




The Judicial Commission's Supervisory Authority on the Behavior of Constitutional Court Judges

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Abstract

Introduction: Indonesia as a legal state upholds the principle of rule of law based on the 1945 Constitution, has institutions such as the Supreme Court, Constitutional Court, and Judicial Commission (KY) that play an important role in the justice system.

Purposes of the Research: The purpose of this paper is to analyze and discuss the authority of the Judicial Commission in supervising constitutional judges and to analyze and explain the mechanism of Judicial Commission supervision of constitutional judges after Constitutional Court Decision Number: 005/PUU-TV/2006.

Methods of the Research: The type of research used is normative juridical research. The problem approach used is a statutory approach and a conceptual approach. Sources of legal materials are primary legal sources and secondary legal materials. Procedures for collecting legal materials through literature studies. Processing and analyzing legal materials qualitatively.

Findings of the Research: The results showed that to achieve a good and ideal judicial system, it can be realized by maintaining the objectivity and integrity of decisions and the behavior of judges in the judicial power, but currently the position and authority of the Judicial Commission (KY) as an external supervisory institution of the judiciary is still very weak due to restrictions by the Constitutional Court Decision Number: 005/PUU/IV-2006 and a narrow interpretation of the 1945 Constitution, so to answer the needs of the community, it is necessary to revise Law Number 18 of 2011 to explicitly emphasize the authority of KY in supervising all judges, including constitutional judges. KY must also be recognized as a state institution that is equal to the Supreme Court and the Constitutional Court in the Indonesian constitutional system, in accordance with the principle of checks and balances, to ensure effective, transparent and accountable supervision.

Keywords: Supervisory Authority; Judge's Behavior; Judicial Commission; Constitutional Court.

Submitted: 2025-06-20

Revised: 2026-03-28

Accepted: 2026-03-29

Published: 2026-03-31

How To Cite: Almendo Imanuel Pohwainyaan, Hendrik Salmon, and Muhammad Irham. "The Judicial Commission's Supervisory Authority on the Behavior of Constitutional Court Judges." *TATOHI: Jurnal Ilmu Hukum* 6 no. 1 (2026): 14-30. <https://doi.org/10.47268/tatohi.v6i1.3253>

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INTRODUCTION

In the division of power, Indonesia adheres to the concept of trias politica, which divides power into three elements: legislative, executive, and judicial. This concept was first put forward by Jhon Lock who was the first Article 24 Paragraph (2) of the Constitution of the Republic of Indonesia (UUD NRI 1945) states that: "Judicial power is exercised by a Supreme Court and the judicial bodies subordinate to it within the general judicial system, religious judicial system, military judicial system, state administrative judicial system, and by a Constitutional Court." Then in Article 1 point (1) of Law Number 48 of 2009 (Law Number 48 of 2009) concerning judicial power states that "Judicial Power is an independent state power to administer justice in order to uphold the law and justice of Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the Republic of

Indonesia Rule of Law." This means that judicial institutions are established to realize legal independence and uphold justice based on the principle of equality.

The judge as the main actor in the judicial institution as well as a law enforcer has an important role with his authority, it can be seen with his authority that a judge can eliminate a person's property rights, eliminate a person's right to freedom, annul a government authority, and can order the elimination of a person's life¹. In exercising its authority a judge needs the full trust of the community which is needed to create a judicial process where legal cases can be resolved properly, to foster a sense of public trust the judiciary must be able to prove that a judge always carries out his obligations to uphold law and justice consistently, this is related to the principle of prohibiting abuse of authority (*detournement de pouvoir*) and the principle of prohibiting arbitrary action (*willekeur*).²

To consistently uphold the law and justice, a judge's enthusiasm, motivation and determination are needed, which can be assessed from his/her behavior both inside and outside the court based on the professional code of ethics. With this, the public can judge well and put their trust in a judge³. With such extraordinary authority held by judges, there needs to be strict supervision from efficient judicial supervisory institutions, which are based on law and human rights. This is in line with the opinion of H. Salmon who stated that State Institutions based on law and human rights function as the main pillars for stability and sustainable development.⁴

The Judicial Commission is a judicial oversight institution whose authority is contained in Article 24B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates: "The Judicial Commission is independent with the authority to propose the appointment of Supreme Court judges and has other powers in order to maintain and uphold the honor, dignity, and behavior of judges". The authority contained in Article 28B of the 1945 Constitution is further explained in detail in Article 13 of Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, which regulates.

The Judicial Commission has the authority: 1) propose the appointment of supreme court judges and ad hoc judges in the Supreme Court to the DPR for approval; 2) maintain and uphold the honor, dignity, and conduct of judges; 3) establish a Code of Ethics and/or Code of Conduct for Judges jointly with the Supreme Court; and 4) maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges.

The establishment of KY occurred in 2001 through the third amendment to the 1945 Constitution of the Republic of Indonesia. According to M. Irham, in the study of constitutional law, there are two ways to amend the Constitution as a written constitution. First, changes made according to the procedures stipulated in the Constitution itself or those made not based on the provisions stipulated in the Constitution. The first way is commonly called *verfassung anderung*, while the second way is commonly called *verfassung wandlung*. The first method is called constitutional, while the second method is

¹ Dudu Duswara Machmudin and Dudu Duswara, "Peranan Keyakinan Hakim Dalam Memutus Suatu Perkara Di Pengadilan," *Varia Justicia* 25, no. 2 (2006), p.51.

² Julista Mustamu, "Diskresi Dan Tanggungjawab Administrasi Pemerintahan," *SASI* 17, no. 2 (2011): 1-9, <https://doi.org/10.47268/sasi.v17i2.349>.

³ Titik Triwulan Tutik, "Pengawasan Hakim Konstitusi Dalam Sistem Pengawasan Hakim Menurut Undang-Undang Dasar Negara RI 1945," *Jurnal Dinamika Hukum* 12, no. 2 (2012): 295-311, <https://doi.org/10.20884/1.jdh.2012.12.2.51>.

⁴ Hendrik Salmon and John Tumba Jacob, "The Role of Law and Human Rights in the Formation of State Institutions: A Comparative Study of Indonesia and Nigeria," *Jurnal Suara Hukum* 7, no. 1 (2025): 218-44, <https://doi.org/10.26740/jsh.v7n1.p218-244>.

revolutionary⁵. KY itself was born through a constitutional process in which this State Institution was born with the task of carrying out the function of checks and balances. So it can be said that the intention of the establishment of KY is the spirit to liberate judges and create effective judicial institutions.⁶

The supervision carried out by KY was indeed very good for the formation of an effective judicial system at that time, but problems arose when the supervision carried out by the Judicial Commission (KY) was considered to have intervened in the internal affairs of the Supreme Court. According to the Supreme Court, KY supervision took the form of summoning Supreme Court Judges who were suspected of having problems in the case that In addition, it can also damage the independence of Supreme Court Judges which results in reduced freedom of judges in deciding a case.

For this reason, on March 10, 2006, 31 Supreme Court Judges submitted a petition to the Constitutional Court to review Law Numer 22/2004 on the Judicial Commission against the 1945 Constitution of the Republic of Indonesia, this petition was examined under register number 005/PUU-IV/2006. Then the Constitutional Court in Decision Number 005/PUU/IV-2006 which is Ultra petita (a decision that exceeds what is requested), resulted in a reduction in the authority possessed by KY from initially being able to oversee the behavior of all judges in Indonesia, now it can no longer oversee constitutional judges because the Constitutional Court already has its own supervisory body called the Constitutional Court Honor Council (MKMK).⁷

METHODS OF THE RESEARCH

The type of research used is normative legal research, with three (4) approaches to the problem, namely the legislative approach, the conceptual approach, the case approach, and the comparative approach. The legal sources used are primary, secondary, and tertiary legal materials. The technique for collecting legal materials was conducted through library research. After the legal materials were collected and analyzed to obtain conclusions through qualitative analysis aimed at identifying the data obtained based on primary, secondary, and tertiary legal materials, they were systematically organized and analyzed qualitatively based on criminal law discipline to find legal clarity and certainty.

RESULTS AND DISCUSSION

A. Position of the Judicial Commission

1. The Position of the Judicial Commission in the Indonesian Constitutional System

Prior to the amendment of the 1945 Constitution of the Republic of Indonesia, Indonesia was a country that adhered to the supremacy system of the People's Consultative Assembly (hereinafter referred to as MPR), which is one of the various variants of parliamentary supremacy known in the world. As stipulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia before the amendment which states "Sovereignty

⁵ Muhammad Irham, Iqbal Taufik, and Dezonda Rosiana Pattipawae, "Strengthening the Authority Ofthe Regional Representative Council (DPD) Doesn't Need Through Amendments to the Constitution of The United State of the Republic of Indonesia Year 1945," *Jurnal Peradaban Hukum* 1, no. 1 (2023): 35–44, <https://doi.org/10.33019/jph.v1i1.10>.

⁶ Wikipedia, "Komisi Yudisial Republik Indonesia," Wikipedia.org, n.d., https://id.wikipedia.org/wiki/Komisi_Yudisial_Republik_Indonesia.

⁷ TriwulanTutik, "Pengawasan Hakim Konstitusi Dalam Sistem Pengawasan Hakim Menurut Undang-Undang Dasar Negara RI 1945."

is in the hands of the people and is exercised entirely by the People's Consultative Assembly"⁸, it is clear that the 1945 Constitution of the Republic of Indonesia did not embrace separation of powers, and thus it can be seen that the 1945 Constitution of the Republic of Indonesia before the amendment did not regulate the explicit separation of the legislative and executive functions.⁹

Therefore, in line with the demands and expectations of reform, the 1945 Constitution was amended by the MPR from 1999 to 2002. In essence, the spirit of the 1945 Constitution was to encourage the development of a more democratic state structure, with one of the main objectives of the 1945 Constitution being to organize checks and balances between State Institutions¹⁰. One of the agendas of reform is the establishment of a judge oversight institution, namely KY, the beginning of the formation of KY is essentially a mandate of the State Constitution as stipulated in Article 24 A paragraph (3) and 24 B of the 1945 Constitution after amendment, which states: "Candidates for Supreme Court Judges are proposed by the Judicial Commission to the House of Representatives for approval and subsequently appointed as Supreme Court judges by the President."

The establishment of KY was an initiation to prevent the potential emergence of a monopoly of judicial power exercised by the Supreme Court as a result of the unification of one roof judicial institutions at the Supreme Court at that time. In addition, this was felt to be the answer to concerns about the Supreme Court Institution that was unable to carry out the administrative, personnel, financial and organizational authority of the court which was previously carried out by the justice department, even at that time there were pessimistic views that said that the Supreme Court would not be able to carry out its one-stop task.¹¹

The existence of KY is very important, because in addition to being a mandate from the constitution, it is also a manifestation of Indonesia as a state of law, in essence a state of law is required to have a judicial institution that is independent and free from interference from other parties so that to realize it requires an external institution to oversee the work of judicial institutions such as KY. This is actually a universal ideal of all states of law as decided at the 7th United Nations Congress on The Prevention of Crime and the Treatment of Offenders.¹²

2. The Position of the Judicial Commission in the Judicial Power System

Public confidence in KY in its existence in the law enforcement system in Indonesia can be said to be very high. This can be proven by the empirical fact that in the initial time span of its formation, which is approximately five years, KY has received as much as 7,200 complaint reports from various communities in 33 provinces in Indonesia at that time. KY has proven its dedication and hard work by successfully processing thousands of public complaints, by issuing 50 recommendations for the imposition of sanctions on 50 problematic judges, both leading to dismissal and administrative punishment. Even at the beginning of its formation, KY's role was very prominent as one of the spearheads in eradicating the judicial mafia. KY carried out its role as a guardian of judges' behavior amidst the euphoria of pressures on the judiciary which was being viewed as having a bad

⁸ Ni'matul Huda, *Hukum Tata Negara Indonesia* (Jakarta: Raja Grafindo Persada, 2005), p. 149.

⁹ Yohanes Pattinasarany, "Kewenangan Pembatalan Peraturan Daerah," *SASI* 17, no. 4 (2011): 73-84.

¹⁰ Mahkamah Konstitusi Republik Indonesia, "Cetak Biru: Membangun Mahkamah Konstitusi Sebagai Institusi Peradilan Konstitusi Yang Modern Dan Terpercaya" (Jakarta, 2004), p. 3.

¹¹ Sirajuddin and Zulkarnain, *Komisi Yudisial & Eksaminasi Publik* (Bandung: Citra Aditya Bakti, 2006).

¹² Edi Setiadi Hz, "Quovadis Komisi Yudisial," ediunisba.multiply.com, n.d., <http://ediunisba.multiply.com/journal/item/4>.

image in the community. Then with the various criminal cases that dragged the names of judges, such as the Anggodo Widjoyo case against the SKPP of two KPK Commissioners. Seeing this, KY's response in responding to these issues was quite fast, even seemingly following each other with the Supreme Court.¹³

Since its inception, KY has determined a policy line that installs civil society as a strategic partner. In this structure, KY is well aware that the effort to socialize the Code of Ethics and Code of Conduct for Judges (KEPPH) to judges throughout Indonesia is not a young matter and it is necessary to strengthen the internal system to realize this. In this regard, KY plays a role in configuring the complaint mechanism, then verification of public complaints is the main step that KY often takes. As time goes by, KY is getting stronger in facing various challenges in carrying out its duties and authorities in accordance with the mandate of the Law (UU). This is driven by high public expectations for KY to maximize its role in supervising judges, in order to create a fair trial for all Indonesian people.¹⁴

After the Constitutional Court decision that eliminated KY's supervisory authority, this institution faced an existential crisis. KY seems to only be a complementary sufferer among other state institutions, without any real authority in the supervisory function. Its main task, namely supervising judges, is no longer supported by law because its authority is very limited. This condition has led to the stagnation of KY's role, and therefore, the revision of the law governing KY is urgent, especially considering the rampant practice of judicial mafia.¹⁵

Along with its development, KY's authority as an external supervisor of judges' behavior began to be sought to be restored through Law Numbr 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court. This law regulates the establishment of the Judges Honor Council (MKH) by KY and MA jointly, with a composition consisting of three Supreme Court judges and four KY commissioners. In addition, Law Number 3/2009 also mandates the preparation of a Code of Ethics and Code of Conduct for Judges, which must be established no later than three months after the law is enacted.¹⁶

In addition, Law No.48/2009 on Judicial Power also contains provisions regarding the supervision of judges. Article 42 stipulates that, in order to maintain and uphold the honor, dignity, and behavior of judges, KY can analyze court decisions that have obtained permanent legal force as a basis for recommendations to transfer judges. Furthermore, Article 43 stipulates that judges who are suspected of having violated the code of ethics and code of conduct for judges are examined by the Supreme Court and/or the Judicial Commission. Meanwhile, supervision of Constitutional Judges is regulated in Article 44, which states that supervision of constitutional judges is carried out by the Honorary Council of Constitutional Judges, which will be further regulated by law.

3. Powers and Duties of the Judicial Commission

As is well known, KY is a state institution established with the aim of realizing an independent judicial power and free from interference from other parties through a

¹³ Komisi Yudisial Republik Indonesia, "Laporan Komisi Yudisial Republik Indonesia Tahun 2007-2010" (Jakarta, 2010).

¹⁴ D Fedrian, "Membumikan Kode Etik & Pedoman Perilaku Hakim," *Buletin Komisi Yudisial* 7, no. 2 (n.d.).

¹⁵ Debbie Silviany Hormati, "Kajian Yuridis Tentang Peran Komisi Yudisial Dalam Penegakkan Kode Etik Mengenai Perilaku Hakim," *Lex Privatum* 5, no. 8 (2017): 86-93, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/18212>.

¹⁶ Fajlurrahman Jurdi, *Komisi Yudisial Dari Delegitimasi Hingga Revitalisasi Moral Hakim* (Yogyakarta: Kreasi Wacana, 2007), p. 225.

transparent and participatory mechanism for nominating supreme judges and supervising judges for the purpose of upholding the honor and dignity, and maintaining the behavior of judges so that they remain in accordance with the laws and norms that apply in the country¹⁷. To achieve this, KY is equipped with the legality contained in the state constitution, to be precise Article 24B Paragraph the 1945 Constitution of the Republic of Indonesia, which stipulates that "the Judicial Commission is independent and has the authority to propose the appointment of supreme judges and has other powers in order to maintain and uphold the honor, nobility, and dignity of the judiciary". dignity, as well as the behavior of judges". Which is then regulated in more detail in the Act Number 18 Year 2011 Jo. Law Number 22/2004 on the Judicial Commission¹⁸. Article 13 of Law Number 18 of 2011 concerning the Judicial Commission states that the Judicial Commission has the authority: 1) Propose the appointment of Supreme Court judges and ad hoc judges in the Supreme Court to the DPR for approval; 2) Maintain and uphold the honor, dignity, and behavior of judges; 3) Establish the Code of Ethics and/or Code of Conduct for Judges (KEPPH) together with the Supreme Court; 4) Maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges (KEPPH).

Based on Article 14 of Law Number 18 of 2011, in exercising the authority as referred to in Article 13 letter a, namely to propose the appointment of Supreme Court judges and *ad hoc* judges in the Supreme Court to the DPR for approval, the Judicial Commission has duties: a) Conducting registration of candidates for supreme court judges; b) Conducting selection of candidates for supreme court judges; c) Determining candidates for supreme court judges; and d) Submit Supreme Court judge candidates to the House of Representatives. Article 20 of Law Number 18/2011 stipulates that: 1) In order to maintain and uphold the honor, dignity, and behavior of judges, the Judicial Commission has the duty: (a) Monitoring and supervising the behavior of judges; (b) Receive reports from the public regarding violations of the Code of Ethics and Code of Conduct for Judges; (c) Conduct verification, clarification, and investigation of reports of alleged violations of the Code of Ethics and Code of Conduct of Judges in a closed manner; (d) Deciding whether or not a report of alleged violation of the Code of Ethics and Code of Conduct of Judges is true, (e) Take legal and/or other measures against individuals, groups of people, or legal entities that undermine the honor and dignity of judges. 2) In addition to the duties as referred to in paragraph (1), the Judicial Commission also has the task of seeking to improve the capacity and welfare of judges;

B. Supervisory Authority of Constitutional Judges

1. Position and Authority of Judicial Commissions in Several Countries

a. Judicial Commission in Italy

1) Judicial Power

¹⁷ Widhia Arum Wibawana, "Apa Tugas Dan Wewenang Komisi Yudisial? Ini Penjelasannya," Detik News, 2022, <https://news.detik.com/berita/d-6308819/apa-tugas-dan-wewenang-komisi-yudisial-ini-penjelasannya>.

¹⁸ Komisi Yudisial, "Wewenang Dan Tugas," [komisiyudisial.go.id](https://www.komisiyudisial.go.id), n.d., https://www.komisiyudisial.go.id/frontend/static_content/authority_and_duties.

One of the main characteristics of the Italian judicial system is the strong emphasis on the independence of individual judges. Judicial power is exercised independently by the judiciary, while court management and budgetary matters fall under the authority of the Ministry of Justice. As in France, the emphasis on judicial independence strongly influences the appointment and promotion system for judges.

The hierarchical structure of public justice in Italy consists of five levels. At the lowest level are the Justices of the Peace (*Giudici Di Pace*), who function as courts of first instance for minor criminal and civil matters. The second tier is the Pretor (*Pretori*), which hears appeals from the decisions of the Justice of the Peace and handles more serious criminal and civil matters as a court of first instance. Next is the District Court (*Tribunali*), which handles criminal and civil matters of a higher seriousness, both as a court of first instance and in appeals against previous decisions. The final remedy is the Court of Cassation (*Corte di Cassazione*), based in Rome, to appeal the decisions of the lower courts.¹⁹

The independence of the judiciary in Italy is guaranteed through the laws regarding the appointment and dismissal of judges. Judges are appointed for life and cannot be dismissed unilaterally. Transfer or dismissal can only be carried out based on the decision of the *Consiglio Superiore della Magistratura* (CSM), the High Court of Magistrates which is the highest authority in supervising the careers of judges in Italy. The CSM is a judicial-level institution created specifically to ensure the independence of judges.

2) Position and Authority of the Judicial Commission in Italy

Under the Italian Constitution, the CSM is an institution that has the authority to appoint, assign, place and promote judges. In addition, the CSM also has the authority to impose sanctions on disciplinary action against judges for breaches of ethics and conduct in the performance of judicial duties (*judicial misconduct*). The CSM exercises discretionary powers in imposing such disciplinary measures, and has a role in organizing training programs for judges.

In Italy, the relationship between the Ministry of Justice and the judiciary emphasizes judicial independence as a top priority, which is reinforced by the existence of the CSM. Discussions developed on the importance of self-control mechanisms, especially regarding the management and use of the budget. The President of the Italian Republic serves as President of the CSM symbolically without being directly involved in its operations. The presence of non-judge members in the CSM was viewed positively as an institutional counterweight. The CSM has important powers in the appointment of magistrates, the placement of judges, and the appointment of the President of *Magistraty Dirigenty*.

b. French Judicial Commission

1) Judicial Power

The organizational structure of the French *judiciary* is set out in the *Code de l'organisation judiciaire*. For civil matters at first *instance*, authority is given to the *Tribunal*

¹⁹ Wim Voermans, *Komisi Yudial Di Beberapa Negara Uni Eropa* (Jakarta: LIPI, The Asia Foundation and USAID, 2002), 86-86.

d'instance, which is equivalent to a *cantonal* or *county* court, and handles small claims. Meanwhile, more complex civil disputes are heard by the *Tribunal de Grande Instance*, which is comparable to a district court. If there is an objection to the judgment at first instance, the disputants can appeal to the *Cour d'Appel*, which acts as the court of appeal. At the highest level, there is the *Cour de Cassation* which is based in Paris and functions as a court of cassation, equivalent to the Supreme Court.²⁰

The administration of criminal courts is essentially similar in principle to that of civil courts, although there are differences in the designation and grouping of institutions. At first instance, the *Tribunal de Police* has jurisdiction over misdemeanors, while the *Tribunal Correctionnel* deals with common crimes (*délic*). For serious offenses (*crimes*), hearings are conducted by a special court of first instance called the *Cour d'assises*. (*Assizes Court*). The *Cour de Cassation*, based in Paris, also functions as a court of cassation for criminal matters²¹. The French Constitution, in principle, guarantees the independence of the judiciary in a functional sense. This judiciary, known as the "*corps judiciaire*" consists of *standing* magistrates and *sitting* magistrates. As a form of protection in addition to the independence of the judiciary, the constitution provides a special guarantee for *sitting magistrates*, namely that once they are appointed, they cannot be removed from office.

2) Position and Authority of the Judicial Commission in France

In the French constitutional system, there is an institution equivalent to the Judicial Commission, the *Conseil Supérieur de la Magistrature*. This institution has very different characteristics from the *Domstolverket* in Sweden. The main function of the CSM is to maintain a balance between the President's authority over the appointment of judges and the Minister of Justice's influence over the appointment of magistrates and the administration of the judiciary. The French President himself does have authority in certain appointments, but other appointments not held by the Government are influenced by recommendations made by the Minister of Justice. In addition, the CSM also has an important function in advising on processes ranging from the appointment to the disciplinary enforcement of judges.

The judicial system in France has its own characteristics, particularly in terms of the management of judges and courts which tend to be rigid in terms of independence. In this country, judges do not enjoy the same status as their counterparts in many other countries. The system is characterized by a strict hierarchy and very strict disciplinary rules. Courts are also given only a limited space of responsibility.

c. Judicial Commission Netherlands

1) Judicial Power

The Dutch Constitution stipulates that judges and the *Procurer General* of the Supreme Court are appointed by the government for life. Their dismissal,

²⁰ Voermans, p. 65.

²¹ Voermans, 66.

whether temporary or permanent, can only be done by a court established by law, and must be based on grounds set out in law. Thus, the constitutional guarantee of judicial independence in the Netherlands is only given to individuals who are members of the judiciary. In the organizational context of the judiciary in the Netherlands, there is a partial dependence on the government, in particular the Minister of Justice. This minister has managerial responsibility for the budget and acts as the responsible authority for the support staff of the judiciary. In addition, the government also plays a role in the appointment process of members of the judiciary. judicial institutions and conduct general monitoring of non-intrinsic data on judicial organizations.

2) Position and Authority of the Judicial Commission in the Netherlands

The Netherlands places the Judicial Commission as a mediating entity between the political and administrative spheres, with the Minister of Justice as the politically responsible party for the organization of the judiciary. The Judicial Commission has a dual role: on the one hand, strengthening the independence of the judiciary in its organizational aspects; on the other hand, encouraging increased internal responsibility and accountability (*self-responsibility*) of the judiciary, particularly in terms of administration, management and budget management. The establishment of the Judicial Commission is part of a broader framework of reform of the Dutch judiciary, with the main practical objective of expanding the managerial role of the judiciary. This idea is in line with the proposed implementation of integral management in the Judicial system.

The Judicial Commission is also expected to improve the efficiency of the judiciary while strengthening the independence of the judiciary itself. The Commission has various powers in policy formation, which include external affairs and public services, cooperation between judicial institutions, human resource management, and policies on the appointment of judicial candidates. In addition, the Judicial Commission has a role in advising the Minister of Justice and formulating policies to improve the quality of the judiciary. In addition to its policy function, the Commission also handles various managerial tasks such as housing and security management, automation systems, organizational administration, and provision of administrative information.

2. State institutions authorized to supervise Constitutional Judges According to the 1945 Constitution of the Republic of Indonesia

In the Blueprint for Building the Constitutional Court, Chapter IV Efforts to Realize Accountability and Transparency of the Constitutional Court, section B which contains the Strategic Objectives of the Constitutional Court states: The Constitutional Court has a strategic role in the constitutional system, which is reflected in the authorities it has ... for this reason it is important for the Constitutional Court to provide supervision of the integrity and behavior of judges to external parties who have the authority to do so. The Judicial Commission, juridically, has the authority to supervise judges in both the general judiciary and the Constitutional Court.²²

²² Mahkamah Konstitusi Republik Indonesia, "Cetak Biru: Membangun Mahkamah Konstitusi Sebagai Institusi Peradilan Konstitusi Yang Modern Dan Terpercaya," p. 121

Regarding the position of KY as an external supervisor of Constitutional Judges, Jimly Asshiddiqie argues: From the provisions regarding the Judicial Commission ... it can be understood that the position of judge in the conception of the 1945 Constitution today is an honorary position that needs to be maintained and upheld by an institution that is also independent, namely the Judicial Commission which is a further development of the idea of establishing the Supreme Court Judges' Honorary Council which was pulled out ... therefore, the existence of this Judicial Commission institution was formed separately outside the Supreme Court, so that the subjects it supervises can be extended to all judges, including constitutional judges and judges throughout Indonesia. Furthermore, Jimly Asshiddiqie said: "...Based on a literal interpretation, constitutional judges are also included in the definition of judges supervised under the provisions of Article 24B paragraph (1) of the 1945 Constitution. That is why UUKY adheres to this latter understanding, which interprets the word 'judge' in Article 24B paragraph (1) of the 1945 Constitution broadly so as to include all judges within the Supreme Court and all judges of the Constitutional Court." Thus, KY functions as a supervisory institution of the Constitutional Court, through its authority to maintain and uphold the honor, dignity, and proper behavior of constitutional judges".²³

Rooted in what is contained in the Constitutional Court blueprint and the opinions of several legal experts above, it can be clearly assessed that basically the Constitutional Court is open to external supervisory mechanisms related to the integrity and behavior of judges, and explicitly legitimizes the existence of KY as a supervisor of judges in addition to the existence of the Honorary Council of the Constitutional Court and public control. In a broader scope, this can be interpreted as a signal that "the subjects supervised by KY can be extended to all judges, including constitutional judges", so that the behavior of constitutional judges is also included in the subjects supervised by KY.²⁴

C. Supervision Mechanism of Constitutional Judges after Constitutional Court Decision Number 005/PUU- IV/2006

The Judicial Commission, which is a product of reform, was formed with the aim of upholding the independence of judges and maintaining the dignity of judges, indeed has a very crucial role in creating a fair and equitable legal system, but over time KY with its movement to highlight and examine judges who are considered naughty, starting from district court judges, to supreme court judges, apparently indirectly increased the passion of the community to participate in highlighting and reporting judges who are considered naughty, even though some of these reports are not true.

As a result of this, many judges are more careful in carrying out their duties. In its duties both in carrying out the selection of candidates for supreme court judges, despite all the controversy, KY has contributed quite well by selecting the best of the best to become a

²³ Jimly Asshiddiqie, "Kedudukan Mahkamah Konstitusi Dalam Struktur Ketatanegaraan Indonesia, Dalam Mahkamah Konstitusi, Bunga Rampai Mahkamah Konstitusi RI" (Jakarta, 2005), p. 35.

²⁴ Titik TriwulanTutik, "Kedudukan Dan Fungsi Komisi Yudisial Sebagai Lembaga Negara Dalam Sistem Ketatanegaraan Republik Indonesia," *Jurnal Ilmu Hukum Yuridika* 21, no. 4 (2006).

supreme court judge, and making a moral contract so that someone who is elected and appointed as a supreme court judge can carry out his duties with high integrity.²⁵

However, KY's move, which was considered to give hope to the institution of judges in Indonesia, has actually become an unexpected boomerang both by KY itself and by the public. Because of the actions taken by KY in carrying out its functions, the Supreme Court felt offended because its authority seemed to be torn apart, especially when KY invited the chairman of the Supreme Court to be questioned and when KY summoned several Supreme Court judges to be examined in connection with the inclusion of several reports from the public. This has led many judges to argue that what KY has done is not to protect, but rather to undermine the dignity of judges themselves, and KY's actions are considered to have intervened in the independence of judges.²⁶

Therefore, 31 (thirty-one) judges filed a judicial review of Law No.22 of 2004 on the Judicial Commission (KY) and Law Number 4 of 2004 on Judicial Power against the 1945 Constitution of the Republic of Indonesia to the Constitutional Court, which in the main petition contained 3 (three) things, namely: 1) The Petitioners asked the Court to rule that supreme judges are not part of the judges that can be supervised by KY, because according to Article 24B paragraph (1) for supreme judges it is stated that KY only proposes their nomination, While supervising behavior is mentioned as applying to judges. Thus, for the plaintiffs, a distinction must be made between supreme court judges and judges so that the content of Law Number 22/2004 that equates the two must be declared unconstitutional; 2) The Petitioners requested that constitutional judges not be made part of the definition of judges that can be supervised by KY because constitutional judges are different from other judges and were only included in the Constitution later than the regulation of KY. The argument is that when KY was established in the Constitution there was no idea of constitutional judges, so it was not possible when KY was established to supervise constitutional judges; 3) KY's authority to supervise judges must be declared contrary to the Constitution because the criteria are unclear and excessive, especially since in practice KY often examines judges by questioning the content of decisions.

Thus, the consideration of the panel of judges in the Constitutional Court's decision was based on a *contextualism* approach to the provisions of Article 24B paragraph (1) of the 1945 Constitution. The approach taken in interpretation is *contextualism or purposivism or Englightened Literalism* as described by Jan McLeod in his book *Legal Method chapter: Modern Interpretation in practice*. The *contextualism* approach is based on three principles, namely: the *principle of noscitur a sociis*, the *principle of ejusdem generis* and the *principle of expressio unius exclusio alterius*.

a. The principle of *Noscitur a Sociis*

This principle means: a thing is known by its associates. It implies that the meaning of a word is determined by its context. Based on this principle, the meaning of judge in Article 24B paragraph (1) of the 1945 Constitution is used in the context of and has other powers in maintaining and uphold the honor, dignity and behavior of judges, thus the term judge is used for the Judicial Commission's other authority, which is in addition to proposing the appointment of Supreme Court judges.

²⁵ Komisi Yudisial, *Bunga Rampai Komisi Yudisial Dan Reformasi Peradilan* (Jakarta: Komisi Yudisial RI, 2007), p. 4.

²⁶ Komisi Yudisial, p. 4-5.

b. *Ejusdem Generis* Principle

This principle implies the meaning of *the same class*. With this principle, the relevant question is whether in the context of Article 24B paragraph (1) of the 1945 Constitution, supreme judges are included in the group of judges related to the second authority of the Judicial Commission? In this context, Supreme Court judges are not included in *the* group of judges (*of the same class*) related to the other authority (second authority) *of the* Judicial Commission. If the other authority includes supreme court judges in the context of Article 24B paragraph (1), it must be expressly stated. The provision of Article 34 paragraph (3) of Law No. 4 Year 2004 which adds the formulation: maintaining the honor of the Supreme Court justices and judges is unconstitutional because Article 24B paragraph (1) of the 1945 Constitution only formulates the behavior of judges. Furthermore, Article 1 point 5 of Law Numer 22 of the Year 2004 on the Judicial Commission expanded it to include Constitutional Court judges.

c. *Expressio Unius Exclusio Alterius* Principle

This principle *implies* that: *the expression (or the inclusion) of one thing implies the exclusion of another*. This principle means that by holding that the meaning of judge in the context of Article 24B (1) does not include supreme court judges, the provisions in the law concerning the authority of the Judicial Commission to oversee the behavior of judges must be rejected by interpreting supreme court judges and Constitutional Court judges as including the meaning of judges in the context of Article 24B(1) of the 1945 Constitution. The laws in question are currently Law Number 4 of 2004 (Article 34(3)) and Law Number 22 of 2004 (Article 1(5)).

After the issuance of the final and binding Constitutional Court Decision Number 005/PUU-IV/2006, KY is no longer authorized to supervise MK judges. However, it can be seen that the Constitutional Court Decision that canceled some of KY's authority in the field of supervision was a wrong step, because it has created a legal vacuum. And what is even worse is that it is actually dealing with the higher and greater potential for the practice of judicial mafia. And even if the authority to supervise the behavior of judges by KY is considered a problem, the Constitutional Court should at least issue a decision like the decision on the KPK Law which states that Article 53 concerning the Corruption Court is declared invalid within a maximum period of three years after it is decided.²⁷

According to the author, the Constitutional Court's decision to cancel some of KY's authority in the field of supervision was a wrong step, because it has created a legal vacuum. And what is even worse is actually dealing with the higher and greater potential for the practice of judicial mafia. And even if the authority to supervise the behavior of judges by KY is considered a problem, the Constitutional Court should at least issue a decision like the decision on the KPK Law which states that Article 53 concerning the Corruption Court is declared invalid within a maximum period of three years after it is decided.

D. Judge Supervisory Institution according to Constitutional Court Decision Number 005/PUU-IV/2006

²⁷ Komisi Yudisial, "Mendorong Terwujudnya Kekuasaan Kehakiman Yang Merdeka," *Buletin Komisi Yudisial* 1, no. 5 (2007), p. 5.

As contained in the Constitutional Court Decision No. 005/PUU-IV/2006 on the judicial review of Law Number 22/2004 on the Judicial Commission and Law Number 4/2004 on Judicial Power against the 1945 Constitution, regulates: The definition of judges according to Article 24B paragraph (1) of the 1945 Constitution which includes Constitutional Judges is proven to be contrary to the 1945 Constitution. Thus Constitutional Judges are not included in the definition of judges whose ethical behavior is supervised by the Judicial Commission. Supervision of the implementation of the code of ethics of Constitutional Judges is carried out by a separate Honorary Council in accordance with the provisions of Article 23 of the UUMK as the implementation of Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia.

Based on this, as the executor of judicial power, Constitutional Judges cannot be eliminated from the definition of judges according to Article 24B paragraph (1) of the 1945 Constitution. The matter referred to in Article 24 paragraph (2) regulates: Judicial power is exercised by a Supreme Court and the judicial bodies under it within the general judicial system, the religious judicial system, the military judicial system, and the administrative judicial system and by a Constitutional Court.²⁸ This provision is further emphasized in Article 1 point (1) of Law Number 24 of 2003 concerning the Constitutional Court, which stipulates that the Constitutional Court is one of the actors of judicial power as referred to in the 1945 Constitution of the Republic of Indonesia, then the affirmation of the position of the Constitutional Court is regulated again in Article 2 of Law Number 24 of 2003 concerning the Constitutional Court which stipulates that the Constitutional Court is one of the state institutions that carry out judicial power which is independent in order to administer justice to uphold law and justice.

Based on the juridical facts above, it can be said that basically the judicial power is exercised by judges in all judicial circles without the exception of the Constitutional Court, thus it can be said that constitutional judges are not included in the definition of judges as intended by the 1945 Constitution of the Republic of Indonesia, even in the amendment of the 1945 Constitution of the Republic of Indonesia, it has never been mentioned that constitutional judges are not included in the definition of judges, furthermore the statutory provisions do not distinguish the definition of judges based on their scope, so that all judges in the realm of state power, including constitutional judges, should be interpreted as judges. This is in line with the meaning in the provisions of Law Number 22/2004 on the Judicial Commission. This means that the expansion of the meaning of "judge" related to the definition of Constitutional Judge in the context of Article 1 paragraph (5) of the UUKY is basically an interpretation of Article 24B paragraph (1) of the 1945 Constitution based on the minutes of the PAH BP MPR RI session. It can be seen based on the minutes of the PAH BP MPR RI session that there is a desire to increase the supervisory competence of KY which applies to all judges, including the promotion and transfer of judges, as well as recommendations for the appointment of MK judges, but besides that there is also a limited desire. Based on this, constitutional judges are also included as judges whose supervision mechanism is carried out by KY.

The next thing is related to the second issue concerning the legal position of the MKMK, if we look at the fact that the MKMK is an ad hoc institution, then the question that comes to mind is whether an ad hoc institution is worthy of supervising a permanent state

²⁸ Tata Wijayanta, "Tinjauan Yuridis Tentang Mahkamah Agung Dan High Court Od Australia Dalam Kaitannya Dengan Penegakan Hukum," *Mimbar Hukum* 10, no. 3 (2002).

institution such as the Constitutional Court? Harjono said that the function of maintaining and upholding the honor, dignity, and behavior of judges is not carried out by an ad hoc institution. This is a permanent function so a permanent institution is also needed.²⁹

Based on these various opinions, it is the author's opinion that to build an effective mechanism for monitoring the behavior of constitutional judges, a state institution that is independent, self-sufficient and permanent is needed because the functions to be carried out are permanent. Other than that, in terms of maintaining integrity and maintaining good institutional performance, an integrated supervisory mechanism involving institutions outside the Constitutional Court is needed, as is the supervisory mechanism carried out at the Supreme Court.

E. Mechanism of Supervision of Judges after Constitutional Court Decision Number 005/PUU- IV/2006

The state constitution has clearly mandated the duties of KY as an external supervisor of judge behavior based on the Code of Ethics and guidelines for judge behavior. In the process, this supervisory function is carried out based on public reports to KY regarding the behavior of judges who are considered unfair in adjudicating and/or deciding a case with their decisions, so that in examining public reports, KY must read the decision as evidence of whether or not a violation of the code of ethics and code of conduct by a judge has occurred.

Like an external supervisory institution in the Judicial Power Institution, in carrying out its supervisory duties KY cooperates with the MA Internal supervisory institution, by harmonizing the implementation of the supervisory function through several joint regulations such as one of them, the joint decision of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number: 047/KMA/SKB/IV/2009-02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges (KEPPH). In addition, there are also several joint regulations, such as: Joint Regulation on Guidelines for Enforcement of the Code of Ethics and Code of Conduct of Judges; Joint Regulation on Joint Examination Procedures; and Joint Regulation on Procedures for the Establishment, Work Procedures, and Decision Making Procedures of the Judges' Honor Council which was drafted in 2012.

In terms of the process of allegations of judges committing violations of the code of ethics, the following outlines the procedure for reports submitted by the public: 1) The report shall be written in Indonesian language addressed to the Chairman of the Judicial Commission; 2) Include the identity of the Reporter, including: name, address and telephone number that can be contacted; 3) Include the identity of the proxy (if using a power of attorney), including: name, address, occupation and telephone number that can be contacted; 4) Include the identity of the reported party, including: name, position, agency and/or case number if related to the decision; 5) Contains the main points of the report, containing important things / main thoughts that will be studied, researched / examined by the Judicial Commission; 6) Chronological / Case Position, written clearly and briefly about the problem that occurred; 7) What the Judicial Commission is requested to do; 8) Report appendices (data completeness): a) Formal Evidence: (1) Copy of the

²⁹ M Agus Santoso, "Peran Dewan Perwakilan Rakyat Daerah Dalam Menjalankan Fungsi Pengawasan," *Jurnal Hukum Ius Quia Iustum* 18, no. 4 (2011): 604-20, <https://doi.org/10.20885/iustum.vol18.iss4.art7>.

Reporter's valid identity (KTP/SIM/Passport); (2) Special Advocates attach a copy of the valid KTA (Advocate Identity Card); (3) Special power of attorney to submit a report to the Judicial Commission (only for those who use a power of attorney); b) Material supporting evidence: Data and/or facts that corroborate reports of alleged violations of the Code of Ethics and Code of Conduct for Judges, among others: (1) Copy of the official copy of the reported decision/ decision (following the judicial level, such as the first level, appeal, cassation and review); (2) Video, audio visual, trial recordings (if any) Photographs, newspaper clippings (if any); (3) witness statements in writing on stamped paper, at least 2 (two) witnesses (if any). 9) Related to the report on the execution must contain and attach: a) Grounds for stay, termination or cancellation of execution; b) Copy of the official copy of the judgment related to the execution; c) Copy of the execution request letter (for the applicant for execution); d) Copy of letter of execution determination; e) Copy of warning letter; f) Copy of minutes of execution; g) Copy of execution seizure minutes. 10) The report is signed by the Reporter or his/her proxy: KY in conducting an examination of public reports is guided by 10 main points of behavior as stipulated in the Code of Ethics and Behavior of Judges. KY RI is a state institution that is oriented to build a system of *checks and balances* in the body of judicial power. Looking at the authority it has is a public orientation so that KY as a public organization is required to be able to carry out activities flexibly and easily developed in line with the development of external situations.

There are several actions that are prohibited and should not be done by a judge, including: 1) Judges are prohibited from giving the impression that one of the parties or their attorneys, including prosecutors and witnesses, is in a privileged position to influence the judge; 2) Judges shall not solicit/accept and shall prevent a judge's spouse, parent, child or other family member, from soliciting or accepting promises, gifts, grants, bequests, awards and loans or facilities from: advocates; prosecutors; persons on trial; other parties who are likely to be on trial; 3) Judges are prohibited from using the authority of the court for personal, family or other third party interests; 4) Judges are prohibited from bargaining for a decision, slowing down the examination of cases, delaying execution or appointing certain advocates in handling a case in court, unless otherwise provided by law; 5) Judges are prohibited from using the authority of their position as a judge to pursue personal interests, family members or anyone else in a financial relationship.

CONCLUSION

The Judicial Commission (KY) was established through the third amendment to the 1945 Constitution in 2001 as an effort to strengthen the principle of *checks and balances*. Article 24B paragraph (1) of the 1945 Constitution stipulates that KY has the authority to maintain and uphold the honor, dignity, and behavior of judges. However, KY's authority to supervise MK judges then ceased to apply with the issuance of Constitutional Court Decision Number 005/PUU-IV/2006. If examined further, although Article 24B paragraph (1) of the 1945 Constitution does not explicitly mention "constitutional judges", based on the interpretation of experts, the definition of "judge" in the 1945 Constitution article also includes judges of the

Constitutional Court (MK), because the position of judge is universal in the Indonesian judicial system. So that in this context KY should have the authority to supervise all judges, including constitutional judges, this is intended to maintain the integrity and dignity of judicial power as the main pillar of the rule of law. After the issuance of Constitutional Court Decision Number 005/PUU-IV/2006, KY no longer has the authority to supervise Constitutional Court judges, the supervisory authority is now in the hands of MKMK. Supervision by the Constitutional Court of its own judges through MKMK is considered insufficient to ensure transparency and accountability. Internalization of supervision is prone to conflicts of interest and does not guarantee full independence. If supervision is carried out only by the internal institutions of the Constitutional Court itself, it will raise public concerns about the objectivity and integrity of decisions and the behavior of judges. Therefore, external supervision such as that carried out by KY is very important, because KY can function as an independent supervisor to bring confidence to the public that there is no impunity in the judicial power, including in the Constitutional Court.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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TATOHI: *Jurnal Ilmu Hukum* is an open acces and peer-reviewed journal published by Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

