



The role of the commission judicial increase the function control of justice and reduce piled the case in the supreme court of the republic of Indonesia

Sophar Maru Hutagalung

Lecturer Faculty of Law, University Krisnadwipayana (UNKRIS) Jakarta, Indonesia

Abstract

Efforts to Expand Duties and Powers of the Judicial Commission in order to preserve and uphold the honor, dignity, and behavior of judges, as mandated by the 1945 Constitution then how Limiting the accumulated caseload of the Supreme Court of the Republic of Indonesia as the highest institution of justice in Indonesia.

Keywords: oversight, the case

Introduction

The government together with the Parliament in accordance duties shaping legislation seems half-hearted in the formulation of the formation of the Judicial Commission as a State agency added to Article 24B of the 1945 Constitution, as mentioned in "paragraph (1), reads:" The Judicial Commission is independent authorities propose the appointment of justices and have other authorities in order to preserve and uphold the honor, dignity and behavior of judges, "it seems the presence of the Commission is just emerging contained in article 24B of the 1945 Constitution, he did not set explicitly what are the" powers other "from the commission. Furthermore, in Article 13 of Law No. 22 Year 2004 concerning Judicial Commission mentioned tasks and authority is selecting justices and proposed to the Parliament, then the supervising judges. On the other hand there is overlap between the Judicial Commission and the Supreme Court (Supreme Court), and these two institutions seem like a face to face, because the Supreme Court also has the authority to supervise the same internally conducted against judges and courts, (Article 32 of Law No. 5 of 2004 on the Supreme Court of the Republic of Indonesia). Among legal practitioners and academics many perceive these institutions Judicial Commission as a figure of the powerless, "run do not have legs, do not have wings to fly" -futility--uselessness of these institutions have no power. Worse, it will be proof of bureaucratic reluctance to deal with a system of effective monitoring and authoritative. It also proves the resistance caused mafia culminating in the legal and judicial corruption. Indeed, the presence of any law enforcement agencies, especially in a country that many entangled in lust corruption, supervision is the main enemy.

The presence of the Judicial Commission as a supervisory agency (monitoring) judicial actually needed, society's expectations of this institution is very positive, this proved to be the large number of reports on complaints to the Judicial Commission for a period of five years from the Judicial Commission was established already reached 8981 cases of complaints (Kompas, 03.08.2010). We consider the presence of the Judicial Commission is important in the midst of legal and judicial reform we are today where the level of corruption in this country is still very high. In connection it is precisely the

presence of the Judicial Commission should be strengthened and directed line (linear) with the Supreme Court is not contrary to cause resistance between the two institutions. Both institutions must work in synergy for the same estuary, equally to uphold the honor, dignity, and behavior of judges (courts). In addition, 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. When viewed from the powers and duties of the Judicial Commission in accordance with Article 13 of Law No. 22 of 2004 we value very minimally. Therefore, these institutions still (very) can we empower optimally with the authority and other tasks despite having to go through a revision or through Amendment law. Therefore this study tries how to optimize the Judicial Commission on a more active role, especially in the "scope" which we describe below, among others:

- Expand Duties and Powers of the Judicial Commission in order to preserve and uphold the honor, dignity and behavior of judges, as mandated by the 1945 Constitution.
- Restrict the accumulated caseload of the Supreme Court of the Republic of Indonesia

Problems Research

1. Lack of Role of Judicial Commission

The Judicial Commission as a state institution which is independent oversight function that runs most of the judicial authorities assessed a minimal role in this regard given the task and authority by law (Act No. 22 of 2004) a very narrow scope of the Judicial Commission merely exercised control over the behavior of judges/court, and for selecting candidates for supreme court justices. Though the orientation of the authority and duty of the Judicial Commission is to ensure that all judges as the main executor of the judicial function of high integrity, honesty, professionalism and thus gained the trust not only for seeking justice but also of the general public. That means that the role of the Judicial Commission should be increased not only the field of supervision but also including guidance and development of science and knowledge of the judges. It is also considering the development of science and technology are constantly evolving. While we know the field of tasks and role of the commission is still a lot of vacant and still can be

charged and added to the other roles that do not conflict with the duties and functions under the legislation, in addition to the duties and powers that are already required by law to the Judicial Commission can be given more powers, namely:

- Conducting an examination of court decisions;
 - As the state agency that oversees the Police Commission draft Prosecutorial Commission in terms of doing an examination of the results of the investigation conducted by the police and that the results of prosecutions conducted by the prosecutor;
 - As the program implementer prevention of corruption;
 - In implementing the training program and coaching judges;
- But to change it recognized no barriers physiology or collision between the competencies of the Judicial Commission as stipulated in Law No. 22 of 2004 with the powers possessed by the Supreme Court to supervise the conduct of judges as set forth in (Act No. 5 of 2004 amendments to the Law No.14 of 1986). Not to mention the challenges of the parties subjectively counter the presence of the Judicial Commission's institution. In this case the necessary corrections and changes in legislation, which is to clarify and reinforce the powers and boundaries between the two institutions with the Supreme Court of the Judicial Commission. Because the proven result of lack of sharpness authority possessed by the Judicial Commission then many of the recommendations of the Judicial Commission of the Supreme Court were not followed.

2. The backlog of the caseload in the Supreme Court of the Republic of Indonesia

a) Buildup case in the Supreme Court of the Republic of Indonesia in the progress that we worry about disturbing caseload buildup can influence the decision. From the data sources that we consider still relevant is the amount of arrears in the Supreme Court:

Year	Total Arrears
2004	20.314
2005	14.366
2006	9.681

(Hukum Online.Com 27/10/09)

- The amount of the remainder of the case in December 2007 = 10.827
 - The case that goes from January to August 2008 = 7.522
 - The number of disconnected Case 2007 – 2008 = 9.902
 - The final balance cases that are still running = 8.447
- b) The number of litigants to each year is growing and unstoppable so technically administrative efforts are being made to overcome it does not make much sense, as well as the types of cases that go growing and growing, it is augmented by the presence of bodies Courts the new, so a case of justice starting from the first levels / d to obtain a permanent decision at the end, the Supreme Court is not uncommon to take between 10 - 15 years;
- c) The Supreme Court of annual report 2009 is known, that the comparison between the Judge of Appeal (total 843) with Justice numbering 43 people, was not impartial. The number of cases handled by the appeals judges at least amount to 14.531 cases was spread across the four jurisdictions. While the Supreme Court justices have to deal with 12.540 cases.

d) The absence of legal certainty and justice.

3. Based on the description in the introductory part of this writing, there are two (2) problems in this study, namely :

The lack of clarity and firmness of the duties and authority of the Judicial Commission as contained in Law No. 22 of 2002;

- a) Psychologically it appears that the presence of the institution of the Judicial Commission is not so favored by the Supreme Court. The Supreme Court was impressed considers himself superior and highest rank when compared with the Judicial Commission, so that the Judicial Commission cannot simply be able to intervene in what had been considered under its authority. Although the actual duties and authority of the Judicial Commission as well as the mandate of the 1945 Constitution Several cases related to resistance to the Supreme Court by the Judicial Commission can be demonstrated through the case to the Constitutional Court for judicial review filed by 31 the Chief Justice on the grounds that they felt aggrieved rights and constitutional authority after the imposition the Judicial Commission Law (03/21/2006); and several justices suggested that the commissioner of the institution of the Judicial Commission are selected, then some of the Chief Justice of the Judicial Commission to report to the police. Once the Supreme Court ic resisted the justices of the cleaning action is actually carried out in order to uphold the dignity of the great institution that we call it. When this goes on means Independency judiciary / judicial power independence of the Supreme Court has actually turned into a tyranny that is untouched by the law itself. And this is dangerous for the future of law enforcement itself.
- b) Case-civil cases that go through the court of the number is increasing and will eventually accumulate through the High Court and the Supreme Court empties. One contributing factor, among others, due to the registration of the court there are no limits and the cases that are registered are not carried out a verification of the evidence material and witnesses which would then be submitted/faced in the hearing whether it has qualified law or not?.

Research Purposes

The objective of this study was to:

1. Knowing why the duties and authority of the Judicial Commission are not optimal.
2. Knowing what efforts were made to overcome the accumulated caseload of the Supreme Court of the Republic of Indonesia.

The Conceptual Framework

Some things are the subject of this research, among others:

- a. According to Law No. 22 The year 2004 concerning Judicial Commission;
- b. According to Law No. 14 of 1986 and Law No. 5 The year 2004 on the Indonesian Supreme Court.
- c. Material legislation containing principles.

Research Methods

The study type is a normative and descriptive. Thus the data obtained in this study include secondary data include:

- a) Primary legal materials which are binding legal materials in the form of legislation related: Act No. 22 The year 2004 concerning Judicial Commission, which is categorized as

the legislation is positive; Law No. 14 of 1986 and Law No. 5 The year 2004 on the Indonesian Supreme Court. and regulations related.

- b) Primary legal materials that explain the primary legal materials of various legal literature (Results of research / scientific papers, magazines / journals law or article).
- c) Tertiary legal materials which provide explanations/instructions and information.

The data collection was done by an inventory and study the literature data in the form of legislation, a compilation of literature books, journals, magazines, newspapers, internet and information sources, the analysis used qualitatively.

Results and Discussion

Improving Tasks and Roles of the Judicial Commission

Based on the Joint Decree of the Chief Justice of the Republic of Indonesia to the Chairman of the Judicial Commission Number. 047/KMA/SKB/IV/2009 & 02/SKB/P.KY/IV/2009 on the Code of Conduct of Judges. There is only contained general things about how a judge disciplined, integrity, behavior and high responsibility and professional in carrying out his duties. The question in order to establish checks and balances of the Judicial Commission in what way the Judicial Commission can carry out its duties and functions to supervise the conduct of judges (courts)? Do go down to the courts or simply based on sources of information, for example through the mass media, or to wait until a report or reports from the public about the conduct of judges who do not correct? This problem does not seem strictly regulated.

Corresponding duties and functions of the Judicial Commission when it does not contradict the authority may be increased as we propose below. It has also become appropriate in line with the Joint Decree of the Judicial Commission and the Supreme Court of the Code of Ethics and Code of Conduct of Judges. Therefore, the impression of competition and institutional excellence displayed during this negatively by one of the institutions of the Judicial Commission and the Supreme Court must first be removed, because the Judicial Commission and the Supreme Court in line at least if not as a partner. But it is not contrary to the two institutions that favor a competitor rank respectively. If so happens, the targets to be achieved in order to realize the rule of law will be increasingly difficult to achieve.

For the appropriate purposes and objectives of this paper and the corresponding Code of Conduct of the Judicial Commission and the Supreme Court in the implementation of these powers should be optimized and expanded, namely:

1. Examination of Court Decision

Give authority to the Judicial Commission conduct an examination of court decisions in several cases cases that are considered attractive and prominent. So it can be known whether a decision taken by qualified normative or not, according to the procedure or not, deviant or not, as well as to determine the quality of the resources of the judges in each court.

2. Evaluation Behavior

To give an additional role to the Judicial Commission beforehand to assess and evaluate the functional (integrity, conduct, performance, and professionalism) before one judge and the Registrar promoted or for promotions if eligible to be

promoted or not. In this case, the Judicial Commission will issue a recommendation on these matters to the Supreme Court.

3. Development

In line with these things in view of the development of science and technology that is always dynamic, hence to knowledge development, knowledge and professionalism of judges, including Supreme Court Justice in handling different types of cases, including for coaching and training and development of identity, so that the integrity of a judge always be maintained. Then to the Judicial Commission should be given the authority that is autonomous as organizer of educational programs for the short-term judges throughout Indonesia which are done regularly and stages.

Conduct educational programs and outreach prevention of corruption on society in cooperation with the Ministry of Education and other relevant institutions, create educational curriculum national corruption prevention to be held in schools and upper secondary as well as in universities.

4. Reducing Burden Task KPK

On the other side of the Corruption Eradication Commission (KPK) is known to load the task at hand is quite heavy, and recognizing that quality is also increasingly sophisticated crime rates in line with the development, as well as the quantity of the number of corruption cases handled by increasing and increasing. When viewed from the duties and functions of the Commission of the most fundamental is the issue of Corruption Eradication and Prevention of Corruption (Article 6 of Law No. 30 of 2002). So given the duties and functions of an increasingly severe that we assume that the task of prevention that during this time the Commission carried revoked and submitted to the Judicial Commission.

Because it radically to consider to change the provisions of the law Commission, which is to take over some of the duties and authority of the KPK (Corruption Eradication Commission). Specifically related to the field of corruption prevention to be submitted and held by the Judicial Commission. This is to strengthen the presence of the Commission so that the Commission does not need to be burdened with the authority and duty to carry out preventive measures, then the Commission is concentrating and focusing only on part of the prosecution only, and given that the number of cases handled by the KPK is becoming increasingly perceived.

5. The Police Commission and the Prosecutorial Commission

Given that the results of the decision of the judiciary in particular in criminal cases are a series of interrelated between the results of investigations conducted by the police as well as the results of the prosecution (indictment) conducted the prosecution. Then in fact for the sake of efficiency of tasks and the State budget, the two commissions, namely the Police Commission, and the Prosecutorial Commission (the Commission is not a State agency) can be subsumed under the Judicial Commission. Presumably in line with the Judicial Commission, the Police Commission may also conduct an examination of performance and the results of investigations conducted by officials-officials as well as the Prosecutorial Commission can either examination assesses a demand (charges) and those related to it by local police officers are the handling of a particular case has been conducted in accordance

with procedures and legal provisions apply? Among others, about the arrest, detention, prosecution, or for example there is a civil case be made a criminal case. It is also intended that each institution commission prosecutors and police have independence and be more proactive and freely carry out its work in evaluating and overseeing each of the two institutions in question. Act objectively and neutrally without intervention from any party, including the body of the police and the prosecutor's office itself.

Legal Effort Limiting the backlog caseload In the Supreme Court of the Republic of Indonesia

In order to answer the problems as described above, namely to reduce the rate of increase in the number of cases referred to court, it is necessary efforts and policy measures from the government to make changes, namely:

1. Registration of a civil lawsuit with the district court is absolutely subjected to prior verification of the evidence material to be filed in the trial about whether a case worthy and qualified legislation to be passed in the judicial process or not. When not meet regulatory requirements, the case is registered must be rejected wait until the requirement is met.
2. Filing legal effort of Cassation can only be done when the nominal value is materially the number of cases of IDR 5 billion to above. While the nominal value of IDR 100 million to 5 billion was completed on appeal in the High Court. With note: The judge of the weight and quality have good ;
3. Besides those cases that can be limited to the High Court, among others :
 - a) Case-divorce cases;
 - b) Judge actions of drugs is limited to the user (not the dealer);
 - c) Defamation / libel Criminal / Civil;
 - d) And so on. and so, in those cases that can be restricted.
4. Assessing the Role of Extra Judicial Commission Decision on Case and Provide Recommendations to the Supreme Court.

Deign with the restrictions cases can be appealed, as referred to in the "item 2" above, when a verdict Appeal by litigants unfair subjectively or objectively, then they can file an objection by the Judicial Commission, the next Commission will conduct an examination of judicial appellate decisions as intended. If it is found deficiencies subjectively and irregularities in the decision making objectively the Judicial Commission will make recommendations to the Supreme Court so that administratively the appeal will be filed and accepted by the Supreme Court

Conclusion

That to realize a just society, prosperous and prosperous society based on Pancasila and the 1945 Constitution, the eradication of corruption that occurred until now we value cannot be executed optimally. While the government agency handling the case-corruption cases have not been up to function effectively and efficiently. Therefore, the implementation of eradication of corruption still needs to be improved.

In connection with the presence of the Judicial Commission as one of the independent institution as referred to in Article 24B of the 1945 Constitution is something that is very important and we should welcome as one of the pillars of law

enforcement supervision can help to achieve the implementation of the oversight function of the judicial authorities and to support the tasks and the authority of other institutions that together perform the function of the judicial power, which, in upholding the dignity, honor, and behavior of judges. The court (judge) as a bastion of law enforcement and the last bastion of justice seekers dignity must be maintained and can be monitored so that the institution is not until the defects caused by acts of fraud committed by rogue elements judicial mafia.

In line with the duties and authority of the Judicial Commission shall be regulated and reaffirmed, then added to and expanded on in the legislation as we describe above. In physiologic must be acknowledged that there is erroneous perception which the existence of the Judicial Commission seems to be resistance from the Supreme Court and this in our opinion is wrong. Therefore, between the Judicial Commission and the Supreme Court must be run as a "partner" in enforcing the law and justice, uphold the honor, dignity, and behavior of judges (the judiciary). And when realized there really is no need to issue something between the Judicial Commission and the Supreme Court because all that is produced from the duty and the authority of the Judicial Commission shall be conducted through a "recommendation". Is it then the Supreme Court will accept or not the recommendations is very depending on the assessment of the Supreme Court? But certainly good recommendations and really should not be denied to be accepted and acted upon.

Recommendation

As recommendation of us in this paper is as follows:

- In order for the existence of the Judicial Commission as an institution of the state in the Act of 1945 can be reconstructed so that its position can be strengthened with clear tasks and authorities.
- Regarding the provisions of Law No. 22 The year 2004 Judicial Commission absolute do revisions (changes) and become scale priorities in the legislative program of national law, which is to reinforce the duties and authority between the institutions of the Judicial Commission of the Supreme Court of the Republic of Indonesia.
- Given a series of tasks and functions of the court, it should be the Police Commission and Prosecutorial Commission may be under the Judicial Commission in conducting an examination of investigation and prosecution, and matters relating to the powers of the police and the prosecutor in accordance the Code of Criminal Law and Related Law.
- Give authority to the Judicial Commission to carry out the duties and functions of the Prevention of Corruption that during this rests with the KPK.
- Give authority to the Judicial Commission undertake an examination of judicial decisions are taken on a particular case and to evaluate and determine the quality and the quality of judges in court.
- Giving the duty and authority to the Judicial Commission as implementing training programs and coaching in order to increase the quality of knowledge of the judges according to the development of science and technology,
- Provide recommendations to the Supreme Court in the case of a judge will be promoted to his or her promotion.
- Empower the Judicial Commission in order to synergize with the Supreme Court in terms of helping to limit the

judge actions Appeal and Review of the ride to the Supreme Court.

References

1. UUD. Dan Perubahannya (amandemen), 1945.
2. Undang Undang Republik Indonesia No. 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi, 2002.
3. Undang-Undang No. 22 Tahun 2004 Tentang Komisi Yudisial, 2004.
4. Kep. Bersama Ketua Mahkamah Agung Republik Indonesia dan Ketua Komisi Yudisial No. 047/ K Mahkamah Agung/SKB/IV/2009 & 02/SKB/P.Komisi Yudisial/IV/ Tentang Kode Etik Dan Pedoman Perilaku Hakim, 2009.
5. HIR. (Het Herziene Indonesisch Reglement/Reglement Indonesia yang diperbarui); RBg (Rechtsreglement Buitengewesten/Reglement Daerah Seberang: S. no 227) luar Jawa & Madura, 1927.
6. Undang-Undang No.5 Tahun Tentang Mahkamah Agung Republik Indonesia, 2004.
7. Hukum Online.Com 27 September, 2009.
8. http://id.wikipedia.org/wiki/Komisi_Yudisial, 26/7/2010.
9. <http://www.kapanlagi.com>, 26/7/2010.
10. <http://www.mediaindonesia.com>, 26/7/2010.