

THE EXISTENCE OF THE JUDICIAL COMMISSION IN SUPERVISING JUDGES IN INDONESIA

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Abstract

The Judicial Commission (KY) has the authority to propose the appointment of Supreme Court justices and has other powers in order to maintain and uphold the honor, dignity, and behavior of judges. Although the Judicial Commission as an institution that is directly regulated by the 1945 Constitution, in carrying out its duties and functions it still raises a number of institutional problems related to its position, institutional relationship with the Supreme Court (MA), and implications that arise after the decision of the Constitutional Court (MK). As for the problems in this paper: First, what are the factors that hinder the Judicial Commission in carrying out its duties and functions in supervising judges? Second, what efforts should be made to strengthen the effectiveness of the Judicial Commission in supervising judges? The research method used is normative juridical. The results in this paper are: First, the obstacles for the Judicial Commission in carrying out its duties and functions: (1) efforts to weaken the Judicial Commission's authority through judicial review of the Constitutional Court's decisions; (2) the lack of clarity regarding the position as an independent institution and the institutional relationship with the Supreme Court; (3) institutional accountability issues. Second, efforts must be made to strengthen the effectiveness of the Judicial Commission's institutions: (1) the application of "shared responsibility" between the Judicial Commission and the Supreme Court includes: promotions, transfers, professional assessment and supervision of judges; (2) strengthening the authority of KY in the recruitment of judges; (3). to streamline the supervision of judges in the regions by optimizing the performance of the liaison KY.

Keywords: Judge; Judicial Commission; Supervision

I. INTRODUCTION

The reform era in Indonesia was marked by the widespread formation of new state institutions that used diverse and independent nomenclature or naming. The existence of these new institutions is theoretically usually referred to as *state auxiliary organs* or *state auxiliary institutions* or supporting state institutions or auxiliary state institutions. Apart from that, sometimes there are also what are called *self-regulatory agencies* or

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independent supervisory bodies . These institutions carry out *mixed* functions between regulative, administrative and punitive functions which are usually separated but are *actually* carried out simultaneously by these new institutions.⁶

Because the existence of *state auxiliary organs* or *state auxiliary institutions* literally in general is within the framework of supporting or assisting the implementation of the duties and functions of existing state institutions , their existence is as *supporting institutions* . One of the institutions that functions as *a supporting institution* This is the Judicial Commission (KY) which functions to supervise judges . Even though supervision over judges has so far been the authority of the Supreme Court (MA) and the Constitutional Court (MK) through internal mechanisms, apparently through the third amendment to the 1945 Constitution in 2001 it was agreed to establish the KY. Provisions regarding KY are regulated in Article 24B of the 1945 Constitution :

- (1) The Judicial Commission is independent and has the authority to propose the appointment of supreme judges and has other authorities in order to maintain and uphold the honor, dignity and behavior of judges.
- (2) Members of the Judicial Commission must have knowledge and experience in the legal field and have integrity and a personality that is beyond reproach.
- (3) Members of the Judicial Commission are appointed and dismissed by the President with the approval of the House of Representatives.
- (4) The composition, position and membership of the Judicial Commission are regulated by law.

The basic intention that became the spirit for the formation of the KY was based on deep concern regarding the gloomy condition of the judiciary and justice in Indonesia which has never been upheld. The KY was therefore formed with two constitutive authorities, namely to propose the appointment of supreme judges and to have other authorities in order to maintain and uphold the honor, dignity and behavior of judges. Furthermore, in order to operationalize the existence of KY, Law no. 22 of 2004 concerning the Judicial Commission which was ratified in Jakarta on 13 August 2004.⁷

The existence of KY is needed its existence is deep system constitutional because it is caused by: First, weakness intensive supervision (monitoring) . against judicial power, because Supervision is only carried out individually internal only; Second, there is no institution which is the link between power government (executive) and power judiciary (judiciary); Third, power the judiciary is deemed to have none efficiency and effectiveness that accommodates in carrying out their duties when still busy with non - legal technical issues; Fourth, there is no consistency in institutional decisions judiciary, because every decision is lacking obtain assessment and supervision the strictness of a special institution; and Fifth, the pattern of recruitment of judges during this is

⁶Jimly Asshiddiqie, 2008, *Relations between State Institutions After the Amendment to the 1945 Constitution, Lecture material at Leadership Education and Training (Diklatpim) Level I Class XVII Institute of State Administration, Jakarta, 30 October 2008, p. 8.*

⁷*Ibid.*

considered too biased towards the problem political, because the institution proposed it and recruiting him is a political institution, namely the president and parliament .⁸

However, in the course of his duties, KY experienced dynamics, especially related to institutional relations with the Supreme Court, including the Constitutional Court, including:⁹

First, in early 2006 , The conflict began when there was a refusal from the Chief Justice of the Supreme Court, Bagir Manan, at the request of the KY who wanted to examine Supreme Court judge Harifin A. Tumpa regarding the case of the execution of the building. Arthaloka is considered problematic. Manan refused to comply with KY's summons regarding the alleged bribery case committed by Probosutejo. Then at that time KY approached the President with the idea of re-selecting Supreme Court judges using a Government Regulation in Lieu of Law (Perppu) instrument. The conflict escalated when several media reported that KY had released information about 13 Supreme Court justices who were considered problematic. This news sparked anger at the Supreme Court and in the end several Supreme Court judges reported the chairman of the KY, Busyro Muqodas, to the police on charges of defamation.

Second, the feud then continued when 31 Supreme Court justices in March 2006 officially submitted a request for a judicial review of Law no. 22 of 2004 concerning the Judicial Commission to the Constitutional Court. In essence, the Supreme Court in the conflict regarding the supervision of judges is of the opinion that the meaning of the word "judge" in article 24B paragraph (1) of the 1945 Constitution is not intended for supreme judges and constitutional judges. The provisions in the KY Law and the Judicial Power Law which regulate that the KY has the authority to supervise supreme judges and constitutional judges are seen as contrary to article 24B paragraph (1) of the 1945 Constitution. Therefore, the KY has no authority to supervise supreme judges and constitutional judges.

Third, the institutional issue of the Judicial Commission in its task of supervising judges faced opposition from the Constitutional Court when the Constitutional Court Decision Number 005/PUU/IV-2006 was issued based on a *judicial review* submitted by a number of Supreme Court judges. In this decision, the KY's authority to supervise the behavior of judges still applies to supreme judges, but does not apply to constitutional judges. With this decision, there will be no supervision by external institutions at the Constitutional Court. Supervision is only carried out by the MK Honorary Council which is internal to the MK. This decision negates supervision of constitutional judges and eliminates the role of external institutions such as the KY which constitutionally has authority over this matter . This is a backward step in building the top judiciary as an institution with the principles of *clean government* and *good governance* .

⁸Ahsin Thohari, 2004, Judicial Commission and Judicial Reform, Jakarta: Elsam, p. 144-145.

⁹Taufik Nurohman, 2014, Dynamics of Institutional Relations Between the Judicial Commission and the Supreme Court and Constitutional Court in the Supervision of Judges, Journal of Political Science and Government, Vol. 1 Number 4, January 2014, p. 489-491.

Institutional issues between the KY and the Supreme Court have re-emerged regarding the constitutionality of the KY's authority in selecting prospective judges together with the Supreme Court . The Constitutional Court through its decision no. 43/PUU-XIII/2015 granted the request of the Indonesian Judges Association (IKAHI) for *a judicial review* of a number of articles in three packages of laws in the field of justice which questioned the involvement of the KY in the selection of prospective judges. In his decision, The Constitutional Court deleted the word "together" and the phrase "Judicial Commission" in Article 14A paragraph (2) and paragraph (3) of Law no. 49 of 2009 concerning General Courts, Article 13A paragraph (2) and paragraph (3) of Law no. 50 of 2009 concerning Religious Courts, and Article 14A paragraph (2) and paragraph (3) of Law no. 51 of 2009 concerning State Administrative Courts (PTUN). With this decision, the KY no longer has authority in the selection process for prospective judges in the three judicial environments .

Seeing the problem of institutional relations between the KY and the Supreme Court, this certainly presents challenges that are not easy for the KY to carry out its duties in supervising judges. The urgency regarding the existence of the KY as an external supervisory institution is increasingly being questioned amidst the practice of *judicial corruption* which is still part of the world of justice in Indonesia. In a span of time spanning dozens of years since its founding, KY's existence has experienced many dynamics. When compared with other independent institutions or commissions established since the reform era, the existence of the KY can be compared with the Corruption Eradication Commission (KPK) as an institution that has received much attention, especially regarding its performance and institutional relations issues.

Even though it is an institution that is viewed from its position as part of an institution that has constitutional authority because it is directly regulated by the 1945 Constitution, in carrying out its duties and functions the existence of the KY still raises a number of problems. This is of course inseparable from the institutional problems faced by the KY, especially regarding position, institutional relationship with the Supreme Court, duties and functions as well as the implications that arise for the authority after the Constitutional Court's decision. Not to mention the internal institutional problems within the KY itself. In order to improve the performance and clean integrity of the judiciary, institutional support through external supervision carried out by the KY is very important to continue to be maintained and strengthened. Therefore, in this research, researchers attempt to examine the Judicial Commission's institutions to understand the various problems faced in supervising judges and efforts to make improvements. Based on this description, the problems in this article are: First, what are the factors that hinder the Judicial Commission in carrying out its duties and functions in supervising judges? Second, what efforts should be made to strengthen the institutional effectiveness of the Judicial Commission in supervising judges?

This research was carried out using normative juridical methods, namely research carried out by examining library materials.¹⁰ In this research, the author uses several approaches, namely: First, a conceptual approach, this approach is used to study theories and concepts related to the institution of the Judicial Commission in supervising judges. Second, the statutory regulation approach (*statute approach*), this approach is used to analyze and study the statutory regulations that regulate the existence of the KY institution. Third, the comparative approach (*comparative approach*), this approach is used to compare the existence of judge supervisory institutions in other countries.

II. DISCUSSION

Inhibiting Factors for The Judicial Commission in Supervising Judges

In the Indonesian context, the background to the formation of the KY in the reform era actually started with the idea of establishing an institution that had certain functions in the realm of judicial power which had existed since the discussion of the Draft Bill on Basic Provisions of Judicial Power in 1968. At that time it was proposed to establish Judge Research Advisory Panel (MPPH). This assembly is expected to function in providing considerations and making final decisions regarding the appointment, promotion, transfer, dismissal and punishment of judges as proposed by the Supreme Court or by the Minister of Justice. However, this idea did not succeed in becoming material for Law no. 14 of 1970 concerning Basic Provisions of Judicial Power. This idea then emerged again during the reforms in 1998.¹¹

After the transfer of power in 1998, Indonesia experienced significant changes in various aspects of statehood, including the system of administering state power which consists of the legislature, executive and judiciary. The basis for this change was born with MPR RI Decree No. X/MPR/1998 concerning the Principles of Development Reform in the Context of Saving and Normalizing National Life as State Policy. One of the agendas that must be implemented based on the MPR Decree is the implementation of reforms in the legal sector to support overcoming the crisis in the legal sector. One of the agendas that must be implemented is a strict separation between functions, executive, judicial and legislative. Based on this, the idea for the formation of the KY was born, which began in 1999 when President Habibie formed a panel to study the renewal of the 1945 Constitution. In one of the panel forum discussions, various ideas regarding the formation of a body called the "Judicial Commission" were *generated*.¹²

This idea was responded to by the MPR so that at the MPR Annual Session in 2001, in discussing the Third Amendment to the 1945 Constitution, the existence of the KY was also discussed, whose existence was then regulated by Article 24B of the 1945 Constitution which clearly states that the KY is an independent state institution and has

¹⁰Soerjono Soekanto and Sri Mamudji, 2003, Normative Legal Research: A Brief Overview, Jakarta, RajaGrafindo Persada, p. 13-14.

¹¹https://www.komisiyudisial.go.id/frontend/static_content/history/about_ky, accessed on 15 August 2022.

¹² <https://komisiyudisial.go.id/storage/assets/uploads/files/buku-saku-ky-mengenal-KY-besar-dengan.pdf> p. 2-3.

the authority to propose the appointment of Supreme Court justices. and has other authorities in order to maintain and uphold the honor, dignity and behavior of judges.¹³

Through the third amendment to the 1945 Constitution, it was agreed to establish the KY as regulated in Article 24B of the 1945 Constitution. The basic intention that became the spirit of the formation of the KY was based on deep concern regarding the gloomy condition of the judiciary and justice in Indonesia which has never been upheld. The KY was formed with two constitutive authorities, namely to propose the appointment of supreme judges and to have other authorities in order to maintain and uphold the honor, nobility and behavior of judges. Furthermore, the existence of KY is regulated by Law no. 22 of 2004 concerning the Judicial Commission which was ratified in Jakarta on August 13 2004. The purpose of the KY was established so that it could carry out intensive monitoring of judicial power by involving elements of society in the widest possible spectrum and not just internal monitoring. KY also plays a role in ensuring the independence of judicial power from the influence of any power, especially government power.¹⁴

The birth of KY was also encouraged, among other things, by the ineffectiveness of internal (functional) supervision in judicial bodies. Therefore, it cannot be denied that the formation of KY as an external supervisory institution was based on weak internal supervision. Weak internal supervision is caused by several factors, including: (1) inadequate quality and integrity of supervisors; (2) the disciplinary examination process is not transparent; (3) there is no ease for disadvantaged communities to submit complaints to monitor the process and results (lack of access); (4) the spirit of defending fellow corps (*esprit de corps*) which results in punishment being disproportionate to the action. Any attempt to improve a bad condition will definitely receive a reaction from the party who has so far benefited from that bad condition; and (5) there is no strong will from the leadership of law enforcement agencies to follow up on the results of supervision.¹⁵

The KY's supervision of judges has been regulated constitutionally and its task is clearly to maintain the honor and dignity of judges' behavior. Repressive (enforcement) and preventive (prevention) forms of supervision are included in the KY's authority to maximize its supervision and the KY is only external, meaning that only judges' behavior is monitored and not judicial technicalities which are the authority of the Supreme Court. The existence of the KY greatly influences the quality of the judge's performance because of course the judge is more professional and careful in carrying out his duties.¹⁶

¹³[*ibid*, p. 5.

¹⁴Imran and Festy Rahma Hidayati, 2019, 14 Years of the Judicial Commission of the Republic of Indonesia: Towards a Credible and Excellent Judicial Commission, Jakarta: Secretariat General of the Judicial Commission of the Republic of Indonesia, p. 19.

¹⁵Elza Faiz, et al, 2013, Minutes of the Judicial Commission: Origins, Institutionalization and Dynamics of Authority, Jakarta: Secretariat General of the Judicial Commission of the Republic of Indonesia, p. 7-8.

¹⁶ Nur Kautsar Hasan, Nasrun Hipan, Hardianto Djanggih, 2018, Effectiveness of Judicial Commission Supervision in Supervising Judges' Professional Code of Ethics, Jurnal Kertha Patrika, Vol. 40, no. December 3, 2018, p. 152.

After looking at the background and ideas underlying the establishment of KY in Indonesia, it is necessary to look at the institutional design of KY from a constitutional law perspective, because this will be related to institutional position and relationships so there are several aspects that need to be reviewed, namely:¹⁷

First, institutionally, KY can be said to be a commission that is unique when compared to other commissions. Unlike other commissions, the KY's authority is given directly by the 1945 Constitution, namely Article 24B. Indeed, the general election commission also has the authority granted directly by the 1945 Indonesian Constitution, namely Article 22E paragraph (5), but the general election commission referred to in this article is not a definitive name. The proof is that the writing is not in capital letters, which shows that the general election was held by a general election commission, whatever the name of the institution. Apart from that, unlike other commissions, the KY is clearly and without doubt part of judicial power, although not in the sense of being an actor of judicial power, because the regulations are in Chapter IX of Judicial Power contained in the 1945 Constitution of the Republic of Indonesia.

Second, the regulation of the KY in the 1945 Constitution is inseparable from efforts to strengthen judicial power in Indonesia's constitutional structure, as a logical consequence of the adoption of the rule of law, one of which is realized by ensuring the recruitment of credible Supreme Court judges and maintaining the continuity of the judges on duty. in the field to remain adherent to his moral values as a judge who must have integrity and a personality that is beyond reproach, honest, fair, and upholds the values of professionalism. It is within this framework that Article 24B of the Third Amendment to the 1945 Constitution, which was enacted on November 9 2001, exists and mandates the formation of an institution called KY.

Third, however, unfortunately, Article 24B of the 1945 Constitution tends to place KY more as a watchdog *who* is only designed to look for judges' mistakes rather than as a sparring partner *who*, apart from finding mistakes, can also reward achievements, even fight for their welfare. . Apart from proposing the appointment of supreme judges, Article 24B of the 1945 Constitution only gives the KY the authority to maintain and uphold the honor, nobility and behavior of judges. This authority was translated into a form of supervision that was not optimally designed by the KY Law, so that it was finally declared contrary to the 1945 Constitution by the MK. This is different from the Italian constitution, for example, in that 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. So, the role of KY is actually not only in the preventive-repressive realm, but also consultative-protective. That is why in several countries the nomenclature for KY is the *Judicial Service Commission*. This function of serving judges is not regulated in our constitution. The revised KY Law should be able to regulate this function in the future.

¹⁷https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=597:ditik-konstitusional-komisi-yudisial-dalam-sistem-ketatanegaraan-indonesia&catid=100&Itemid=180, accessed on 13 September 2022.

Fourth, however, based on the fact that changing the constitution is not easy, the impact of regulatory weaknesses at the constitutional level can be minimized if regulations at the statutory level translate the position, authority and duties of the KY in the Indonesian constitutional system. Apart from that, there is momentum in the form of a revision of Law no. 22 of 2004 concerning the Judicial Commission to follow up on Constitutional Court Decision No. 005/PUU-IV/2006. Some parties want the KY to have greater authority than just the authority to propose the appointment of Supreme Court justices and to have other powers in order to maintain and uphold the honor, dignity and behavior of judges. The expansion of authority that deserves consideration is the transfer and promotion of judges. Countries that give limited authority to the Judicial Commission also recognize the authority to transfer and promote judges. For example, this authority is owned by the KY in Southern European countries such as France, Italy, Spain and Portugal.

Judging from the duties, functions and authority, the existence of the KY also carries out a mixture of regulatory functions, administrative functions and punitive functions similar to a judicial institution. By having mixed functions like this, the existence of the KY in Indonesia cannot be classified into which branch of power in the context of the *trias politica theory*, namely executive, legislative or judicial. In constitutional theory, when formulating how a state institution outside the executive, judiciary and legislature, there are 3 theories that are often offered. First, *separation of powers* is characterized by not accepting the presence of these supporting institutions, so it can be concluded as extra-constitutional. Second, *separation of functions* which has the characteristic of still being able to accept its presence as long as it is related to executive, legislative or judicial functions. Third, *checks and balances* which are characterized by fully accepting the presence of other supporting institutions as part of the 4th or 5th principle of power from the legislative, judicial and executive branches of power.¹⁸

Based on the theoretical approach above, it can be interpreted that the existence of the KY in Indonesia is within the framework of *checks and balances* which are characterized by fully accepting the presence of other supporting institutions as part of the 4th or 5th principle of power from the legislative, judicial and executive branches of power. Or at least its existence is based on the *separation of function theory* which is characterized by being able to accept the presence of the KY as long as it is related to executive, legislative or judicial functions. Because according to John A. Garvey and T. Alexander Aleinikoff, the division of power based on the *separation of function theory* means strictly separating the functions of each branch of state power, not strictly separating them as if they have no relationship at all as adhered to by the *separation of power theory*. Of course, the ¹⁹*separation of power* approach cannot be used in the framework of explaining the existence or position of KY in Indonesia. Because only with

¹⁸<https://www.pukatkorup.org/index.php?action=archive.list&id=65-16k> -

¹⁹John A. Garvey and T. Alexander Aleinikoff. 1994. *Modern Constitutional Theory*, West Publishing Co, p. 296-297 in Saldi Isra. 2010. *Shifting the Function of Legislation: Strengthening the Parliamentary Legislation Model in the Indonesian Presidential System*, Jakarta: RajaGrafindo Persada, p. 77.

a *separation of function* and *checks and balances* approach can we understand the existence of the KY in the Indonesian constitutional system.

Because the existence of *checks and balances* places greater emphasis on efforts to build a balanced mechanism for mutual control between branches of state power. Because this mechanism can only be implemented as long as it has a constitutional basis to prevent the possibility of abuse of power by branches of state power.²⁰ Therefore, in the context of this *checks and balances approach*, the formation of the KY in Indonesia was indeed formed within the framework of preventing centralization of power and *abuse of power* to strengthen the building of a democratic Indonesian legal state.

However, it is realized that regarding the urgency of the KY's existence as an external supervisor of judges, the KY also faces challenges that are not easy, including efforts to weaken the KY's authority. There are at least several juridical problems in the form of weakening the authority of the KY, including:²¹

- 1) weakening through MK Decision No.005/PUU-iv/2006 which resulted in the revocation of the KY's authority to carry out external supervision of MK judges and resulted in the loss of the binding power of the KY's supervisory regulations as well as the loss of most of the KY's authority to impose sanctions.
- 2) weakening related to Constitutional Court Decision No. 49/PUU-IX/2011 against the KY as regulated in Law no. 8 of 2011 concerning Amendments to Law no. 24 of 2003 concerning the Constitutional Court regarding MKMH membership.
- 3) weakening through Constitutional Court Decision No. 1-2/PUU-XII/2014 regarding the Judicial Commission as regulated in Law no. 4 of 2014 concerning Perrpu No. 1 of 2013 concerning the Second Amendment to Law No. 24 of 2003 concerning the Constitutional Court into Law.
- 4) weakening through Constitutional Court Decision No. 43/ PUU- KY.

Regarding supervisory authority after Law no. 18 of 2011, the KY began to clearly divide two approaches, namely a preventive approach and a repressive approach. These two approaches can be distinguished but cannot be separated, because in taking action there are always preventive values. However, basically the KY does not have the capacity to impose sanctions for violations of the code of ethics committed by judges. KY may only provide recommendations to the Supreme Court if there is a violation of the code of ethics. When there is a difference of opinion between the KY and the Supreme Court regarding the KY's proposal regarding the imposition of light sanctions, medium sanctions and heavy sanctions, a joint examination is carried out between the KY and the Supreme Court of the judge concerned.²²

In carrying out its duties and authority, KY often has conflicts with the Supreme Court, therefore since 2012 the Supreme Court and KY issued Joint Decree No. 04/

²⁰Ibid, p. 78.

²¹Nita Ariyani, 2017, *Strengthening the Authority of the Judicial Commission in the Context of Realizing an Independent Judiciary in Proceedings: Synergy of the Supreme Court and the Judicial Commission in Realizing an Excellent Court 6 May 2017*, Purwokerto: Muhammadiyah University, p. 46-47.

²²Ibid, p. 20.

PB/MA/IX/2012 and 04/PB/P.KY/09/2012 concerning Guidelines for Enforcement of the Code of Ethics and Code of Conduct for Judges. One of the media for implementing this Joint Decree is the existence of an Honorary Panel of Judges (MKH). MKH is a media for judges who are "judged" and defend themselves from all kinds of accusations directed at them. The MKH is led by 3 Supreme Court Justices from the Supreme Court and 4 judges from the KY.²³

Apart from the issue of authority in carrying out the duties and functions of supervising judges, in terms of position, especially the independence aspect and institutional accountability aspect, the Judiciary still has several problems, namely: First, independence, the constitution has clearly determined that the KY is an independent institution. However, as with other commissions, what constitutes 'independence' and the extent to which that independence should be implied, are not clear.²⁴

Second, accountability, there are at least 6 (six) important aspects to pay attention to regarding the accountability of KY institutions. First, form of accountability; second, the subject who must be responsible; third, the object of responsibility. Fourth, the legal basis for demanding responsibility; fifth, to whom and with what mechanism the holder of power must be accountable for the object of his responsibility; and sixth, sanctions that can be given to parties who cannot be held accountable for the implementation of their functions.²⁵

Efforts to Strengthen the Effectiveness of The Judicial Commission Institutions in Supervising Judges

The existence of the formation of KY is a phenomenon that emerged along with the development of democratization in many countries. The awareness that the implementation of democracy requires the existence of clean and independent judicial institutions requires supervision of the personnel of these institutions, especially those related to maintaining the professionalism and integrity of judges in carrying out their duties. To carry out supervision of judges, it is not enough to just use internal supervision mechanisms such as the ethics institution established by the Supreme Court, but also requires supervision by external institutions such as the KY.

The KY was formed in Indonesia with the aim of ensuring that internal supervision under one roof under the Supreme Court does not turn into judicial tyranny. The existence of the KY as a state institution that is a supporter (*auxiliary organ*) to judicial power, based on the 1945 Republic of Indonesia Constitution, the KY has an equal position with other state institutions such as the President, DPR and other state institutions. KY is not an actor of judicial power, but its authority is related to judicial power. If we look at the historical background of the birth of the KY, then there are 2

²³*Ibid.*

²⁴Elza Faiz, et al, *Minutes of the Judicial Commission: Origins, Institutionalization and Dynamics of Authority*, Jakarta: Secretariat General of the Judicial Commission of the Republic of Indonesia, p. 178.

²⁵*Ibid*, p. 189-190.

(two) reasons why the KY is needed in the Indonesian state administration as stated in the 1945 Law, namely:²⁶

- a. The internal supervision system of the Supreme Court supervisory body has not yet functioned optimally;
- b. In order to strive to uphold honor and dignity and maintain the behavior of judges in carrying out their duties.

KY is given the mandate to maintain the credibility of judges as legal officials. Judge is a prestigious position that should be given to people who have quality, credibility and capabilities. As enforcers of justice, judges should be held by people who believe and are devoted to God. Be devoted to to God because every decision taken by the judge must also be accounted for before God. This means that a judge cannot discharge his moral responsibility regarding the decision on a case submitted to him.²⁷

There are at least 4 (four) things that serve as the background for the main purpose of establishing the KY, namely:

- (1) The KY was formed to be able to carry out intensive monitoring of judicial power by involving elements of society in the widest possible spectrum and not just internal monitoring.
- (2) The existence of the KY, the level of efficiency and effectiveness of judicial power *will* be higher in many ways, both regarding the recruitment and monitoring of supreme judges and the financial management of judicial power.
- (3) Maintaining consistency in the decisions of judicial institutions, because each decision receives strict assessment and supervision from a special institution, such as the KY.
- (4) The existence of the KY, the independence of judicial *power* can continue to be maintained, because politicization of the recruitment of Supreme Court judges can be minimized by the existence of the KY which is not a political institution, so it is assumed that it has no political interests ²⁸.

A checks and balances function in the judicial supervision system. KY is expected because the public has lost trust in judicial institutions and the internal supervision carried out by the Supreme Court is seen as less effective. In principle, supervision by the KY is aimed at ensuring that supreme judges and justices carry out their authority and duties strictly based on and in accordance with the provisions of laws and regulations, truth and society's sense of justice, as well as upholding the judge's professional code of ethics.²⁹

²⁶Syamsir Yusfan, 2014, *The Existence of the Judicial Commission in Supervising the Behavior of Judges in the Supreme Court of the Republic of Indonesia*, Wahana Innovation, Volume 3 No.1 Jan-June 2014, p. 188.

²⁷*Ibid*, p. 188-189.

²⁸Widodo Ekatjahjana, *Existence and Role of the Judicial Commission in Indonesian Constitutional Practice*, in Hermansyah, et al (ed), 2016, *Optimizing the Authority of the Judicial Commission in Creating Judges with Integrity*, Jakarta: Secretariat General of the Judicial Commission of the Republic of Indonesia, p. 233.

²⁹*Ibid*, p. 240.

According to Wim Voermens, currently KY³⁰ institutional formulations can be identified which are grouped into 2 main models, namely:

- a. the KY model in Northern European countries, where the KY functions as a *buffer* between the government (executive) and the judiciary, so that the work carried out is more focused on administrative governance and judicial management;
- b. KY model in Southern European countries, where the KY functions as a balancer to judicial power as well as a *supervisory heavy supervisor* on judicial functions.

In structuring the KY institution in Indonesia, one can take the example of the practices developed in the two KY models in mainland European countries, where the KY is placed in the judicial power group with authority related to administrative governance and judicial management and functions as a balance and supervision of the functions of the judiciary. judicial function. Based on the background of its formation, the authority of the KY in Indonesia is similar to the KY in mainland European countries, both as a buffer and a balance to judicial power.³¹

As an effort to strengthen the authority of the KY in Indonesia, which so far has not been optimal and has not been effective in carrying out its duties and functions, it is necessary to take a number of steps as follows:³²

- a. returning executive authority to the KY as a whole regarding the supervision of judges so that whether mild, moderate or serious cases related to irregularities in the judge's behavior are not just recommendations for sanctions so that external supervision will be more effective. This of course also makes the Supreme Court's work easier so that it can focus more on upholding law and justice.
- b. Regarding the concept of "*shared responsibility*" offered by the KY which includes several aspects, such as: promotion, transfer, assessment of professionalism and supervision of judges, the Supreme Court should consider this concept to be accommodated in the Draft Law (RUU) concerning the Position of Judges.
- c. The next strengthening of the KY's authority is related to the authority in recruiting judges. Recruitment of judges in France and America is carried out by institutions such as KY alone without involving the judiciary. The recruitment of judges used by France and the United States can be used as input in order to strengthen the authority of the Judicial Commission in Indonesia and be accommodated in the Draft Law (RUU) on the Position of Judges. By giving full authority to recruit judges to the KY, it will certainly reduce the burden on the Supreme Court so that the Supreme Court's role will be maximized in upholding law and justice.

³⁰Sukma Violetta, *Building a Judicial Commission Organization Post Law Number 18 of 2011 in Hermansyah, et al (ed), 2016, Optimizing the Authority of the Judicial Commission in Realizing Judges with Integrity*, Jakarta: Secretariat General of the Judicial Commission of the Republic of Indonesia, p. 114.

³¹*Ibid*, p. 114-115.

³²Nita Ariyani, 2017, *Op.Cit*, p. 48-49.

In an effort to make its performance more effective, KY must set a priority scale in optimizing the authority it has and the carrying capacity of existing resources. KY has set a priority scale called the national priority program related to developing judge integrity, strengthening and integrating judge track record databases, judge advocacy and ethics clinics, and Code of Ethics training and the Judge's Code of Conduct (KEPPH) as well as legal and judicial technicalities, namely:³³

First, increasing the capacity and integrity of judges in order to create an effective, transparent and accountable justice system. KY received a budget ceiling of IDR 184 billion in 2022, or an increase of IDR 77 billion from 2021. KY's support for achieving the 2022 national priority agenda is IDR 19.3 billion, or around 10% of the total KY budget. With the support of such a large budget related to the development of judge integrity, it is hoped that this year's judge integrity index target will be 7.36 and we are currently conducting assessments with survey institutions in order to implement the measurement of the judge integrity index.

Second, strengthening and integrating the judge's track record database, where the number of integrated judge track record databases is 735 judges. Currently, mapping of the judge's track record database as a result of investigations is being carried out.

Third, judge advocacy and ethics clinics, where the number of judge advocacy activities and ethics clinics is planned to run as many as 16 activities.

Fourth, Training on the Code of Ethics and Code of Conduct for Judges (KEPPH) as well as legal and judicial technicalities. It is scheduled that the number of judges who will receive KEPPH training as well as legal and judicial technicalities is 600 judges. Currently, KEPPH training and judicial legal techniques have been carried out for 179 judges.

The program to increase the capacity of judges is one of the national priority activities in the field of law enforcement. The choice of Increasing the Capacity of Judges as one of the national priorities is the government's focus and attention to together with the KY to make efforts to prevent irregularities committed by law enforcement officials, in this case judges, so that in the future the law can be fully enforced.³⁴

III. CONCLUSION

The factors that hinder the KY in carrying out its duties and functions in supervising judges are: First, related to independence; The constitution has clearly determined that the KY is an independent institution. However, as with other commissions, what is meant by the KY as an 'independent' institution and to what extent the implications of this independence should be interpreted, is not clear. This has implications for uncertainty regarding the institutional relationship of the Judicial Commission in supervising judges both with the Supreme Court and the Constitutional Court; Second, there was a judicial review of the KY Law which resulted in a weakening of the KY's authority in supervising judges. A number of *judicial review* decisions issued by the Constitutional Court had an

³³Judicial Commission Magazine, *National KY 2022 Program*, March-January 2022 Edition, p. 4-5.

³⁴*Ibid*, p. 5.

impact on weakening the KY's authority, namely as follows: 1) weakening through Constitutional Court Decision No.005/PUU-iv/2006 which resulted in the revocation of the KY's authority to carry out external supervision of MK judges and resulted in the loss of the binding power of the KY's supervisory regulations and the loss of most of the KY's authority to impose sanctions; 2) weakening related to Constitutional Court Decision No. 49/PUU-IX/2011 against the KY as regulated in Law no. 8 of 2011 concerning Amendments to Law no. 24 of 2003 concerning the Constitutional Court regarding MKMH membership. 3) weakening through Constitutional Court Decision No. 1-2/PUU-XII/2014 regarding the Judicial Commission as regulated in Law no. 4 of 2014 concerning Perrpu No. 1 of 2013 concerning the Second Amendment to Law No. 24 of 2003 concerning the Constitutional Court into Law; 4) weakening through Constitutional Court Decision No. 43/PUU-XIII/2015 regarding the KY regulated in Law no. 49 of 2009 concerning General Courts, Law No. 50 of 2009 concerning Religious Courts and Law No. 51 of 2009 concerning State Administrative Courts, in terms of recruitment of prospective judges by the KY.

There are suggestions to strengthen the institutional effectiveness of the KY in supervising judges: First, return executive authority to the KY as a whole regarding the supervision of judges regarding irregularities in judges' behavior, not just in the form of recommendations for sanctions so that external supervision will be more effective. Second, related to the concept of "*shared responsibility*" offered by the KY which includes several aspects, such as: promotion, transfer, assessment of professionalism and supervision of judges, this concept is to be accommodated in the Draft Law (RUU) concerning the Position of Judges. Third, further strengthening of the KY's authority is related to the authority in recruiting judges. By giving full authority to recruit judges to the KY, it will certainly reduce the burden on the Supreme Court so that the Supreme Court's role will be maximized in upholding law and justice. Fourth, Strengthen and make the supervisory function of regional judges more effective by optimizing the performance of the liaison Judicial Commission as a representative and extension of the Judicial Commission at the center with the support of adequate resources, budget and infrastructure.

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