



External supervision of the judicial commission post the decision of the constitutional court number 005/PUU-IV/2006

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Abstract

The aim is to explain how the external supervision carried out by the Judicial Commission in the Decision of the Constitutional Court which changed the substance of the 1945 Constitution, to explain what the juridical consequences of the external supervision of the Judicial Commission after the Constitutional Court's decision were and to explain what the legal implications of the existence of the Judicial Commission were. its external supervisory powers are limited. The analysis method is carried out based on normative juridical using a statutory approach. The results show that the Constitutional Court's decision cannot change the substance of the 1945 Constitution based on the hierarchy of laws and regulations and changes in the substance of the 1945 Constitution can only be carried out procedurally by the House of Representatives, the juridical consequences of external supervision of the Judicial Commission are supporting Institutions of the Supreme Court include ad hoc judges at the Supreme Court and the Judicial Body under it by revising Law No. 22 of 2004 concerning the Judicial Commission as well as the legal implications of the existence of a Judicial Commission whose external supervisory authority is limited, namely the function of external supervision in law enforcement for violations of judicial ethics. Against the Supreme Court justices and only external supervision is carried out on ad hoc judges in the Supreme Court and judges of the judicial bodies under them.

Keywords: judicial commission, external monitoring, constitutional court

Introduction

The 1945 Constitution in Article 24B paragraph (1) states that "the Judicial Commission is independent in nature which has the authority to propose the appointment of supreme judges and has other powers to maintain and uphold the honor, nobility of dignity, and the behavior of judges".

The Judicial Commission's institutionalization is manifested by Law Number 22 of 2004 concerning the Judicial Commission, in Article 1 point 5 it is stated that "Judges are Supreme Court Justices and judges in judicial bodies in all judicial circles under the Supreme Court and judges of the Constitutional Court as referred to in the 1945 Constitution of the Republic of Indonesia".

About the authority of the Judicial Commission Article 20 it is stated that "The Judicial Commission has the task of supervising the behavior of judges to uphold the honor and dignity and maintain the behavior of judges" and Article 21 states that "The Judicial Commission has the task of submitting proposals for imposing sanctions against judges to the Court. Supreme Court and/or Constitutional Court". Since its inception, the Judicial Commission has established a policy line that places civil society as a strategic partner. Within this framework, the Judicial Commission is well aware that efforts to disseminate the Code of Ethics and Code of Conduct for Judges (KEPPH) to judges cannot be carried out without strengthening the internal system. In this regard, the Judicial Commission will arrange a complaint mechanism. Verification of public complaints is a step that is always taken by the Judicial Commission. ^[1]

The passage of time has made the Judicial Commission more stable in facing various obstacles in carrying out its duties and realizing the authority it has by the mandate of the law. The public has very high hopes for the Judicial Commission to maximize its role in supervising judges so that the judicial atmosphere can be guaranteed and prioritizes justice.

Not long after it was formed, the Judicial Commission was involved in a conflict with the Supreme Court. Whereas the Judicial Commission is a partner of the Supreme Court, which should synergize to jointly maintain and uphold the dignity and honor of judges to strengthen judicial power. At that time, the Judicial Commission began to translate its duties into concrete steps, especially to maintain the honor and dignity of judges, including Supreme Court justices. This conflict began when the Judicial Commission felt that it was difficult to obtain information from the head of the Supreme Court regarding a case of public concern. ^[2]

The role of the Judicial Commission externally in exercising independence in organizing, analyzing, and handling the integrity monitoring of the judges' behavior, especially about "judge supervision" as regulated in Chapter. III Article 20 and Article 22 paragraph (1) letter e and paragraph (5) as well as those relating to the "proposed imposition of sanctions" as regulated in Article 21, Article 23 paragraph (2) and paragraph (3) as well

as paragraph (5), Article 24 paragraph (1) and Article 25 paragraph (3) and paragraph (4), linked to Chapter. I Article 1 point 5 as stipulated in Law Number 22 the Year 2004.

Decision Number 005/PUU-IV/2006, the Constitutional Court gives consideration that in terms of judges as stated in Article 24B paragraph (1) of the 1945 Constitution, whether or not they are Constitutional Justices and Supreme Court Justices are as follows:

"It is understood that the provisions regarding the Judicial Commission in Article 24B of the 1945 Constitution are indeed not intended to cover the objects of the behavior of constitutional judges as regulated in Article 24C of the 1945 Constitution". Furthermore, the notion of the behavior of constitutional judges in what is meant by the behavior of judges according to Article 24B paragraph (1) of the 1945 Constitution is also contained in the provisions of the Law on the Constitutional Court and the Law on the Judicial Commission which was established before the establishment of the Law on the Judicial Commission. In the Law on the Constitutional Court, for the function of supervising the behavior of the Constitutional Court Justices, it is determined the existence of an Honorary Council which is regulated separately in Article 23 of the Law on the Constitutional Court. Similarly, Article 34 paragraph (3) of the Judicial Commission Law does not at all stipulate that Constitutional Justices are the object of supervision by KY. The provisions regarding KY in Article 24B of the 1945 Constitution are indeed not related to the provisions concerning the Constitutional Court as regulated in Article 24C of the 1945 Constitution". The Judicial Commission's authority as written in Article 13 letter (b) which is the formulation of Article 20 UUKY, according to the Constitutional Court's consideration is different from the provisions of Article 24B paragraph (1) of the 1945 Constitution. In considering the Constitutional Court's decision, it states:

"The formulation of Article 20 UUKY is very different from the formulation of Article 24B paragraph (1) of the 1945 Constitution. Article 20 of the UUKY stipulates, "... to uphold the honor and dignity and maintain the behavior of judges". Meanwhile, Article 24B paragraph (1) of the 1945 Constitution stipulates, "... to maintain and uphold the honor, dignity, and behavior of judges". Thus, the formulation of Article 20 UUKY is different from the formulation of Article 24B paragraph (1) of the 1945 Constitution which has implications for legal uncertainty (*rechtsonzekerheid*) in its application. Whereas the "other powers" of the Judicial Commission are "to maintain and enforce" it can be interpreted not only to take preventive or corrective actions, but also to increase understanding, awareness, quality, and professional commitment which leads to the level of honor, dignity and expected behavior of judges.

Regarding the Judicial Commission Law Number 22 of 2004 in Article 1 point 5, it states "Judges are Supreme Court Justices and judges in judicial bodies in all judicial circles under the Supreme Court as well as judges of the Constitutional Court as referred to in the State Constitution. The Republic of Indonesia in 1945". Revised in Article 1 number 5 to "Judges are ad hoc judges and judges in the Supreme Court and Judicial Body", in the amendment to Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission. According to Novianto M. Hantoro^[3], there are 2 (two) definitions of ad hoc judges:

1. Status as a state official for ad hoc judges must be excluded because the duties, authorities, and responsibilities are different, exist temporarily, and only exist in special courts;
2. It is better if the status as a state official should not be differentiated between career judges and non-career judges. This is because all judges, both career and non-career, have the same obligation, namely to exercise judicial power.

This revision is the impact of the conflict of interest that the judicial review was granted, the judicial review of Law Number 22 of 2004 on Article 24B paragraph (1) of the 1945 Constitution by the Constitutional Court through the decision of the Constitutional Court Number 005/PUU-IV/2006 dated 23 August 2006, which in essence, the decision stated that the Supreme Court Justices and Constitutional Court judges were not within the jurisdiction of the Judicial Commission. According to Denny Indrayana, this is a sign of the death knell for judicial reform.^[4]

Another implication of the Judicial review written in Chapter VI (six) Supervision of Judges and Constitutional Judges in Law Number 48 of 2009 concerning Judicial Power in Article 43 is that "Judges who are suspected of having violated the Code of Ethics and Code of Conduct of Judges are examined by the Supreme Court. and/or the Judicial Commission" and Article 44 paragraph (1) states that "Supervision of constitutional judges is carried out by the Honorary Council of Constitutional Justices". Constitutional Court judges in carrying out their duties and associations are regulated in the Code of Ethics and Guidelines for the Conduct of Constitutional Judges. Supervision in the Constitutional Court is carried out internally to form a Constitutional Court Ethics Council, to examine and decide on the judges reported or suspected judges, then an Honorary Council of the Constitutional Court is formed to examine and decide the judges reported or judges suspected.

In contrast to judges under the internal supervision of the Supreme Court and the external supervision of the Judicial Commission, the code of conduct of judges must understand moral teachings and follow the form of normative demands based on joint decisions of the Supreme Court and the Judicial Commission Code of Ethics and Code of Conduct for Judges.

Based on the decision of the Constitutional Court, there is a limitation on the external supervision authority of the Judicial Commission, related to constitutionalism democracy which emphasizes the existence of a system of mutual monitoring and balancing (checks and balances)^[5]. According to AM Fatwa, the principle of people's

sovereignty is organized through a system of separation of power or distribution of power, which is reflected in structures and mechanisms, meaning that power is separated into the functions of state institutions that are equal and balance each other (checks and balances)^[6].

According to Mahfud MD, as a legal state, the Constitution provides guarantees in the explanation of Article 24 it is explained that "judicial power is an independent power, meaning that it is independent of the influence of government power". Often the problem is that its implementation raises questions about its relevance^[7]. Norms and laws do not stand static and rigid (static structure) but as a dynamic process. However, in the context of state structure and law, the 1945 Constitution has advantages and capabilities over other norms. According to M. Mahfud M.D., Judicial Commission is a state institution formed in connection with judicial power through the constitution to carry out external supervision of judges^[8].

It is necessary to strengthen the Judicial Commission as an external oversight institution within the judicial power clump by the original intent behind its formation in the constitution. In this regard, the supervision over the behavior of judges by the Judicial Commission does not only cover judges within the Supreme Court but also needs to include constitutional judges.

Any position that has power, should be equipped with an assessment of the accountability of the executor of the position concerned in exercising the power entrusted to him^[9]. In line with the above principles, C.S.T. Kansil thinks that one of the important substances of the 1945 Constitution is the existence of a Judicial Commission^[10].

The concept of immoral behavior, Jimly Asshiddiqie said, it is important to pay attention to the ethical quality of the behavior of state officials in the legislative, executive, and judicial fields even though they are not related to office duties, they should maintain ideal behavior in the eyes of the public. Legal support is deemed necessary formally^[11].

The importance of legal construction to maximize the structural role of the Judicial Commission with all its potential to maintain and uphold the honor and dignity of judge behavior with legal objectives, as a manifestation of the original intent-rule of law (original intention of the rule of law) of the 1945 Constitution. Public dissatisfaction with court decisions is partly because judges' decisions are often considered unfair, controversial, and even not legally enforceable. This situation requires judges to truly have integrity and a personality that is not blameworthy, honest, fair, and professional to build and grow public trust. The task of supervision in the context of maintaining and upholding the honor, dignity, and behavior of judges is the authority of the Judicial Commission, which is constitutional and independent^[12].

Research Methods

This study uses a normative juridical research method using a statute approach which examines the extent to which positive law applies that links one statutory regulation with other laws and regulations. The sources of data used in this study are secondary data in the form of primary, secondary, and tertiary legal materials. The data were obtained from primary legal materials, secondary legal materials, and tertiary legal materials, then the data were analyzed using a qualitative approach, namely content analysis.

Results and Discussion

Review of Law Number 22 of 2004 concerning the Judicial Commission on Judicial Power

Judicial Commission As an institution that has the authority to oversee the behavior of judges, the position of KY is structurally equal to that of the Supreme Court and the Constitutional Court. However, functionally the role of KY is as an auxiliary to the judicial power institution. The supervisory function gives rise to practice and the impression that the position of the Judicial Commission structure is higher or more important than the institution being supervised and raises questions about the juridical and logical link between legislation and the constitution. The refusal of KY supervision in the conceptual interpretation of the word "judge" is judges in general and career judges, candidates for Supreme Court justices, but does not include Supreme Court justices^[13].

The Judicial Commission as a party related to the review of Law Number 22 of 2004 concerning the Judicial Commission and Law Number 4 of 2004 concerning Judicial Powers of the 1945 Constitution has been registered in case No. 005/PUU-IV/2006 in the trial judicial review. Based on the reasons above, the petitioners stated that these articles were contrary to Article 24 B and Article 25 of the 1945 Constitution, while in the reasons for the petition that Article 24 B paragraph (1), "The Judicial Commission is independent and has the authority to propose the appointment of Supreme Court Justices and have other powers in the context of maintaining and upholding the honor, dignity, and behavior of judges". Article 25 of the 1945 Constitution stipulates that "the conditions to become and to be dismissed as judges are stipulated by law". The decision of the Constitutional Court in case No. 005/PUU-IV/2006 stated that the petitions of the petitioners were partially granted:

1. As far as the words of the Constitutional Court are concerned in Article: 1 point 5 which is linked to Article 24 paragraph (1) and Article 25 paragraph (3) and paragraph (4);
2. Article 20, which reads, in carrying out the authority as referred to in Article 13 letter b, the Judicial Commission has the task of supervising the behavior of judges in the context of upholding the honor and dignity and maintaining the behavior of judges;

3. Article 21, which reads, to implement the authority as referred to in Article 13 letter b, the Judicial Commission is tasked with submitting proposals for imposing sanctions against judges to the leadership of the Supreme Court and/or Constitutional Court;
4. Article 22 paragraph (5), reads, if the judiciary or judge does not fulfill the obligations as referred to in paragraph (4), the Supreme Court and/or the Constitutional Court are obliged to give a determination in the form of coercion to the judicial body or judge to provide information or data that requested;
5. Article 23 paragraph (2), which reads, "The proposal for imposing sanctions as referred to in paragraph (1) letter an along with the reasons for the error is binding, is submitted by the Judicial Commission to the leadership of the Supreme Court and/or the Constitutional Court;
6. Article 23 paragraph (3), reads, "The proposal for imposing sanctions as referred to in paragraph (1) letters b and c is submitted by the Judicial Commission to the Supreme Court and/or the Constitutional Court;
7. Article 23 paragraph (5), reads, if the self-defense is rejected, the proposal for dismissal of the judge is submitted by the Supreme Court and/or the Constitutional Court to the President no later than 14 (fourteen) days since the self-defense was rejected by the Horror Council of former Judges; and
8. Article 34 paragraph (3), reads, to maintain the honor, dignity, and behavior of supreme judges and judges, supervision is carried out by the Judicial Commission as regulated in Law of the Republic of Indonesia Number 4 of 2004 concerning Judicial Power.

The Constitutional Court's decision stating that the petitioners' petition for judicial review was partially granted, the Constitutional Court stated that the Law of the Republic of Indonesia Number 22 of 2004 concerning the Judicial Commission and Law Number 48 of 2009 concerning Judicial Power did not have legally binding considerations, there were no criteria. which is clear about the behavior of judges which can cause legal uncertainty because it overlaps with technical judicial supervision that is inherently carried out by the leadership of the Supreme Court as the institution that holds judicial power. The Constitutional Court's decision creates legal uncertainty in the sense that it is contrary to the 1945 Constitution by canceling part of the Judicial Commission's authority which has implications for external supervision of judges and involves other law enforcers in the judicial system judicial power.

Based on the petition for judicial review of Law Number 22 of 2004 concerning the Judicial Commission, the Petitioner as a party who considers his constitutional rights and/or authority to be impaired by the enactment of the Law on KY in carrying out its duties, KY's authority and actions related to the interests of judges are the basis for reviewing the regulation. and related to the interests of constitutional judges who are not petitioners, but in giving the said decision, the credibility and legitimacy of the Constitutional Court itself in examining, adjudicating, and deciding cases may be questioned. Then the response of the Judicial Commission as the Related Party for the reasons put forward by the Petitioners in the petition include:

1. The inconsistency of the reasons for the petition from the applicants for material in the legislation cannot be expanded or interpreted other than what is written in the legislation;
2. In the context of authentic interpretation, to provide an originally intended interpretation of an article, this can be traced to the debate when the article is formulated. At the 41st Plenary Meeting of the Ad Hoc Committee I, People's Consultative Assembly on June 8, 2000, a proposal was put forward that: "The Judicial Commission functions to supervise Supreme Court justices", "judicial supervisors who oversee all judges' behavior in the judicial carried out by judges at all levels";
3. The Judicial Commission oversees judges including the Supreme Court Justices of Law Number 4 of 2004 concerning Judicial Power which is the umbrella law for all laws and regulations governing the exercise of judicial power in Chapter V, Position of Judges and Judicial Officials in Article 34 paragraph (3) explicitly state the position of the judge and his relationship with the Judicial Commission.

Based on the above description, it can be concluded that the supervision carried out by the Judicial Commission is aimed at and covers the entirety of all judges' behavior in the judicial field. Judges in the context of supervision of the Judicial Commission are judges who carry out judicial duties (serving as judges) starting from first-degree judges, appeals, and supreme judges in all judicial circles and levels.

The consideration of the Constitutional Court thinks because the supervision of the Judicial Commission is more of supervision of individual judges, the arena is not in the technical judicial realm but the ethical realm, the criteria must be formulated first and that in terms of supervision carried out by the Judicial Commission on judges is supervision. against individual judges and not supervision of the Supreme Court institution as the holder of judicial power because with its position as a "free and independent" state institution, the Supreme Court cannot be supervised by other state institutions. Therefore, the supervision of the Judicial Commission is more of a supervisory nature against individual judges, the arena is not in the technical field of justice but in the realm of ethics, which must first be formulated with criteria.

The Judicial Commission cannot be said to be independent or have its authority interfered with by other powers from outside parties simply for the reason that its decision-making is based on facts obtained through cooperation or coordination with the judicial power itself, in case the Supreme Court. Of course, such consideration becomes a ratio decidendi which means an interpretation or interpretation based on the constitution or the 1945 Constitution which can be interpreted freely and broadly from the original intent of the third amendment to the 1945 Constitution if the judge wants to find the meaning contained in the law. invitation, not

only to examine history until the formation of the law but to dig deeper into the historical process that preceded it.

According to Anom Surya Putra ^[14], "in the practice of applying the law, how the law must be interpreted and applied, to find out which law must be interpreted and applied or what positive legal rules must be studied. Furthermore, in the methodology of law formation, the technique of legislation occupies a central position. Because a good legal technique should be able to prevent many problems of interpretation. Difficulties of interpretation in the practice of applying the law, which have become the impetus for improving the quality of legislation. In this case, full attention is directed to the determination of the law by the judge.

The stages to find or reconstruct the unraveled statutory law or a unified legal system to decide the authority of the Judicial Commission itself, the method of interpreting the constitution in contextualism and textualism approaches including literal and legalistic methods, rigid and shallow, progressive, referring to the definition previously (*stare decisis*), the intention of the constitution maker (purposive), and the general or liberal cannot support the understanding of the Supreme Court Justices and constitutional judges making a decision that there are differences in dissenting opinions by the judges of the Constitutional Court during a judicial review to explore or analyze the textual, as well as values that the basis as a judge's point of view when doing reasoning and as a basis for constitutional considerations on the authority of the Judicial Commission can be done through a historical interpretation approach that underlies the principles of legislation and the principle of legal certainty in achieving legal positivism and n original intent of its formation.

The judicial power system in the third amendment of the 1945 Constitution divides the fields of judicial institutions on an equal footing. So we can realize that regardless of whether it is right or wrong, the Constitutional Court's decision in case Number 005/PUU-IV/2006 has permanent legal force. perspective when looking at changes in perspective on the substance of the constitution, the impact of Decision Number 005/PUU-IV/2006 which has permanent legal force is binding and therefore must be followed or implemented even though the validity of external supervision of the Judicial Commission in the material content of the constitution legally binding.

External Supervision of the Judicial Commission after the Constitutional Court Decision

Controversially, the authority of the Judicial Commission was trimmed through a judicial review by the Constitutional Court through Constitutional Court Decision Number 005/PUU-IV/2006 dated August 23, 2006, which filed a petition for judicial review of Law Number 22 of 2004 concerning the Judicial Commission. Consideration of the Constitutional Court cutting the various powers of the Judicial Commission, among others: this institution is a supporting institution that was specifically formed as an external supervisory agency for judicial power institutions, then there are no clear criteria regarding the behavior of judges which creates legal uncertainty due to overlapping with judicial technical supervision. which is carried out inherently by the leadership of the Supreme Court as the institution holding judicial power.

Consideration of the legal basis (legal reasoning) if the decision does not reach consensus or there is a dissenting opinion for the benefit of the judiciary as a form of individualistic reasoning judicial review to the Constitutional Court and has been decided by the Constitutional Court Number 005/PUU-IV/2006, even though it resulted in gave rise to various legal opinions controversy (legal opinion).

According to Jimly Asshiddiqie, the formulation of the provisions of Article 24B paragraph (I) of the 1945 Constitution as a result of the third discussion could cause controversy in the future. There it is very clearly formulated: "The Judicial Commission is independent in nature which has the authority to propose the appointment of Supreme Court justices and has other powers to maintain and uphold the honor, dignity, and behavior of judges". This means that the first task of this commission is to propose the appointment of Supreme Court justices and its second task is to maintain and uphold the honor, dignity, and behavior of judges. Furthermore, Jimly Asshiddiqie explained that because the first task is related to the "high judge" and the second task is only to the "judge", the meaning is clear, namely that the Judicial Commission has the task of protecting (preventive) and upholding (corrective and repressive) honor, dignity and dignity. and the behavior of all judges in Indonesia. Thus, judges whose honor, dignity, and behavior must be maintained and enforced include supreme court judges, general court judges, religious courts, state administrative courts, and military courts as well as constitutional judges. Main Constraints in Legal Reasoning Representation The obstacle in representing legal reasoning lies in several important factors concerning the legal system itself, government bureaucratization, political system, and social structure, as well as other factors that affect law enforcement.

Legal Reasoning by function gives meaning to two English phrases, namely: legal (law) and reasoning (legal basis considerations). Understanding legal rationalizing according to H.F. Abraham Amos is related to legal reasons that are used as a benchmark (stelling) or equivalent (underselling), by the legal institution apparatus in a case for the sake of prosecution and court judge decisions based on law.

In principle, according to H.F. Abraham Amos, to express legal reasons (legal reasoning) requires a systematic construction of thinking by the function of regulations and standardization of the workings of the applicable law which are often practiced by judicial institutions according to the predicate and legal hierarchy as described among them: 1 the rule of common law (*lex generalis*); 2. special legal regulations (*lex specialis*); 3. Regulations of the same degree previously made (*lex superior*); 4. Rules of the same degree that were made later (*lex postiori*).

Based on Mahfud MD's opinion, about the MPR Decrees derived from the minutes of the Ad Hoc Committee (PAH) sessions in the establishment of the Constitutional Court, there are several limitations in the Constitutional Court Decisions, namely: ^[15]

1. The decision of the Constitutional Court cannot contain regulatory content. The decision of the Constitutional Court can only state that a law or part of the content of the law is contrary to certain parts of the Basic Law.
2. The decision of the Constitutional Court cannot annul the law or part of the contents of the law, whose authority is attributed to the law by the Constitution.
3. The decision of the Constitutional Court cannot exceed what is requested by the petitioners (*ultra petita*). Even though the Constitutional Court sees that there are important matters in the petition that are not asked to be decided, the Constitutional Court is not allowed to make a decision based on the assumptions of the Constitutional Court itself.
4. Decisions of the Constitutional Court cannot touch matters relating to the Constitutional Court or concerning the judiciary. This opinion is based on a legal principle, namely *nemo iudex in causa sua* or *nemo iudex indoneus in propria causa*, as a universal legal principle that opposes judges deciding cases related to themselves and/or related to the judiciary.

According to Mahfud MD, the Judicial Commission is a state institution formed in connection with judicial power through the constitution to carry out external supervision of judges. This is still in line with the description of the statement of the Constitutional Court Decision Number 005/PUU-IV/2006, that the supervision carried out by the Judicial Commission on judges is the supervision of individual judges without interfering and influencing judges in the judicial technical case process, but in the Court's decision, The Constitution cannot cancel the delegated legislators against the supervisory delegates for individual judges, namely the Judicial Commission in Law Number 22 of 2004 concerning the Judicial Commission against judges in the Supreme Court or the Constitutional Court regarding the external judicial oversight function by the Judicial Commission through mandatory Laws. -The 1945 Constitution whose authority is attributable to Law Number 22 of 2004 concerning the Judicial Commission.

The authority of the Judicial Commission as an external supervisory agency for the judicial power institution in the theory of constitutional interpretation stated above has a major influence on the quality of the concept of will, there tends to be a sharp distinction between the public sector and the private sector when the external oversight function of the Judicial Commission is interpreted.

Legal Implications for the Existence of a Judicial Commission whose External Oversight Authority is Restricted

Supervision is very necessary for an organization's management of any form. Self-monitoring is also required of the government of the Republic of Indonesia. Supervision is needed in the involvement of the state in increasing people's trust and at the same time aiming to organize the welfare of all the people.

Supervision is an activity carried out to assess from the implementation of activities whether it is by what was planned and evaluation and correction actions are carried out on *Dass Sein* (plans/aspirations) and *Dass Sollen* (reality/facts) with what has been achieved.^[16] According to Muchsan, the following elements are needed for supervisory action:

1. There is a clear authority possessed by the supervisory apparatus;
2. The existence of a solid plan as a testing tool for the implementation of a task to be supervised;
3. Supervision actions can be carried out on a process of ongoing activities as well as on the results achieved from these activities;
4. The supervisory action ends with the preparation of a final evaluation of the activities carried out and the matching of the results achieved with the plan as a benchmark; and
5. Henceforth, supervisory actions will be continued with follow-up both administratively and juridically.

According to Ahsin Thohari, the consequence of realizing the existence of a rule of law is in the effort to strengthen judicial power to maintain the continuity of judges to stick to their moral values as a judge who must have integrity and an impeccable personality, be honest, fair, and uphold values. Professionalism ^[17]

Ahsin Thohari concludes that the background for the formation of KY in several countries includes:

1. Weak monitoring of judicial power, because monitoring is only carried out internally;
2. No institution acts as a liaison between government power (executive power) and judicial power (judicial power);
3. The judicial power will not be efficient and effective in carrying out judicial duties if it is still preoccupied with non-technical judicial tasks;
4. The absence of a special institution that strictly supervises and assesses the consistency of judicial decisions;
5. The pattern of recruitment of judges is still biased by political interests, because the institutions that propose and recruit are political, namely the president or parliament.

Law enforcement related to disciplinary sanctions should be realized that in the context of supervising judges, the system to enforce judge ethics needs to be addressed by judges as a form of judges' support for a good trial because they realize that the ethics enforcement system is important to increase public trust in the judiciary. enforcement of judicial ethics must be within limits so that it does not conflict with judicial freedom on the behavior of a judge.

Law No. 22 of 2004 concerning the Judicial Commission relating to the task of supervising judges does not clearly and unequivocally determine who the object being supervised is, what instruments are used, and how the supervisory process is carried out. This is seen as causing all provisions of Law No. 22 of 2004 concerning the Judicial Commission relating to supervision to be blurred (*obscuur*) and causing legal uncertainty (*rechtsonzekerheid*) in its implementation. Even the elaboration of the concept of supervision in Law No. 22 of 2004 concerning the Judicial Commission creates uncertainty.

External supervision of the Judicial Commission as a separate state institution has an important role substantially in efforts to maintain and uphold the honor, dignity, and behavior of judges. External supervision of judicial power affects the independence, transparency, and accountability of a good judicial ethics enforcement system. External supervision has a positive influence on justice seekers on the existence of a judicial body or court apparatus when proceeding to adjudicate a case which tends to be triggered by the quality of the administration and judicial decisions, as well as deviations in the behavior of the court apparatus. The position of the Judicial Commission in maintaining and upholding the honor of judges needs to pay attention to whether the decisions made are by the honor of the judge and the sense of justice that arises from the community.

Furthermore, for the sake of the dignity of judges, the Judicial Commission must monitor whether the profession of judges has been carried out according to professional ethics and has received public recognition. Another purpose of this supervision is to keep the judges in their human nature, have a conscience, and at the same time maintain their dignity by not committing any disgraceful acts.

The existence of the Judicial Commission is expected to be a solution to problems related to the administration of judicial power so that the focus of the Judicial Commission's authority cannot be separated from the judicial power. The Judicial Commission as a state institution ideally has authoritative authority, an institution that should have full authority to exercise authority related to judicial power except for the technical authority of the judiciary. The function of external supervision of judges makes the role of KY in the judicial reform agenda strategic to provide basic certainty of good and clean governance, fair and responsible law enforcement, and uphold the code of ethics of the profession of judges.

Judging from the decision of the Constitutional Court in case No. 005/PUU-IV/2006, supervision in the technical judicial is in the hands of the leadership of the Supreme Court as part of the built-in control. Consequently, the Judicial Commission can only handle judges' behavior in matters unrelated to the case, meaning that the Judicial Commission can only handle matters related to the ethics of individual judges because the affairs of the case are fully supervised by the Supreme Court.

With this view, some even propose that the Judicial Commission be placed under the Supreme Court or remain independent but its chairman is concurrently *ex-officio* by the Chief Justice of the Supreme Court. Therefore, the Judicial Commission is an external supervisory agency for judicial power institutions that remain within the scope of judicial power as an institution specifically formed as a supporting institution.

The Supervisory Body of the Supreme Court as the Internal Supervisor works hard on the administration of justice, the implementation of administrative and financial tasks at the Judicial Body under it in carrying out the form of transparency, effectiveness, and efficiency of the Judicial Power. The Supreme Court needs to evaluate existing policies and establish new policies that can improve conditions for existing violations. Jurisdiction of supervision of judges is regulated in a Joint Regulation of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number: 02/PB/MA/IX/2012-02/PB/P.KY/09/2012 concerning Guidelines for Enforcement of the Code of Ethics and Code of Conduct for Judges.

Conclusion

Changes in the substance of the 1945 Constitution in the state administration system in Indonesia can only be carried out procedurally by the People's Consultative Assembly, not through the decisions of the judges of the Constitutional Court. The decision of the Constitutional Court Number 005/UPP-IV/2006 cannot change the authority of the Judicial Commission by the substance of the 1945 Constitution constitutionally and based on the hierarchy of laws. The juridical consequences of the external supervision of the Judicial Commission after the decision of the Constitutional Court recommended the President and the House of Representatives to revise Law No. 22 of 2004 concerning the Judicial Commission through improvement steps by synchronizing the law on judicial power, the law on the Supreme Court and constitutional court laws and other laws related to the judicial system. About the limitation of external supervisory authority by the Judicial Commission, it only covers the supervision of *ad hoc* judges at the Supreme Court and Judicial Body Judges under the Supreme Court so the Judicial Commission does not have the authority to enforce the law on violations of judge ethics (main institution).

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