

Inefficiency of the Code of Ethics for Judges in Indonesia

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Abstract

This qualitative article aims to examine the enforcement of the code of ethics and code of conduct for judges in Indonesia by the Judicial Commission as an external supervisor with the Supreme Court as the internal supervisor. The sub-optimal relationship between the two institutions is clear from the high number of reports of violations of the Code of Ethics and the Code of Conduct of Judges and the low rate of implementation of the recommendations of the Judicial Commission in the supervision of judges at the Supreme Court. There is an overlap between internal supervision at the Supreme Court, and the Supreme Court does not consider the Judicial Commission violations. According to the Judicial Commission, violations of the Code of Ethics and Judicial Code of Conduct are violations. As a result, public reports about violations of the judge's code of ethics and the recommendations of the Judicial Commission were ineffective, and breaches of the judges' code of ethics continued. The cause is the Judicial Commission's inefficiency and the tendency of protecting the corps of judges by the Supreme Court. To redress this, it is necessary to assign a single task and authority to the Judicial Commission and amend the Judicial Commission Law to create judges with integrity and dignity.

Keywords: Judge Ethics, behavior, Indonesia, Judicial Commission.

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1. INTRODUCTION

The realization of judges' commitment to implementing the Code of Ethics and Code of Conduct of Judges and increasing public trust in judges are two of the strategic goals of the Judicial Commission (Judicial Commission of the Republic of Indonesia, 2020). These aims support the foundation that became the spirit of the formation of the Judicial Commission, which is based on deep concern about the grim fact that, in Indonesia, rulings of the Judicial Commission of the Republic of Indonesia has not yet upheld (Judicial Commission of the Republic of Indonesia, 2020).

According to Tohari (2004), reasons for forming a Judicial Commission in a country include lack of intensive monitoring power because monitoring is carried out internally and lacks judicial decisions. After all, each decision receives preliminary assessment and tight supervision from particular institutions.

However, the supervision of judges by internal supervisors of the Supreme Court is considered ineffective because of conflicts of interest and feelings of camaraderie under which the reluctance of the corps of judges to raise cases involving its members has

indirectly fostered bad practices in court (Saleh, 2014). As a result, corruption and despicable acts among judges continued to occur. It has carried inadequate supervision while internal and external controls out. The reason is that the internal and external management carried out by the Supreme Court and the Judicial Commission as a counterweight is ineffective because of the lack of synergy between the two institutions in supervision.

2. LITERATURE REVIEW

Previous researchers have inspected the ethical supervision of the code of conduct for judges to be ineffective just because the combined operations relationship does not exist between the Supreme Court and the Judicial Commission (Deu, 2015; Galingging, 2016; Hendrawati *et al*, 2016; Hasa., Hipan, & Djanggih, 2018; Ningsih, Rohmadi, & Masril, 2019; Fauzanto, 2020). However, the control of judges for various reasons, such as actions protecting the corps, ineffective monitoring, and amendments to the Judicial Commission Law, leads to inefficiency of Judges' code of conduct (Imam, 2014; Marzuki, 2015).

The judge supervision will be effective if it changes the Judicial Commission Law, with the additional condition that it gives the Judicial Commission sole authority. This should include the control of implementing the code of ethics and guidelines for judge behavior and not the appointment of supreme justices. As a reference, it has only given the Philippine Judicial Commission and the American Wisconsin Judicial Commission a single task and authority (Judicial Commission of the Republic of Indonesia, 2020). The authors consider this model more adequate compared to the Indonesian Judicial Commission because it will focus more on ethics and judge behavior and not be involved in other tasks such as appointing judges and increasing the capacity and health of judges. However, this is not always effective because judges sometimes do not comply with external oversight. Research conducted by the University of Chicago on 121 Judicial Commissions, as quoted by the Judicial Commission, proves that judges will fight against regulations from external parties. If most commission members come from judges, they will have more power (Judicial Commission of the Republic of Indonesia, 2020).

We organize this paper into five parts: the first part is about the background of the importance of research on the outrageous violation of ethics and the code of conduct for judges. There are external and internal supervisors to monitor the ethics and behavior of the judges. The second part of the paper explains how the technique and writing method. The third part is about research results that show the outrageous violation of the Code of Ethics and Code of Conduct for Judges (KE and PPH) in the 2015–2019 period. The fourth part discusses problems, followed in the fifth part by conclusions and suggestions containing recommendations for the future Judicial Commission.

3. METHODOLOGY

This is normative legal research or doctrinal research with the object or target of investigation in regulations, legislation, and other legal materials. In such work, even the results of the legal study do not find new legal theories, at least in new arguments. The research carried out is juridical normative by examining the major problems mentioned above. In addition, the present author addresses it from other relevant aspects based on the scope and problem identification formulation.

To answer the problems in this paper, the author uses a normative research method of analysis using secondary data, including:

1. Primary legal materials, including: Law Number 18 the Year 2011 concerning Amendments to Law Number 22 the Year 2004 concerning the Judicial Commission. Law no. 14 of 1986 and Law no. 5 of 2004 concerning the Supreme Court and the 1945 Constitution.

2. Secondary legal materials that explain primary law comprise various legal pieces of literature (results of legal research / scientific papers, legal journals, legal articles, and websites containing data on KE and PPH and their enforcement).
3. The authors also use tertiary legal materials that provide explanations and information about KE and PPH in this study.

Data collection techniques are carried out by inventorying and studying literature data as laws, including literary books, journals, magazines, newspapers, the internet, and information sources. Qualitative analysis (Marshall & Rossman, 2006) is used to analyze material and documents collected and used to answer problems.

4. RESULT AND ANALYSES

Indonesia enjoys the increase in the Law Enforcement Index in 2020 from a score of 0.52 to 0.53, placing Indonesia in the 59th position of the 128 countries surveyed. However, weaknesses in the justice system still occur because of the widespread grip of corruption (JP, 2020). According to the Corruption Report written by the GAN Business Anti-Corruption Portal, the Indonesian judiciary is full of crime and is subject to political influence (GAN, 2017). Bribery occurs at all bench levels, including in court decisions and appellate courts (GAN, 2017). One in ten Indonesians surveyed reported paying a bribe to court in the past twelve months (GAN, 2017). It has been asserted that there are typical judges who accept bribes and decide cases not according to the facts of the trial but according to the parties' wishes (Prasetyo & Mardatillah, 2018). Moreover, judicial corruption and irregularities are rooted and systemic because the supervisory system is still weak (Irfan, 2016)

As shown in Table 1, from 2015 to 2019, the Indonesian Judicial Commission received 7,909 public reports regarding alleged violations of the Code of Ethics and Code of Conduct for Judges (KE and PPH) (Prabowo, 2019). Even during the (e.g., the COVID-19 pandemic emergency, in the first 4 months of 2020, the Judicial Commission of the Republic of Indonesia received 781 complaints. It was estimated that there was potential that the number of public reports to the Judicial Commission would reach 1600 reports over the following 6 months (Judicial Commission of the Republic of Indonesia, 2020).

However, the recommendation given by Judicial Commission to the Supreme Court did not get a response from the Supreme Court. Surprisingly, the Chief Justice of the Supreme Court firmly acknowledged that the Supreme Court ignored several recommendations from the Judicial Commission (Marzuqi, 2020). Factors such as the lack of transparency in the Supreme Court and the spirit of

defending the corps also influence the weakness of

supervision (Sutiyoso, 2011).

Table-1: Number of Judicial Commission Recommendations implemented by the Supreme Court for violations of the Code of Ethics and Guidelines for Judicial Conduct from 2016-2019.

No	Year	Community Report to Judicial Commission	Recommendation from Judicial Commission to the Supreme Court	The Number Executed by the Supreme Court
	2019	1.544	130	10
	2018	1.719	63	32
	2017	1.473	58	
	2016	1.682	87	
	2015	1.491	116	
TOTAL		7.909	454	42

Source: Judicial Commission of the Republic of Indonesia

The total number of Judicial Commission recommendations during the 2015–2018 period was 324, and the Supreme Court of the Republic of Indonesia implemented only 32.

From Table-1, we can see that the high number of public reports regarding violations of the Professional Code of Ethics and Judge's Behavior (KE and PPH) shows the high number of KE and PPH violations by judges. It can be concluded that the supervision carried out by the Supreme Court and the Judicial Commission on judges has not been effective, and implementation of the Judicial Commission recommendations by the Supreme Court is very low. We will discuss the solution to the outrageous violations of KE and PPH in the following section.

4.1. Position, Authority and Duties of the Indonesian Judicial Commission

Article 24B of the 1945 Constitution clearly states that: (1) The Judicial Commission is an independent authority to propose the appointment of judges and has other powers to preserve and uphold the honor, dignity, and behavior of judges. (2) Members of the Judicial Commission must have knowledge and experience in law and integrity and a personality beyond reproach. (3). The President appoints and dismisses members of the Judiciary with the approval of Parliament. (4) The composition, status, and membership of the Judicial Commission shall be regulated by law. Thus, the Judicial Commission has obtained legitimacy based on Article 24B of the 1945 Constitution.

Based on Article 24B paragraph (1), the Judicial Commission has two mandatory powers. First, the Judicial Commission has the authority to propose the appointment of the Chief Justice. The second is to maintain and uphold the honor, dignity, and behavior of judges. This authority proves that the Judicial Commission is a state institution aligned with other state institutions—namely, the Supreme Court, the Constitutional Court, the House of Representatives, the Regional Representative Council, the President, and the Vice President.

To uphold the code of ethics for judges, The Supreme Court and the Judicial Commission of the Republic of Indonesia signed joint decree No. 047 / KMA / SKB / IV / 2009 & 02 / SKB / P.KY / IV / 2009 concerning the Code of Ethics and Code of Conduct of Judges (KE and PPH). It only contains general matters regarding how judges discipline themselves, integrity, behavior, and prime responsibility and professionalism in carrying out their duties. The problem is how the Judicial Commission can conduct examinations on judges who carry out judicial responsibilities in court based only on information from reports of violations committed by judges. There is a sub-optimal relationship between the Judicial Commission and the Supreme Court in enforcing the KE and PPH.

The emerging competition between the Judicial Commission and the Supreme Court shows that they must align their approaches, or at least operate as partners. Failure to change the model of ethics enforcement for judges by the two different institutions will allow the competition between the two institutions to grow. If this is the case, it will become increasingly difficult to create independent, clean, and authoritative judges. For this purpose, the powers and duties of the Judicial Commission must focus only on upholding ethics and legal behavior in court by strengthening its authority in the areas mentioned below.

4.2. Examination of Court Decisions

Since the formation of the Judicial Commission in 2004, it has had authority to examine court decisions; however, sometimes, the Commission can examine certain cases that have content in the public interest. This must evolve to include the authority to determine whether the decisions taken by judges are normative. If the Judicial Commission has the power to examine a judge's decision, it will be apparent if the decision has met the requirements, according to the procedure or not, deviant or not, because most of the immoral acts committed by the judge lie in the verdict. Judges never stop playing with decisions, manipulating evil into good and good into sin (Yanto, 2010).

4.3. Evaluation of Judge's Behavior

The Judicial Commission should be given an additional role to assess and evaluate judges' function in terms of integrity, behavior, performance, and professionalism. Indeed, integrity is the critical element for judges in handling, examining, and deciding cases. Honesty is the element of integrity for judges in hearing issues. Without honesty, courts or the judicial system will not achieve the goals of justice (Soeharno, 2016).

4.4. The Urgency of Creating Ideal Relations between the Judicial Commission and the Supreme Court.

The strategic intention in establishing the Judicial Commission was to create judges with integrity; however, this strategy is not fully applicable in practice. The Judicial Commission experienced a systemic failure to create judges with integrity. The distortion of authority outlined in the 1945 Constitution and Law Number 18 the Year 2011 concerning Amendments to Law Number 22 the Year 2004 concerning the Judicial Commission is clear. Another difficulty is the Constitutional Court decision No. 005 / PUU-IV / 2006 regarding removing some powers of the Judicial Commission. The incompleteness of the revision of the Law in the People Representative Assembly (DPR) and resistance from the judiciary that does not agree to be supervised by the Judicial Commission also pose difficulties.

We can explain the distortion of the authority of the Judicial Commission outlined in the 1945 Constitution and Law Number 18 the Year 2011 concerning Amendments to Law Number 22 the Year 2004 concerning the Judicial Commission as follows. First, the 1945 Constitution uses the phrase "defend and enforce." This phrase implies authority for preventive action, while the term "enforce" indicates enforcement (function to supervise). Then, the Judicial Commission Law is inconsistent, because it does not give full power to the Commission instead of a recommendation. Examining and imposing sanctions on actions suspected of violating the Code of Ethics and Code of Conduct for Judges (KE & PPH) must be accompanied by repressive measures. The authority of the Judicial Commission with the phrase to "Safeguard the honor, dignity and behavior of judges" cannot be realized only by providing recommendations whose final decision rests with other authorities.

The Judicial Commission's authority is very limited because it has no technical-administrative power. Despite awareness of the importance of the Judicial Commission as an institution that maintains the integrity of judges, the strengthening of the Judicial Commission authority through the Joint Regulation of the Judicial Commission and the Supreme Court No. 047 / KMA / SKB / IV / 2009-02 / SKB / P.KY / IV / 2009 concerning Code of Ethics and Code of Ethics for

Judges and Joint Regulations of Supreme Court and Judicial Commission No 02 / PB / MA / IX / 2012 and No. 02 / PB / P.KY / 2012 still cannot create judges with integrity.

Article 21 of Law Number 18 the Year 2011 concerning Amendments to Law Number 22 revoked the Law Year 2004 concerning the Judicial Commission, Article 22 E empowers the Judicial Commission to impose sanctions on judges who violate the KE and PPH. However, from the fact that the Supreme Court did not follow up on Judicial Commission's recommendations, especially in 2019. Based on Article 22 E, the Judicial Commission proposal automatically applies and must be used by the Supreme Court. The Judicial Commission's recommendations apply automatically if the Supreme Court ignores them. That is, the Judicial Commission does not need to wait for the Supreme Court to follow up on its recommendations because Article 22 E clearly states that the recommendations apply automatically.

Besides the advantages provided by the Law above, to strengthen the Judicial Commission's position as an external supervisor to impose its sentences on judges, there needs to be a change in the Law, including examining judges suspected of violating the KE and PPH. In addition, it is necessary to give Pro Justitia authority to the Judicial Commission to carry out investigations against judges suspected of committing criminal acts. This power will provide more robust support to the Judicial Commission to supervise judges who commit violations, especially bribery. As a result, it will deter the judges from committing corruption in court.

5. CONCLUSION

Despite the level of law enforcement in Indonesia has emerged, however, violations of judges' code of conduct still occur in the courts. This is because of internal oversight of the Supreme Court and external supervisors (Judicial Commission) of KE & PPH are ineffective.

The Judicial Commission must follow an innovative strategy as the external supervisor of KE & PPH. The Commission must be independent and have complete authority over the supervision of judges as applied in the Philippines and the Judicial Commission of Madison in the USA. So far, the Judicial Commission has only provided recommendations to the Supreme Court to follow up and implement KE & PPH. However, the Supreme Court has often ignored these recommendations, as evidenced by the Supreme Court having implemented only a few of the hundreds of Judicial Commission recommendations from 2016 to 2020. It occurs because of the character of protecting one corps in the Supreme Court so that the enforcement and imposition of KE & PPH sanctions against judges are ineffective. As an external supervisor, the Judicial

Commission needs to carry out innovative strategies such as changing its capacity from being a recommendation provider to being an executor of KE & PPH. Importantly, amendments of the Judicial Commission Law, including changes to the Joint Decree of Judicial Commission and MA regarding KE & PPH, are necessary. With this strategy, the future Judicial Commission will change and create high integrity judges.

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