
Reformulation of the Authority of Judicial Commission: Safeguarding the Future of Indonesian Judicial Power

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Abstract

Jurisdiction of Indonesian judiciary still leaves various polemics, one of which relates to decisions that are antinomian between the Constitutional Court and the Supreme Court. This research aims to describe efforts to resolve these issues through reformulation within the constitution, regarding the supervisory authority of the Judicial Commission in creating harmonization of judicial decisions in the future. This type of research is normative research. The results indicate that reformulation or redefinition of the authority of the Judicial Commission in the constitution is a gateway to optimizing the role of the Judicial Commission as a product of reform in supervising judges in issuing correct, fair, and legal certainty decisions. Regulation through the constitution is an attributive authority in which the formulation of constitutional norms in the chapter on judicial power, particularly Article of the Judicial Commission, should preferably include phrases of "safeguarding" and "upholding" the code of ethics and conduct of judges, as preventive and repressive measures to prevent antinomian decisions between two judicial state institutions from recurring.

1. Introduction

Indonesia is a country that identifies law as the highest commander,¹ so that the law can be a protector for all its people, with the hope that the law will seat everyone in the throne of certainty, justice, and expediency.² The legal foundation of Indonesia begins in the Preamble of the 1945 Constitution of the Republic of Indonesia which clearly states that independence is the right of all nations. Freedom and independence are the foundation of a country, including Indonesia, which upholds the supremacy of law based on social justice and truth according to the spirit of *philosophische grondslag* and *grundnorm*,³ thus law is created to be the savior for all components of the nation.

Viewed from a state perspective, one of the approaches worth exploring in materializing this legal ideal is through the implementation of judicial power in Indonesia. The judicial realm plays a role in administering judicial power to uphold the law and justice in achieving truth, order, and legal certainty.

In order to materialize these efforts, a juridical foundation is established governing judicial power in the Third Amendment of the 1945 Constitution Article 24 paragraph (2).⁴ Amendment of the 1945 Constitution Chapter IX brought forth to a new institution in the field of judicial power, which was the Constitutional Court, as stated in Article 24 paragraph (2), which reads as follows: “*The judicial power is exercised by a Supreme Court and the subordinate judicial bodies in the general courts, religious courts, military courts, administrative courts, and by a Constitutional Court.*”

The article explicitly states that judicial power in the Indonesian state system lies within the judiciary domain exercised by the Supreme Court and subordinate judicial bodies, as well as by a Constitutional Court. In Chapter IX of the 1945 Constitution,

¹ Usman Rasyid, Fence M. Wantu, and Novendri M. Nggilu, *Wajah Kekuasaan Kehakiman Indonesia: Analisis Yuridis Putusan Mahkamah Konstitusi Dan Putusan Mahkamah Agung Yang Bersifat A Contrario* (Yogyakarta: UII Press, 2020), 1.

² Mertokusumo mentions that there are three elements of legal ideals: Certainty (*Rechtssicherheit*), justice (*Generchtigkeits*), and utility (*Zweckmasigkeit*). These legal ideals are interconnected and inseparable, and all three must be strived for in every legal rule. See Fence M. Wantu, *Idee Des Recht: Kepastian Hukum, Keadilan, Dan Kemanfaatan* (Yogyakarta: Pustaka Pelajar, 2011), 75.

³ Fence M. Wantu and Usman Rasyid, “Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia,” *Jurnal Majelis* 8 (2020): 35.

⁴ Sakirman Sakirman, “Tafsir Hukum Atas Posisi Ganda Hakim Di Indonesia,” *Jurnal Konstitusi* 14, no. 1 (July 24, 2017): 189–90, <https://doi.org/10.31078/jk1419>.

however, there are three main institutions of which authority is directly conferred by the constitution regarding the exercise of judicial power, namely the Supreme Court (MA), the Constitutional Court (MK), and the Judicial Commission (KY).⁵

The realm of judicial power in Indonesia continues to be fraught with various controversies, one of which relates to the jurisdiction of each main state institution in the judicial domain (Supreme Court and Constitutional Court). The issues involving these two state institutions have become a dark cloud in the Indonesian state system, especially concerning contradictory rulings or antinomian.

The Constitutional Court functionally holds the task of upholding the constitutional values of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Certainly, the decisions of the Constitutional Court are the breath of the constitution that is alive in this country. In fact, there are many cases of non-compliance with the decisions of the Constitutional Court, one of the major concerns being the Supreme Court, which often disregards the decisions of the Constitutional Court, leading to differences in views through decisions between the Supreme Court and the Constitutional Court.

Here are examples of differences in actions within the realm of judicial power in Indonesia, including:

Table 1. *Antinomic Decisions and Actions between the Constitutional Court and the Supreme Court*⁶

No.	Constitutional court	Supreme court
1.	<p>Constitutional Court Decision No. 2/PUU-V/2007</p> <p>The Constitutional Court's decision stated that the death penalty is constitutional.</p>	<p>Supreme Court PK Decision in the Death Penalty Case of Hilary K. Chimezia and Hengki Gunawan (Case Number 39K/Pid.Sus/2011)</p> <p>Decision of the Panel of Judges stated that the death penalty is very contrary</p>

⁵ See the Amendments to the 1945 Constitution of the Republic of Indonesia Chapter IX Judicial Power; these amendments brought forth two new institutions within the judicial power, namely the Constitutional Court (MK) and the Judicial Commission (KY).

⁶ Data in Table. 1 is the outcome of processing from several references. See Novendri M. Nggilu, "Menggagas Sanksi Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 1 (April 1, 2019): 52–53, <https://doi.org/10.31078/jk1613>; L. S. Fajar, "Pembangkangan Terhadap Putusan Mahkamah Konstitusi: Kajian Putusan Nomor 153/G/2011/PTUN_JKT," *Jurnal Yudisial Komisi Yudisial* 6, no. 3 (2013): 237–38, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/viewFile/100/84>; Supriyadi A. Arief, "Penggunaan Putusan Mahkamah Konstitusi Sebagai Sumber Hukum: Studi Ketaatan Mahkamah Agung" (Thesis, Bandung, Universitas Padjadjaran, 2021).

	to the provisions in Article 28A of the 1945 Constitution of the Republic of Indonesia, and violates Article 1 paragraph (1) of the Law in conjunction with Article 4 of Law no. 39 of 1999 on Human Rights.
<p>2. Constitutional Court Decision Number 4/PUU-V/2007</p> <p>Law no. 29 of 2004 on Medical Practice. Article 75 paragraph (1), article 76, and article 79 in a quo Law contain provisions for criminal sanctions (imprisonment and fines) for doctors who have no permit and registration certificate to carry out their medical practice. Thus, in the Constitutional Court's decision, it gives provisions that eliminate the penalty of imprisonment and only leave fines for doctors in the Medical Law.</p>	<p>Supreme Court Cassation Decision No.1110 K/Pid.Sus/2012 (Case of Dr. Bambang Suprpto)</p> <p>The Public Prosecutor granted the cassation request and declared the defendant Dr. Bambang was proven guilty of committing a criminal act, "intentionally practicing medicine without having a practice license and not fulfilling his obligation to provide medical services in accordance with professional standards and standard operational procedures," thus the Supreme Court sentenced Dr. Bambang to one year and six months in imprisonment and ordered the defendant to be detained. Although in the end Decision Number.1110 K/Pid.Sus/2012 was later canceled by Decision Number.210 PK/Pid.Sus/2014 which was a Judicial Review (PK) decision submitted by Dr. Bambang. However, the existence of the Supreme Court's cassation decision which uses normative provisions that have been canceled by the MK indicates that there is noncompliance by the Supreme Court by not using the Constitutional Court's decision.</p>
<p>3. Constitutional Court Decision No. 30/PUU-XVI/2018</p> <p>Confirm that members of the Regional Representative Council (DPD) from the 2019 Election onwards cannot be filled by political party administrators.</p>	<p>Supreme Court Decision Number 65 P/HUM/2018</p> <p>Declare that the provisions of article 60A PKPU Number 26 of 2018 which contain the prohibition on political party administrators becoming DPD member candidates are contrary to higher laws and regulations, namely article 5 letter d and article 6</p>

	paragraph (1) letter i of Law Number 12 of 2011 on Formation of the Laws and Regulations.
4. Constitutional Court Decision No. 34/PUU-XI/2013	Supreme Court Circular (SEMA) No. 7 of 2014
State that the limitation on requests for review of a decision to only be made once is contrary to the Constitution and is declared to have no binding legal force.	State that there are still limitations on judicial review of a case.

Measures and Decisions between the Supreme Court and the Constitutional Court as shown in the Table. 1, in the implementation of this authority, there is often a relationship regarding the limits of authority, and there are even frequent conflicts,⁷ caused by various factors, including the fact that the constitution provides the same authority in reviewing legislation, as well as other factors as the implementation of the principle of judge independence in making decisions. Differences in decisions could have implications for causing confusion and failing to reflect legal certainty, this could be dangerous for the Indonesian constitutional system.

The idea that is often offered to resolve problems between the Constitutional Court and the Supreme Court is related to the frequent differences in the issued decisions, namely by granting one-roof review authority of laws and regulations to the Constitutional Court (one roof system) which was initiated by Jimly Asshiediqie.⁸ According to Muhammad Ishar in his writing, the idea of unifying the review of the laws and regulations can be pursued continuously (including of law and justice). This is because the presence of the Constitutional Court with its main tasks and functions is seen as being able to strengthen the principles of the rule of law,⁹ democracy and protection of human rights, but one thing should be noted that the differences in the issued decisions

⁷ Budi Suhariyanto, "Masalah Eksekutabilitas Putusan Mahkamah Konstitusi Oleh Mahkamah Agung," *Jurnal Konstitusi* 13, no. 1 (May 20, 2016): 173, <https://doi.org/10.31078/jk1318>.

⁸ Wantu and Rasyid, "Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia," 38.

⁹ Muhammad Ishar Helmi, "Penyelesaian Satu Atap Perkara Judicial Review Di Mahkamah Konstitusi," *SALAM: Jurnal Sosial dan Budaya Syar-i* 6, no. 1 (February 5, 2019): 104, <https://doi.org/10.15408/sjsbs.v6i1.10551>.

between the Constitutional Court and the Supreme Court are not all related to the review of such laws and regulations.

Every court decision must be respected and implemented by all parties related to the decision, whether directly or indirectly involved. This is because court decisions are the crown of the judicial power institution, containing the principles of certainty, justice, and expediency. Court decisions, as law formers, are one of the legal sources.¹⁰

Court decisions constructed as legal sources make court decisions themselves the law; thus, there should be no contradiction between laws, as this breeds doubt. In law, when there's a legal issue, it's called a Legal gap, occurring when there's a discrepancy between formal positive law and informal law existing within society (living law).¹¹

Unlike legal gaps that can lead to legal conflicts, court decisions constructed as legal sources make court decisions themselves the law, so there should be no contradiction between legal decisions. In the event that contradictions arise, they must be promptly resolved through legal system mechanisms, as seen in the issues between the Supreme Court and Constitutional Court.

Introducing a Decision Alignment Process as a solution to the problem of implementing court decisions is crucial for legal progressiveness, particularly in cases of conflicting decisions between the Constitutional Court and the Supreme Court. The Constitutional Court's decision raises the assumption that, despite its final and generally binding nature (*erga omnes*) and equivalence to legislation (negative legislator), it cannot necessarily bind or be enforced by other judicial bodies.

Referring to the issues within the judicial power domain as outlined above, the Decision Alignment Process is introduced with careful consideration within the Indonesian constitution. In fact, the Constitution of the Republic of Indonesia of 1945 provides a framework for addressing and resolving conflicting decisions between the Constitutional Court and the Supreme Court through the Judicial Commission, both of

¹⁰ Arief, "Penggunaan Putusan Mahkamah Konstitusi Sebagai Sumber Hukum: Studi Ketaatan Mahkamah Agung," 1-2.

¹¹ Saeful Bahar Bahar, "Legal Gap: Pertentangan Hukum Masyarakat Dan Hukum Negara," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 10, no. 1 (April 6, 2020): 57, <https://doi.org/10.15642/ad.2020.10.1.54-72>.

which fall under the judicial power domain as stated in Chapter IX Judicial Power Article 24B.

2. Problem Statement

The focus of this research is reformulation of the Judicial Commission's authority in the constitution as an effort to create harmonization of decisions within the judicial power.

3. Methods

This type of research is normative research. The research approach includes the statute approach related to the judicial power in Indonesia, the constitutional approach through the 1945 Constitution of the Republic of Indonesia, the case approach concerning the antinomy decisions between the Constitutional Court and the Supreme Court, and the conceptual approach related to the reformulation of the Judicial Commission's authority in the constitution. Furthermore, it is analyzed using descriptive analysis techniques in a deductive manner.

4. Reformulation of the Authority of the Judicial Commission in Creating Harmony in Judicial Decisions.

Tracing the history of the Judicial Commission, so far as a fundamental institution within the realm of judicial power, its authority seems to be diminished, despite the fact that the Judicial Commission is among the fundamental institutions in the judiciary. Furthermore, there are decisions that restrict the scope of the Judicial Commission, such as Constitutional Court Decision No. 005/PUU-IV/2006 on the review of Law No. 22 of 2004 on the Judicial Commission in relation to the Constitutional Court, where the Constitutional Court excludes the term "Judge" from being interpreted as a judge of the Constitutional Court.¹² This decision nullifies several authorities in supervising judges and monitoring Constitutional Court judges, thus reflecting the Judicial Commission as a fundamental state institution based on the constitution without crucial tasks.

Referring to the comprehensive manuscript of the amendment to the 1945

¹² Ahmad, Fence M. Wantu, and Dian Ekawaty Ismail, "Constitutional Dialogue in Judicial Review at the Indonesian Constitutional Court: The Future Prospects," *Journal of Legal, Ethical and Regulatory Issues* 25, no. Special Issue 1 (2022): 1.

Constitution, Hamdan Zoelva from the F-PBB Party in the Third Meeting of First Ad Hoc Committee of the Working Body of the People's Consultative Assembly (MPR) on the Introduction of Faction Deliberations on Monday, December 6, 1999, conveyed that in order to supervise and control the Supreme Court, including its judges, particularly concerning their judicial duties, it is necessary to establish an independent commission.¹³ Hence, this argument laid the groundwork for the establishment of the Judicial Commission as a supervisory body in the field of judicial power in Indonesia, supervising both the Supreme Court and the Constitutional Court. The Judicial Commission was formed with the hope of upholding the honor and conduct of judges. In this regard, the Judicial Commission functions as a supervisor. The position of the Judicial Commission is highly strategic or fundamental. It is tasked with supervising the performance of judges.¹⁴

The Constitution of the Republic of Indonesia 1945 (UUD NRI 1945) Article 24B paragraph (1) states: "*The Judicial Commission is an independent body authorized to propose the appointment of supreme court justices and has other authorities to uphold and enforce the honor, dignity, and conduct of judges.*"

Considering the formulation of the above paragraph, there are several opinions that divide the elements in the article, one of which is Taufiqurrohman Syahuri who states that from the formulation of the article, we can understand that:¹⁵

- 1) The Judicial Commission is an independent institution;
- 2) having the authority to propose candidates for Supreme Court justices;
- 3) safeguarding the dignity and conduct of judges;
- 4) upholding the dignity of judges.

Based on the division of constitutional authority of the Judicial Commission above, this

¹³ Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, *Naskah Komprehensif Perubahan Undang Undang Dasar Negara Republik Indonesia Tahun 1945 (Latar Belakang, Proses, Dan Hasil Pembahasan 1999-2002)*, Edisi Revisi, Kekuasaan Kehakiman, VI (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2010), 603.

¹⁴ Achmad Edi Subiyanto, "Mendesain Kewenangan Kekuasaan Kehakiman Setelah Perubahan UUD 1945," *Jurnal Konstitusi* 9, no. 4 (2012): 671, <https://doi.org/10.31078/jk944>.

¹⁵ Taufiqurrohman Syahuri, "Problematika Tugas Konstitusional Komisi Yudisial," *Jurnal Konstitusi* 7, no. 4 (2010): 56, <https://doi.org/10.31078/jk743>.

journal will specifically discuss its authority in safeguarding and upholding the dignity of judges. Decisions of the judicial authority (from the Supreme Court and Constitutional Court) portray the honor and dignity of Supreme Court justices showcased to the public. Therefore, the decisions of these courts or judicial decision in general have become a veil of honor and dignity for a judge, hence, in achieving a correct, fair, and certain decision, supervision of judges including the subordinate judicial bodies is necessary through the Judicial Commission.

Supervision by the Judicial Commission, in addition to the realm of ethics and morals, can also be extended to the decisions (legal products) of this judicial institution, but will only be limited to specific scope and criteria. Supervision aims to identify and correct what has been done, whether it has been in line with the plan. The results of this correction are then used as material for remedy.¹⁶ The Judicial Commission is tasked with safeguarding and upholding the honor, dignity, and conduct of judges, so the Judicial Commission as a judicial supervisory body should be given more space to monitor judges to work professionally.

The Judicial Commission as a supervisor of judges must not exceed the limits or act arbitrarily. It also must comply with rules that do not contradict the rule of law. It should be noted that the implementation of the Judicial Commission's supervisory duties will not curtail the free rights of a judge in carrying out their duties. This is important because judges must be independent when deciding a case. If restricted, it can result in a legal enforcement through the judiciary that does not conform to the principles of justice and undermines the independence of judges.

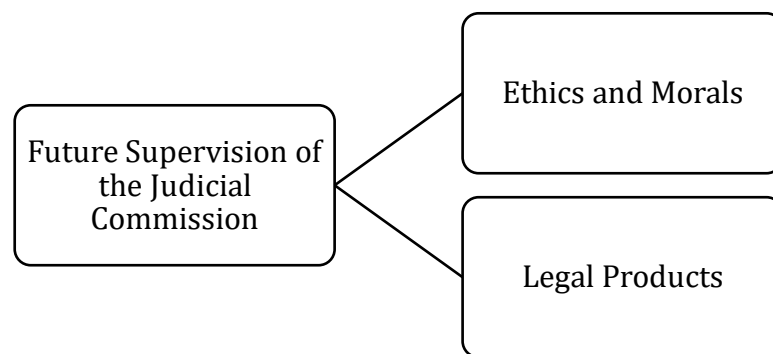
The turbulence in the realm of judicial power related to conflicting decisions leads to the foundation of an idea to seek solutions in response to this issue. The plan of findings as a novelty will focus on formulating criteria, determining when the Judicial Commission can intervene to supervise judicial decisions and when the Judicial Commission cannot intervene in this realm. This will certainly have implications for reformulation of the Judicial Commission's authority in the Indonesian constitution.

¹⁶ Angger Sigit Pramukti and Meylani Chahyaningsih, *Pengawasan Hukum Terhadap Aparatur Negara* (Yogyakarta: Pustaka Yustisia, 2016).

Reformulation or redefinition of the Judicial Commission's authority within the constitution serves as a gateway to optimize its role as the product of reform in supervising judges to issue decisions that are correct, fair, and legally certain. The Judicial Commission, formulated through KY's authority in the 1945 Constitution concerning the clauses 'safeguarding' and 'upholding' the honour, dignity, and conduct of a judge, aims to achieve solutions in resolving conflicting decisions between the Constitutional Court and the Supreme Court.

The following scheme outlines the basic concept for reformulating the authority of the Judicial Commission in creating harmonization of judicial power decisions, as follows:

Figure 1. *The basic concept of reformulating the authority of the Judicial Commission in creating harmonization of judicial decisions*



The supervision of the Judicial Commission can also be expanded beyond the realm of ethics and morals to include judgments (legal products) of this judicial institution, but it will only be limited to specific scopes and criteria.

- 1) The supervision of the Judicial Commission regarding ethics and morals will be based on the Code of Ethics and Guidelines for Judicial Conduct. This means that all actions of judges must adhere to the code of ethics, exhibiting fairness, honesty, wisdom, independence, high integrity, responsibility, upholding dignity, high discipline, humility, and professionalism, providing a gateway for the Judicial Commission to supervise and enforce the law for judges.
- 2) The supervision of the Judicial Commission over legal products (decisions of judicial power). The Judicial Commission is tasked with upholding the honor,

dignity, and conduct of judges, so the Judicial Commission as a judicial supervisory body should be given more space to monitor judges to work professionally, especially in issuing legal products in the form of judicial decisions.

The authority of the Judicial Commission based on the status quo, the Judicial Commission can enter the territory of judicial decisions when the decision is not in accordance with or disregards the facts of the trial. In Law No. 48 of 2009 concerning Judicial Power, Article 42 states: *“In order to uphold and enforce the honor, dignity, and conduct of judges, the Judicial Commission may analyze court decisions that have obtained permanent legal force as the basis for recommendations to transfer judges.”*

Judicial decisions must be based on courtroom facts (evidences and expert testimonies), including Constitutional Court decisions, which should be a key indicator in the Supreme Court's decision-making process. When the Supreme Court and its subordinate courts disregard the Constitutional Court decisions, the decisions are solely based on judges' convictions without considering constitutional values derived from the Constitutional Court decisions.

Based on the agreement between the Supreme Court and the Judicial Commission, the Joint Decision on the Code of Ethics and Guidelines for Judicial Conduct (KE-PPH) was established. The fundamental principle of KE-PPH is implemented through 10 rules of conduct, including professionalism.

In the tenth point (10), professionalism is described: *“One of its implementations is that judges must avoid making mistakes in decisions or disregarding facts that could incriminate the defendant or parties, or intentionally making considerations favorable to the defendant or parties in adjudicating a case.”*

Technical responsibility of profession is an assessment of whether or not the actions taken by the judge comply with applicable provisions, which is of utmost importance. In addition, the assessment of the judge's performance and professionalism in carrying out his duties also becomes a concern. Every judge is required to be accountable for their actions as a legal professional, both within and outside their official duties, in

material and formal manner. Therefore, it is imperative for judges to have a deep understanding of the rules regarding procedural law in court proceedings. The inability of a judge to be accountable for their actions technically, or known as unprofessional conduct, is considered a violation that must be sanctioned.¹⁷

Until now, the authorities of the Judicial Commission have been executed without any obstacles, and judges summoned by the Judicial Commission have never been prohibited by the Supreme Court. Judges assessed by the Judicial Commission may not have performed their profession well and have been deemed to engage in unprofessional conduct, as proposed by the Judicial Commission according to its authority.¹⁸

The authority to analyze decisions has always been a polemic. Some groups, especially within the internal judicial corps, view that the Judicial Commission is not authorized to analyze decisions for supervision. They are concerned that the Judicial Commission may interfere with the independence of judges, as happened when Harifin A. Tumpa (Chief Justice of the Supreme Court) rejected the Judicial Commission's request to examine judges adjudicating the Antasari Azhar case, especially considering that what is used as a testing tool (*getoets*) was "allegations" of disregarding trial facts and evidence. Meanwhile, others argue that the Judicial Commission is authorized as judges' conduct can be discerned from their decisions. Indications of criminal acts can also be inferred from a judge's decision. In fact, until now, the Judicial Commission has used decisions as a means to determine whether there has been a violation of the code of ethics or not.¹⁹

Unprofessional conduct, or misconduct, can be interpreted as any unprofessional conduct exhibited by judges, including when judges fail to consider decisions made by the Constitutional Court as interpreters of the Constitution, which render

¹⁷ Ririn Oktaviani, "Eksistensi Etika Hakim Dalam Persidangan Peradilan Pidana Guna Mewujudkan Lembaga Peradilan Yang Bersih Dari KKN," *Wajah Hukum* 4, no. 1 (April 24, 2020): 103–4, <https://doi.org/10.33087/wjh.v4i1.83>.

¹⁸ Jesi Aryanto, "Pengawasan Hakim Agung Dan Hakim Konstitusi Oleh Komisi Yudisial," *ADIL: Jurnal Hukum* 3, no. 2 (2012): 286, <https://doi.org/10.33476/ajl.v3i2.812>.

¹⁹ Noor M. Aziz, "Laporan Akhir Penelitian Hukum Efektifitas Komisi Yudisial Dalam Rangka Menjaga Harkat Dan Martabat Hakim" (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2011), 10–11.

constitutional judgments.

Preserving the dignity of judges can be actualized through the Judicial Commission, which can intervene in judicial decisions as the decisions cannot be separated from the judges who adjudicate them. Judges adjudicate based on indicators, trial facts (evidence), and personal convictions. In this context, it is necessary to add one indicator that must be considered in decision-making in the Supreme Court and its subordinate courts, namely decisions made by the Constitutional Court, which have constitutional value.

Regardless of the interpretation made regarding the expansion of the Judicial Commission's authority based on the constitution and legislation, in Law Number 48 of 2009 on the Judicial Authority, Article 40 paragraph (1) clearly states that: *"In order to uphold and enforce the honor, dignity, and conduct of judges, external supervision is carried out by the Judicial Commission."*

The provisions for supervision by the Judicial Commission as an external supervisor over judges are implicitly regulated in Article 24B of the 1945 Constitution, which states that the Judicial Commission is an independent body authorized to propose Supreme Court justices and has other authorities to uphold the honor, dignity, and conduct of judges. The Judicial Commission, as a judicial supervisory body, should be given more spaces to monitor judges in order to work professionally.

The Judicial Commission, in carrying out its role as a supervisor of judges, must not act arbitrarily. It is obliged to adhere to norms, laws, and provisions of laws and regulations, and to maintain the confidentiality of information, which by its nature is the Judicial Commission's secret obtained based on its position as a member. It should be noted that the implementation of supervisory tasks must not diminish the freedom of judges to examine and decide cases.²⁰

As a comparative study of the authority of the Judicial Commission in Australia and the Netherlands, it is noted that both countries grant authority to ensure legal certainty.

²⁰ Achmad Safiudin, "Pengawasan Komisi Yudisial Terhadap Hakim Mahkamah Konstitusi Perspektif Fiqh Siyasah," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 6, no. 1 (April 1, 2016): 92-93, <https://doi.org/10.15642/ad.2016.6.1.80-109>.

The Judicial Commission is empowered to assist courts in making consistent decisions, provide input to the Minister of Justice when deemed necessary, and is obligated to enhance the quality and unity of law.²¹

When viewed in the context of obtaining legal certainty as with the current issues, it wouldn't hurt to reformulate the authority of the Judicial Commission in the 1945 Constitution of the Republic of Indonesia and further regulate it.²² This includes upholding the dignity and honor of Supreme Court justices and subordinate court judges as reflected in their decisions. Therefore, it is necessary to grant spaces for expanding the authority of the Judicial Commission in overseeing Supreme Court judges to determine decisions. This is intended to enable the Judicial Commission to function within the judicial realm as a mediator between the Supreme Court and the Constitutional Court, thereby eliminating any decisions from both courts that are antinomy.

Reorganizing the judicial system to ensure the quality of justice with the principles of independence balanced by effective accountability and ensuring trust, accompanied by a more productive division of tasks between the Constitutional Court, the Supreme Court, and the Judicial Commission in achieving the agenda of law enforcement and justice, as well as modernizing governance to uphold the dignity and honor of judges,²³ needs to be constructed.

The Supreme Court and the Constitutional Court are equivalent, but in terms of authority, the Constitutional Court is tasked with examining laws, while the Supreme Court only adjudicates legislation under the law. The benchmark for the Constitutional Court is the constitution, and essentially Constitutional Court decisions contain the constitutional values of the 1945 Constitution as the highest legal basis. Therefore, the

²¹ Imam Anshori Saleh, *Konsep Pengawasan Kehakiman: Upaya Memperkuat Kewenangan Konstitusional Komisi Yudisial Dalam Pengawasan Peradilan*, Cet. 1 (Malang: Setara Press, 2014), 160–64.

²² Further regulations can be achieved through constitutional amendments or by expanding the authority of the Judicial Commission through legislation, as done by Australia and the Netherlands.

²³ Tim Peneliti Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, *Kajian Akademik: Kajian Terhadap Undang Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Pelaksanaannya (Bab VIII Hal Keuangan, Bab VIII A Badan Pemeriksa Keuangan, Bab IX Kekuasaan Kehakiman, Bab IX A Wilayah Negara)* (Jakarta: Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, 2022), 3.

Constitutional Court functionally holds a slightly higher degree than the Supreme Court. The *erga omnes* nature of Constitutional Court decisions implies that they are binding and should be complied with by all citizens and legal entities without exception.²⁴

The nature of Constitutional Court decisions as considerations for determining decisions in the Supreme Court is one of the reasons that can serve as the basis for the Judicial Commission's supervision of decisions in the Supreme Court, so conflicts between the Supreme Court and the Constitutional Court decisions in the future will not occur again within the realm of the judiciary in Indonesia.

Regarding the execution of duties by the Judicial Commission to execute sanctions against judges, there is indeed one issue which must also be taken into consideration is that the Judicial Commission does not handle or manage the administrative affairs of judges. It would be legally awkward in terms of state administrative law if sanctions were imposed by an institution that has no administrative relation with the employees or officials who are dismissed or sanctioned. Therefore, if the Judicial Commission is given the authority to execute sanctions against judges, then administrative affairs must also be managed by the Judicial Commission. This condition is actually not something new and can be implemented, as viewed in the Judicial Commission of several European countries, especially Northern Europe, such as Ireland and the Netherlands, where the Judicial Commission also manages personnel administration and budgets.²⁵

The harmony of institutional powers within the judiciary is crucial as the establishment of justice is not solely the prerogative of either the Supreme Court or, conversely, the Constitutional Court. Instead, both institutions are part of a unified judicial power system. Creating an atmosphere for the administration of judicial power in Indonesia requires a platform that serves as a common forum, not only to align

²⁴ Khelda Ayunita, *Pengantar Hukum Konstitusi dan Acara Mahkamah Konstitusi* (Jakarta: Mitra Wacana Media, 2017), 149.

²⁵ Suparto, "Fungsi Dan Kewenangan Komisi Yudisial Sebagai Lembaga Negara Pelaku Pengawasan Eksternal Terhadap Hakim Di Indonesia," in *Hukum Dan Teori Dalam Realita Masyarakat* (Pekanbaru: UIR Press, 2015), 19.

thinking but also to foster emotional closeness, not just among judges individually but also institutionally. For instance, organizing a Judicial Symposium could serve as a joint forum between the Constitutional Court, the Supreme Court, and the Judicial Commission. One of its outcomes could be an official document containing Constitutional Court decisions, along with dedicated discussions focusing particularly on concrete cases that the judges encounter within the Supreme Court setting that intersect with constitutional values and have not been adjudicated by the Constitutional Court.²⁶

The quality of decisions or verdicts made by a panel of judges has a significant impact on the credibility and integrity of the judiciary. Low-quality decisions or verdicts from judges will undoubtedly diminish the authority and credibility of the judiciary. If judges are aware of this correlation, before making their decisions, they should not only consider their relationship with God but also strive to ensure that the decision they are about to make does not potentially create new problems. However, judges are only human, and their resistance is limited when faced with the constant influences surrounding them. This often leads to judges being unable to think objectively and independently when making decisions on a case.²⁷

According to Van Doorn, in their role as enforcers within an organization, a law enforcer tends to carry out their function according to their own interpretation, influenced by various factors such as their personality, social background, level of education, economic interests, as well as their political beliefs and worldview. These perspectives reflect the views of legal realists and critical legal studies in understanding the role of judges.²⁸

Based on that, in order to create decisions that are certain and just in the realm of judicial power, it would be advisable to grant supervision authority to the Judicial

²⁶ Tim Peneliti Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, *Kajian Akademik: Kajian Terhadap Undang Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Pelaksanaannya (Bab VIII Hal Keuangan, Bab VIIIA Badan Pemeriksa Keuangan, Bab IX Kekuasaan Kehakiman, Bab IXA Wilayah Negara)*, 216–17.

²⁷ Adi Sulistiyono, *Krisis Lembaga Peradilan di Indonesia* (Surakarta: Lembaga Pengembangan Pendidikan (LPP) dan UPT Penerbitan dan Percetakan UNS (UNS Press), Universitas Sebelas Maret, 2006), 156–57.

²⁸ *Ibid.*

Commission through a reformulation of its powers in the constitution to create harmony between the Constitutional Court and the Supreme Court.

These followings are the current formulation of the Judicial Commission's authority and proposed ideas for the prospective formulation of the its authority in the Indonesian Constitution 1945:

Current formulation of Article 24B paragraph (1): *"The Judicial Commission is an independent body authorized to propose the appointment of Supreme Court justices and has other powers to uphold and enforce the honor, dignity, and conduct of judges."*

Prospective formulation of the Judicial Commission's authority:

The Judicial Commission is an independent body authorized to propose the appointment of Supreme Court and Constitutional Court justices, conduct supervision of the judiciary to uphold and enforce the honor, dignity, and conduct of judges based on the code of ethics and conduct, and has other powers granted by law.

Formulation of changes to the Judicial Commission's authority as proposed above is intended to create normative consistency and strengthen the institutional authority of the Judicial Commission. Formulation of constitutional norms in the chapter on judicial power, particularly regarding the Judicial Commission's role in "safeguarding" and "upholding" the code of ethics and conduct of judges, is expected to regulate the institutional authority of the Indonesian judiciary and create harmonious institutional relations in the enforcement of law and the formation of justice for all Indonesian citizens.²⁹

Referring to the new formulation of the Judicial Commission's authority, there are 2 authorities that it can exercise regarding contradictory decisions between the Supreme Court and the Constitutional Court, namely:

- 1) The phrase "Safeguarding – the code of ethics and conduct of judges" is intended to provide constitutional authority to the Judicial Commission that is preventive

²⁹ Tim Peneliti Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, *Kajian Akademik: Kajian Terhadap Undang Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Pelaksanaannya (Bab VIII Hal Keuangan, Bab VIII A Badan Pemeriksa Keuangan, Bab IX Kekuasaan Kehakiman, Bab IX A Wilayah Negara)*, 228–29.

in nature. The implementation of efforts for safeguarding can be done through a joint forum between the Constitutional Court, Supreme Court, and Judicial Commission to unify their perspectives. The interpretation that the Judicial Commission can take preventive measures to ensure that every decision made by Supreme Court justices and subordinate judges, which have significant and broad implications and have legal binding force, no longer leaves any controversy in society because every decision made by judges represents the dignity, nobility, and honor of a judge that is true, fair, and certain. This step can be applied by the Judicial Commission through its authority in the phrase 'safeguarding' towards Supreme Court justices and subordinate judges by collaborating between the Judicial Commission, Constitutional Court, and Supreme Court in providing periodic professional training for judges, consolidating existing legal substance, both legislatively, jurisprudentially, or in terms of Constitutional Court decisions. This is intended to ensure that the legal basis used in the determination of decisions by constitutional judges, Supreme Court justices, and subordinate judges is clear, coherent, consistent, and does not delegitimize each other. Further regulations can be stipulated through the revision of the Judicial Power Law and the Judicial Commission Law.

- 2) The phrase "Upholding – the code of ethics and conduct of judges" actually implies that the Judicial Commission can take corrective or repressive measures. If we refer to the Judicial Commission Law, it mentions the function of upholding as a repressive effort to ensure the honor and dignity of a judge. Upholding in the Judicial Commission's duties serves as a means to self-improvement directly related to disciplining the conduct of judges, thus carrying out the function of upholding should rightfully be accompanied by imposing sanctions. Based on the Indonesian constitution, the Judicial Commission actually has very strong legitimacy and is fundamentally constitutional as a supervisory body as its authority is directly granted by the 1945 Constitution of the Republic of Indonesia. The interpretation of expanding the meaning of the phrase "upholding" regarding the Judicial Commission's duties can be materialized to address the issue of conflicting decisions between

the Constitutional Court and the Supreme Court through the Judicial Commission's role in imposing sanctions on Supreme Court justices and subordinate judges who do not consider the Supreme Court decisions in their decision-making process, the issuance of decrees, or circular letters in the Supreme Court. Sanctions given, as per the current status quo in the Judicial Commission Law, or other sanctions developed for non-compliance with the Supreme Court decisions, are also viewed as a form of constitutional disobedience.

Referring to the new formulation of the Judicial Commission's authority, there are main foundations for the attributive authority formulation, as follows:

- 1) *Philosophical Basis*: The judicial power is one of the crucial aspects, even regarded as one of the pillars determining the functioning of a state. In formulating the Indonesian Constitution, the founding fathers positioned the judicial power to be independent and sovereign as the philosophical basis of judicial power. This independence and sovereignty of the judiciary power cannot be separated from universal principles as outlined in the Basic Principle on Independence of the Judiciary in 1985 and also reflected in the Beijing Statement of Principles of the Independence the Law Asia Region of the Judiciary in Manila in 1997, which fundamentally states that judiciary represents the highest institutional value in any society. The independence of judges requires that judges decide a case entirely based on the understanding of the law and hold harmless from any influence, whether direct or indirect, as they have jurisdiction over all issues that require justice.³⁰ In the context of judicial power, the development of constitutional law has given rise to two institutions as actors of power, namely the Constitutional Court, which has the main task of overseeing whether the constitutional values are implemented responsibly or not (the guardian of constitution), while the Supreme Court is intended to enforce the rule of law. Jimly even refers to the existence of these two judicial power institutions considering the division of tasks between them;

³⁰ Dahlan Sinaga, *Kemandirian Dan Kebebasan Hakim Memutus Perkara Pidana Dalam Negara Hukum Pancasila*, Cet. 1 (Bandung: Nusa Media, 2015), 7.

if the Constitutional Court is a court of law, while the Supreme Court focuses on administering justice of court.³¹ The Judicial Commission as an institution of judicial power is expected to materialize justice and legal certainty within the framework of the Unitary State of the Republic of Indonesia and based on human rights. Therefore, it is important to consider restructuring the authority of the Judicial Commission institution. At the level of the Judicial Commission, it is crucial to strengthen its authority in the recruitment of Supreme Court Justices and Constitutional Court Justices. Issues involving judges in cases of corruption and other violations of the code of ethics can be prevented through judge recruitment. Additionally, the Judicial Commission, as an institution tasked with safeguarding and upholding the code of ethics and conduct of judges, represents a constitutional effort to uphold the dignity and honor of judges as representatives of God in crystallizing and materializing the value of justice in the state and nation's life.³²

- 2) *Sociological Basis*: After Indonesia gained independence, judicial power interventions that occurred during the Dutch and Japanese occupations also taken place during the Old Order era. President Soekarno's intervention in judicial power was difficult to avoid, even the normative formulation in Law Number 19 of 1964, which essentially stated that the judiciary as part of the revolutionary tool, certainly fell under the influence of President Soekarno as the great leader of the revolution. In the context of safeguarding the honor of the state and nation or urgent public interests, the President could participate or intervene in judicial matters. In Sebastian Pompe's writing, during this regime, there was erosion of the status of the judiciary as an independent judicial power.³³ During the transition of Indonesia's political system in the New Order era, judicial power was normatively asserted as independent and sovereign. However, in reality, in its implementation, the judiciary once again

³¹ Nail Muhammad Hoiru and Jayus, *Pergeseran Fungsi Yudikatif dalam Kekuasaan Kehakiman di Indonesia* (Surabaya: Jakad Media Publishing, 2019), 19.

³² Tim Peneliti Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, *Kajian Akademik: Kajian Terhadap Undang Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Pelaksanaannya (Bab VIII Hal Keuangan, Bab VIII A Badan Pemeriksa Keuangan, Bab IX Kekuasaan Kehakiman, Bab IX A Wilayah Negara)*, 220–21.

³³ *Ibid.*, 222.

became a tool of the ruler to legitimize power interests. In short, the dominance of presidential power strongly controlled judicial power. Following the constitutional reform that took place from 1999 to 2002, which was the result of collective efforts of society at that time, hopes arose regarding the face of judicial power. Structural and functional arrangements were made through constitutional amendments, although later these hopes began to erode due to the behavior of judges trapped in external interventions, especially in cases intersecting with business and political interests. In such conditions, some judges found themselves mired in the dirty practice of corruption. Additionally, the institutional relations that were not yet fully harmonized became a feature of the organization of judicial power in Indonesia.³⁴ In the discourse of the fifth amendment to the Constitution, views and thoughts on structuring the authority of the institutions involved in judicial power, as well as the institution that upholds the dignity and honor of judges, have become important discussions. This includes granting supervisory authority by the Judicial Commission over antinomy decisions between the Constitutional Court and the Supreme Court, which socially creates uncertainty in society.

- 3) *Juridical Basis*: The regulation regarding judicial power is found in Article 24 of the 1945 Constitution, enacted on August 18, 1945, which states that "judicial power is exercised by a Supreme Court and other judicial bodies according to the law." The formulation of this article is partly influenced by the views of Soesanto Tirtoprodjo, who expressed that one of the pillars of independent Indonesia is the existence of a single Judiciary Body for all citizens, free from the influence of government bodies.³⁵ The reenactment of the 1945 Constitution through the Presidential Decree on July 5, 1959, also had implications for the judicial power. Although materially Article 24 of the 1945 Constitution remained unchanged, further regulations regarding judicial power were stipulated in Law Number 19 of 1964 on the Basic Principles of Judicial Authority, which provided spaces for presidential intervention as the great

³⁴ Ibid., 222–23.

³⁵ Ibid.

leader of the revolution in the judicial power. After the constitutional changes of 1999-2002, the design of judicial power underwent fundamental changes. The institutional structure of the Supreme Court, which rigidly mentioned the existence of four judicial bodies including general courts, religious courts, military courts, and administrative courts, also brought forth to the Constitutional Court as another actor in the judicial power, and the Judicial Commission as an institution involved in proposing supreme court justices and other authorities to uphold and enforce the honor, dignity, and conduct of judges. In the context of the Judicial Commission, enforcing its authority is crucial, as the Commission is constitutionally positioned within the realm of judicial power, which is functionally carried out by the Constitutional Court and the Supreme Court. However, the supervisory domain of the Judicial Commission over judges is limited to Supreme Court justices only, not including constitutional judges. Therefore, in order to maximize efforts in upholding the honor, dignity, and integrity of judges, including constitutional judges, it is necessary to grant the Judicial Commission authority to oversee and enforce the code of ethics and conduct, especially concerning those in the judiciary of which decisions do not align. In this regard, the Supreme Court and the Constitutional Court are involved.³⁶

The enforcing of the Judicial Commission's authority in imposing sanctions on judges is an effort to uphold the honor and ethical code of judges. Supervision of judges related to the enforcement of the Code of Ethics and Conduct for Judges (KE-PPH) needs to be intensified. Since the establishment of the Judicial Commission until decades into its existence, now is the opportune time to further enhance the institution. A concrete step would be to grant the Judicial Commission the authority to directly impose sanctions on judges as a means of upholding the honor and ethical code of judges. This would enable the Judicial Commission to not only provide recommendations to the Supreme Court regarding supervision of judges related to the enforcement of the Code of Ethics

³⁶ Taufiqurrohman Syahuri, "Reformasi Kekuasaan Kehakiman Dalam Perspektif Konstitusi," *Problematika Hukum Dan Peradilan Di Indonesia*, 2014, 99.

and Conduct for Judges (KE-PPH),³⁷ but also to address judges who fail to carry out their duties professionally, including issuing antinomian decisions, whether in the Supreme Court or the Constitutional Court.

The enforcing of sanctions by the Judicial Commission is not only aimed at the Supreme Court regarding instances where the Supreme Court does not consider the Constitutional Court in its decisions but also at ensuring the enforcement of ethical codes and conduct among judges, which can be applied by the Judicial Commission to the Constitutional Court if it is found to issue overruling decisions. This is intended to maintain consistency in the interpretation of the constitution by previous Constitutional Court decisions, thereby avoiding any doubts regarding the judicial domain.

As a final step to ensure judges comply with aligning their decisions within the judicial authority (Supreme Court and Constitutional Court), Circular Letters should be issued both in the Constitutional Court and Supreme Court requiring consideration of the Constitutional Court decisions as ongoing constitutional interpretations. This is also in line with the principle of *ius curia novit*, whereby judges are deemed to know all applicable laws to prevent continuous antinomies in decisions within the judicial authority.

Meanwhile, regarding the phrase that the Judicial Commission has other authorities based on the law, it will still refer to the current Judicial Commission Law but with the addition of several other authorities, including:

- 1) The Judicial Commission proposes the appointment of Supreme Court justices and ad hoc judges to the Supreme Court, as well as constitutional judges to the People's Representative Council (DPR) for approval;
- 2) Carrying out supervision to safeguard and uphold the dignity, nobility, and conduct of judges in creating quality decisions;
- 3) Establishing the Code of Ethics and/or Guidelines for Judicial Conduct together

³⁷ Teuku Muhammad Qashmal Jabbar, Parlindungan Harahap, and Nabil Abduh Aqil, "Urgensi Penguatan Wewenang Komisi Yudisial Sebagai Upaya Menegakkan Kehormatan, Keluhuran Martabat Hakim Dalam Penegakan Hukum Di Indonesia," *Recht Studiosum Law Review* 1, no. 1 (2022): 22.

- with the Supreme Court and Constitutional Court; and
- 4) Safeguarding and upholding the implementation of the Code of Ethics and/or Guidelines for Judge Conduct.

In order to safeguard and uphold the dignity, nobility, and conduct of judges, the Judicial Commission has the following duties:

- 1) Monitor and supervise the conduct of judges;
- 2) Receive reports from the public regarding violations of the Code of Ethics and/or Guidelines for Judge Conduct;
- 3) Verify, clarify, and investigate reports of alleged violations of the Code of Ethics and/or Guidelines for Judge Conduct in a closed manner;
- 4) Decide whether the reports of alleged violations of the Code of Ethics and/or Guidelines for Judge Conduct are valid, and have the authority to impose sanctions; and
- 5) Take legal and/or other actions against individuals, groups of individuals, or legal entities that degrade the honor and dignity of judges.

The Judicial Commission is a response to the demands of the public during the reform era who lacked trust in the judicial institutions and sought improvements. It is a mandate of the law born out of the people's aspiration thus the public has the authority to oversee its performance. One way is through the representation of the public in the People's Representative Council (DPR). The Judicial Commission is accountable to the People's Representative Council for its duties. Every month, it routinely submits reports to the People's Representative Council.³⁸ In materializing state institutions based on the system of checks and balances, the regulation regarding who will oversee the Judicial Commission in the future must be reinforced in the Judicial Commission's law with explicit provisions that the Judicial Commission is overseen by the public and the DPR and is accountable to the public through the DPR.

5. Conclusion

Reformulation of the Judicial Commission's authority within the constitution serves as

³⁸ Komisi Yudisial Republik Indonesia, "Rakyat Berwenang Awasi Kinerja KY," May 22, 2015, https://www.komisiyudisial.go.id/frontend/news_detail/6/rakyat-berwenang-awasi-kinerja-ky.

a gateway to optimizing the role of the Commission in overseeing judges to issue rulings that are correct, fair, and legally certain, as an effort to avoid antinomies in the judicial realm. The oversight by the Judicial Commission, besides ethical and moral realms, can also be expanded to cover decisions (legal products) of judicial institutions. The supervision of the Judicial Commission on ethics and morals will be based on the Code of Ethics and Conduct Guidelines for Judges, meaning that all actions of judges must adhere to the code of ethics and conduct for the supervision and enforcement of the law for the judges. Unprofessional conduct by judges can be interpreted as something unprofessional, including if they do not consider Constitutional Court decisions as interpreters of the constitution containing constitutional values. The formulation of constitutional norms in the Chapter of Judiciary Power, especially regarding the authority of the Judicial Commission, should include phrases such as safeguarding and upholding the code of ethics and conduct of judges, as preventive and repressive measures to safeguard the future of judicial power in Indonesia.

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