Court." This recommendation by the Supreme Court can be followed up or not followed up. In reality, many recommendations were not followed up on or rejected by the Supreme Court, giving the impression that KY's authority in this area of supervision was pseudo. For this reason, the KY must be given executive authority relating to supervisory authority over judges, not just recommendations. Apart from that, as a partner of the Supreme Court, there is also a need for joint responsibility between the KY and the Supreme Court regarding promotions, transfers, professionalism assessments, and supervision of judges.

3.3.2 The synergy between the Judicial Commission and the Constitutional Court

The Constitutional Court is the interpreter and guardian of the Constitution. Therefore, Constitutional Court judges must have high integrity. The position of MK judges as guardians of the constitution and enforcers of democracy makes MK judges bear the title statesmen. A statesman does not only mean a person who masters state matters but also a person who is always accompanied by wisdom and authority.⁵³ According to the 1945 Constitution of the Republic of Indonesia, constitutional judges must possess impeccable honesty and an unblemished character. They must also demonstrate fairness, possess the

52 Sindy, Nurul Mutmainah Al Zahra, and Neni Nurjanah., Rekonstruksi Komisi Yudisial Sebagai Upaya Optimalisasi Penegakan Integritas Kekuasaan Kehakiman, *Journal of Studia Legalia*, Vol.3 No.02, November 21, 2022, page.64–85

53 Despan Heryansyah., Urgensi Perluasan Kewenangan Komisi Yudisial dalam Pengawasan Terhadap Hakim Mahkamah Konstitusi, *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam*, Vol.1 No.2, 2021

qualities of a skilled statesman with expertise in constitutional matters and state administration, and not hold any concurrent positions as state officials.

In order to ensure the integrity of Constitutional Court judges in executing their authority and responsibilities, it is necessary to have both internal and external supervision. The Honorary Council of the Constitutional Court carries out internal supervision. The Constitutional Court formed this assembly, and of course, it will not be effective because of the possibility of a conflict of interest. The case of former Chief Justice of the Constitutional Court, Akil Mochtar, who was proven guilty of accepting gifts and money laundering concerning the regional election dispute at the Constitutional Court, and Patrialis Akbar in connection with the case of corrupt practices in the judicial review of the Animal Husbandry and Health Law, who was suspected of receiving bribes of US\$22,000 and S\$284,050 from meat imports have damaged the image and honor of MK. These two cases prove that the internal supervision carried out by the Constitutional Court has proven to be ineffective in supervising the behavior of constitutional judges.

External supervision of Constitutional Court judges, in accordance with the mandate of Article 24B of Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, should be carried out by the KY. However, MK Decisions Number 005/PUU-IV/2006 and Number 56/PUU-XX/2022 have reduced the KY's authority as an external supervisor of MK judges. The Constitutional Court's decision Number 005/PUU-IV/2006 is *ultra petite*, meaning that the decision exceeds what the judicial review applicant requested. The Constitutional Court judge was considered to have tried his own case and for his own interests. The 1945 Constitution of the Republic of Indonesia gives other authorities to the KY in order to maintain and uphold the honor, nobility, and behavior of judges. Judges in this provision are all judges, not limited to judges at the Supreme Court and lower judicial bodies, but also including Constitutional Court judges.

Constitutional Court Decision No. 005/PUU-IV/2006 was a setback for the realization of an independent judiciary because the KY's external supervisory authority over constitutional judges was revoked in this decision. Constitutional Court Decision No. 005/PUU-IV/2006 contains many weaknesses, one of which is that the decision is "Ultra Petita", because the decision exceeds what was requested. The MK revoked the KY's supervisory authority over constitutional judges who were not included in the petition. The decision was also deemed inappropriate because the constitutional judge had ignored the legal principle of *nemo iudex in propria causa* (no judge can judge his own case). This means that there is a conflict of interest, which is based on Article 17 of Law Number 48 of 2009, the word "judge" in Article 24B of Paragraph (1) of the 1945 Constitution of the Republic of Indonesia as a judge other than a Constitutional Court judge. The consequence of the decision is that the checks and balances mechanism and supervision from external institutions (KY) towards Constitutional Court judges is lost, giving the potential for violations and abuse of judicial power. Another consequence is the existence of a legal vacuum at the statutory level regarding the implementation of the supervisory function of judges by the KY. Despite the ineffectiveness of internal supervision, judges'

supervision is currently reliant upon it. However, several irregularities committed by judges have been substantiated.⁵⁴

According to Jimly Assididqie, the meaning of Article 24B of Paragraph (1) of the 1945 Constitution of the Republic of Indonesia is that the first task of the KY is to propose the appointment of supreme judges, and the second task is to maintain the honor, dignity, and behavior of judges. Because the first task is associated with the supreme "judge" and the second task is associated with the "judge", the meaning is literally obvious, namely that the KY is tasked with maintaining (preventive) and upholding (corrective and repressive) the honor, dignity, and behavior of all Indonesian judges. Thus, judges whose honor, nobility, and behavior must be maintained and upheld include Supreme Court judges, general court judges, religious courts, state administrative courts, and military courts, including constitutional judges.⁵⁵

The Constitutional Court Decision No. 005/PUU-IV/2006 undermines the supervision of judges since there is no external entity supervising their conduct as judges. This endows the Constitutional Court with significant authority and influence. The Honorary Council of the Constitutional Court (MKMK, *Majelis Kehormatan Mahkamah Konstitusi*), an ad hoc supervisory institution, is considered unable to properly supervise the behavior of constitutional judges. The cases of Akil Mochtar and Patrialis Akbar prove that judicial power without external supervision by independent and independent institutions is prone to abuse of power or authority.

In relation to the 2024 election, the decision issued by the Constitutional Court on the age limit for presidential and vice-presidential candidates is now being discussed. In one day, the Constitutional Court twice read out different decisions regarding the request for review of the same article, namely Article 169 letter q of Law Number 7 of 2017, concerning General Elections, which require the age of candidates for President and Vice President to be at least forty years. The first thing that was read was Decision Number 29-51-55/PUUXXI/2023; the Constitutional Court explicitly, straightforwardly, and firmly stated that the age norm in Article 169 letter q of Law 7/2017 is the authority of the legislators to change it or open legal policy, meaning that it is entirely within the authority of the legislators, so the Constitutional Court rejected the application. Second, on the same day, the Constitutional Court read out Decision Number 90/PUU-XXI/2023, which differed from the previous decision. In this decision, the Constitutional Court granted part of the petition, which tested Article 169 letter q of Law Number 7 of 2017 concerning General Elections. The Constitutional Court stated that Article 169 letter q of Law Number 7 of 2017 concerning General Elections, which states at least 40 (forty) years of age, is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not is defined as at least 40

54 Ariyani Nita., Penguatan Kewenangan Komisi Yudisial Dalam Rangka Mewujudkan Peradilan Yang Independen, in *Prosiding: Sinergitas Mahkamah Agung Dan Komisi Yudisial Dalam Mewujudkan Excellent Court*, Purwokerto: Universitas Muhammadiyah Purwokerto, 2017

55 Jimly Ashididqie., *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Rineka Cipta, 2007.

(forty) years of age or has/is currently holding a position elected through general elections including regional head elections.

Two different Constitutional Court decisions regarding the review of the same article were considered odd and conditional on political interests to pass certain people. This is because even though the Constitutional Court initially rejected the request for the minimum age of presidential and vice-presidential candidates to be 35 years old, in its next decision, the Constitutional Court included other conditions to be able to be nominated even though they are not yet 40 years old, namely having previously or currently holding positions obtained through elections, including regional head elections. This decision is considered worse than the granting of the lawsuit regarding the minimum age limit for presidential and vice-presidential candidates because if the decision on the age limit is granted, then all citizens will have the same opportunity. However, granting the requirement to have experience as a regional head will only accommodate those in power.

The addition of the clause of having previously held or currently held a position obtained through elections, including regional head elections, means that the Constitutional Court has added new content that is not included in the main material of the law being reviewed. In this decision, the Constitutional Court was deemed to have exceeded its authority. The Constitutional Court is not a lawmaker, so it has no authority to change or add material to Law Number 7 of 2017 concerning Elections. Changing laws is the authority of the DPR as a legislative institution. Several examples of cases involving Constitutional Court judges show that internal supervision by the Honorary Council of the Constitutional Court has not been able to optimally supervise constitutional judges.

Various cases involving constitutional judges, Supreme Court justices, and judges in the judiciary below the Supreme Court prove that internal supervision alone is insufficient. Supervision from external institutions is necessary to maintain judges' independence or freedom in every case resolution. As stipulated in the 1945 Constitution of the Republic of Indonesia, the KY supervises judges externally in order to maintain and uphold the honor, nobility, and behavior of judges. For this reason, changes are needed to the law on the Judicial Commission and the Law on the Constitutional Court by including content that gives the KY the authority to supervise judges, both judges within the Supreme Court, which includes Supreme Court justices, judges within the judiciary below the Supreme Court, as well as Constitutional Court judges as mandated by the 1945 Constitution of the Republic of Indonesia. The judges, not the institution, carry out external supervision by the KY. Strengthening the authority of the Judicial Commission is necessary to create judges with integrity and uphold an independent judiciary.

The Judicial Commission should ideally be given authority to overcome weaknesses in the field of judicial power. The content that needs to be included in the amendment to the Judicial Commission Law is: first, returning the Judicial Commission as a state institution that has the authority to uphold honor and nobility and maintain the behavior of judges by supervising all judges, including

Supreme Court Judges and Constitutional Court Judges. Second, the Judicial Commission Representatives in each province and/or Regency/City area will be formed to supervise judges because judges are located throughout Indonesia. Third, it provides immunity rights to members of the Judicial Commission in carrying out their duties and authority.

Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Commissions that need to be amended are the provisions of Article 1 Number 5. The definition of the judge is returned to the original provisions, which read: Judges are Supreme Judges and judges in courts in all areas located under the Supreme Court and judges of the Constitutional Court as intended in the 1945 Constitution of the Republic of Indonesia. For establishing KY representatives in the regions, the provisions of Article 3 of Paragraph (2) are amended to read: The Judicial Commission establishes Judicial Commission representatives in the provinces and/or Regency/City. Paragraph (3) is formulated: Further provisions regarding the formation, composition, and working procedures of Judicial Commission representatives in the regions as intended in Paragraph (2) are regulated by Government Regulation. The authority of the Judicial Commission was increased by amending the provisions of Article 3, namely, selecting the appointment of judges in the General Court environment, the Religious Court environment, the Military Court environment, and the State Administrative Court environment.

Regarding the right to immunity, between Article 21 and Article 22, one article has been inserted, namely Article 21A, which reads: In the context of carrying out their duties and authority, members of the Judicial Commission cannot be arrested, detained, interrogated, prosecuted or sued before a court. In order to enhance the jurisdiction of the KY, it is necessary to amend Article 20, Paragraph (3) as follows. In order to maintain and uphold the honor, nobility, and behavior of judges as intended in Paragraph (1) letter a, the Judicial Commission can request assistance from law enforcement authorities to conduct wiretapping and recording of conversations. This power can be utilized when there are allegations of judges violating the Judge's Code of Ethics and/or Code of Conduct. Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court in Article 27A of Paragraph (2) is still included as an element of the KY in the composition of the MKMK to maintain the nobility of the dignity and behavior of constitutional judges.

4. Conclusion

Based on the description above, it can be concluded that the authority given to the KY is limited to proposing candidates for Supreme Court justices and supervising judges in the judiciary under the Supreme Court. The Constitution of the Republic of Indonesia mandates the KY to maintain all judges' noble dignity and behavior. With limited authority, the mission of establishing the KY to maintain the dignity of the judiciary has not been achieved. Various cases involving judges show that without external supervision, they will be prone to abuse of power or authority. Therefore, the KY needs to be given the authority to select and supervise supreme judges and judges at all levels of justice within

the Supreme Court and constitutional judges in order to promote judges who are competent and have integrity so that a clean and authoritative judiciary is created. The KY is also given executive authority regarding the supervision of judges, not just recommendations whose follow-up actions are submitted to the Supreme Court. In order to maximize the authority of the KY, it is essential to establish synergy among state institutions in the judicial domain, namely the Supreme Court, MK, and KY. Establishing KY representatives in the province and/or Regency/City is a must for the effective operation of the KY's authority, considering the geographical distribution of judges across the province and the regency/city. It is also important to give immunity rights to KY Members in carrying out their authority and duties. The granting of immunity rights is expected to be a protection so that KY Members can be free from pressure and interests when carrying out their duties and authority. Granting authority can be done by regulating it in the law on the Position of Judges, amending the Law on KY, and the law on the Constitutional Court.

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