

The Ideal Relationship between the Judicial Commissions with the Supreme Court in Indonesia

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Abstract: *The function of the Judicial Commission is to make judicial bodies in Indonesia have a high and clean performance, so that law enforcement and justice by judicial bodies at all levels can be realized in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia. This paper is intended to identify the ideal relationship between the Judicial Commission and the Supreme Court. Research uses the normative juridical method, which is a process to find the rule of law, legal principles and legal doctrine to answer the legal problems at hand. It was found that the relationship between the Judicial Commission and the ideal Supreme Court was a synergy relationship between the two institutions in carrying out the authority and duties as mandated by the 1945 Constitution of the Republic of Indonesia and related law orders. Their relationship is not merely check and balances relationship, but rather interpreted as an institutional relationship that collaborates with each other, works together, supports each other and complements one another based on a spirit of togetherness and mutual trust without feeling defeated in exercising authority and institutional duties, especially those related to the function of supervising judges' behavior. It is recommended that the synergy between the Judicial Commission and the Supreme Court prioritizes the rule of law and justice in accordance with their respective powers and duties, and is committed to building a spirit of cooperation, mutual understanding and respect, and mutual trust.*

Keywords: Judicial Commission; Supreme Court; Institutional relations

1. Introduction

The formation of the Judicial Commission is closely related to efforts to make improvements in the mechanism of the judicial power system in Indonesia. The function given to the Judicial Commission aims to make judicial bodies in Indonesia have high and clean performance, so that law enforcement and justice by judicial bodies at all levels can be realized according to the mandate of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 CRI).

One of the considerations of the establishment of the Judicial Commission in Law Number 22 of 2004 concerning the Judicial Commission states that the Judicial Commission (hereinafter abbreviated as JC Act) has an important role in efforts to realize an independent judicial power through the nomination of the Supreme Court justices and supervision of transparent judges and participatory in order to uphold the dignity and honor, and to maintain the behavior of judges.

The aforementioned considerations emphasize that the presence of the Judicial Commission which was formed based on demands for legal and judicial reforms as regulated in Article 24B paragraph (1) of 1945 CRI is not a democratic accessory, but its presence is theoretically to build a system of checks and balances in the post-amendment judicial power system. 1945 CRI. With the inclusion of the Judicial Commission in Chapter IX on the Judicial Power of the 1945 CRI, the existence of the Judicial Commission has a strong constitutional basis to play an optimal role in judicial reform and supervision of judge behavior.

The Judicial Commission as a supervisory institution for justice institutions in Indonesia is a new phenomenon. The supervisory institution, like many institutions produced during democratization in Indonesia, carries out the supervisory function in order to improve the performance of

the supervised institution, so that the institution carries out its duties properly and does not harm the state and nation of Indonesia. Because various institutions in Indonesia are familiar with the situation without supervision, the oversight function often faces strong resistance from the party being supervised.¹

The presence of the Judicial Commission has entered the age of 15 years, since its birth in 2005. Within a period of more than 1 decade, the journey of the Judicial Commission is full of obstacles and challenges. The relationship between the Judicial Commission and the Supreme Court also experienced ups and downs, full of dynamics and a feuding between synergy and dualism. The leadership and members of the Judicial Commission were reported to the Criminal Investigation Police Headquarters by the Supreme Court justices, judges, and Supreme Court officials for reasons of defamation (including the Sarpin Rizaldi case) which contributed to the dynamics of relations between the two institutions. The discourse of re-selection of 49 Supreme Court Justices and the Chief Justice of the Supreme Court put forward by the Chairman of the Indonesian Judicial Commission Busyro Muqoddas on 4 January 2006² has caused resistance among the Supreme Court justices and judges against the Judicial Commission's oversight function. This also worsened the relationship between the Judicial Commission and the Supreme Court.

The climax is that 31 Supreme Court Justices filed a petition for judicial review of Law Number 22 of 2004 concerning the Judicial Commission. In short, through Decision of the

¹Maswadi Rauf, *Komisi Yudisial Sebagai Agent of Change Dalam Mendorong Reformasi Peradilan di Indonesia*, Judicial Commission as Agent of Change in Encouraging Judicial Reform in Indonesia in Bunga Rampai Refleksi Satu Tahun Komisi Yudisial RI, Tahun 2006, hlm. 442 – 443.

²See <https://news.detik.com/berita/512365/ky-seleksi-ulang-49-hakim-agung-termasuk-pimpinan-ma>

Constitutional Court Number 005 / PUU-IV / 2006, several authorities in the supervision of judges are declared non-binding. As a result the Judicial Commission since the decision of the Constitutional Court (2006) until early 2009 can only receive reports of public complaints without being able to act on them.

It seems that the resistance of the judges to the Judicial Commission is not only limited to the supervisory function, but also the authority of the Judicial Commission in the selection of the appointment of first-level judges as stipulated in the 2009 Judicial Body Law Package. Constitutional Court. Based on the Constitutional Court Decision Number 43 / PUU-XIII / 2015, the Constitutional Court stated that the authority of the Judicial Commission to recruit first level judicial judges was against the constitution and disrupted the independence of judges as an independent institution.

The dynamics and disputes that occur in the relationship between the Judicial Commission and the Supreme Court as described above indicate that the relationship between the Judicial Commission and the Supreme Court is unhealthy and the relationship between the Supreme Court. Perhaps one of the efforts that need to be made by the two institutions is to meet each other to review and evaluate the relationships that have occurred so far with the aim of finding common ground and connecting points in order to reorganize the institution's relations to be healthy and synergize.

This paper discusses more about the ideal relationship of the Judicial Commission with the Supreme Court according to the topic determined by the Committee. Systematics of writing is divided into three parts, namely: introduction, problems, discussion, and closing. The problem in this paper is to find out the relationship between the Judicial Commission and Supreme Court.

2. Methods

Research uses the normative juridical method, which is a process to find the rule of law, legal principles and legal doctrine to answer the legal problems at hand. In this study, researchers used three approaches, namely the legal approach and the case approach. The use of this approach is intended to complement one approach with another.

3. Discussion

To discuss the problem of the relationship between the Judicial Commission and the ideal Supreme Court, then we need to first explore the role of the Supreme Court in the process of forming the Judicial Commission, and also the cooperation that has existed between the Judicial Commission and the Supreme Court. This is important to be expressed, so that we can find a meeting point and a connecting point that is able to bridge and connect the two institutions, so that in the future there will be no more feuds and synergy relations will be formed that have a solid foundation for the sake of law and justice in accordance with the mandate of Article 24, 24A and Article 24B 1945 CRI and related laws and regulations.

As an institution that was born from the results of the amendment to the 1945 Constitution, the existence of the Judicial Commission is motivated by a strong will so that the judicial power exercised by the Supreme Court is truly an independent power to administer justice, in order to uphold law and justice. That power must not be used for personal, group or group interests, but must be used solely to uphold law and justice.³

It is recognized that the problems that exist in the judiciary today are very complex, so that ideally the Judicial Commission and the Supreme Court can collaborate in resolving various issues surrounding judicial material including judges. Moreover, constitutionally / normatively, there is actually no other choice for the two institutions, except building collaboration and cooperation in carrying out the mandate of Article 24, 24A and 24B 1945 CRI and carrying out the relevant law orders in the corridor while maintaining the independence of judicial power, and not disturbing independence. Judicial Commission as an independent state institution.

In this connection, in the Preface to the Academic Paper and the Draft Law on the Judicial Commission signed by the Chairperson of Supreme Court Prof. Dr. Bagir Manan, SH, MCL in April 2003 stated among other things:

“The existence of the Judicial Commission has become important in court reforms, including maintaining and upholding the honor, dignity, and behavior of judges. This is not an easy job, and can be realized in a short time. Or it can be done alone by the Supreme Court or without the support of other parties. The existence of this Judicial Commission is expected to become one of the partners of the Supreme Court to continue to make efforts in the context of reforming the judicial body. Realizing the importance of the existence of the Judicial Commission, encouraged the Supreme Court to take the initiative to make the Academic Paper and the Draft Law on the Judicial Commission”.⁴

Listening to the contents of the foreword shows that in fact from the beginning the Supreme Court expected and acknowledged the presence of the Judicial Commission was important in relation to judicial reform, including maintaining and upholding the honor, dignity, and conduct of judges. The Supreme Court also hopes the Judicial Commission can become one of its partners after the new institution is formed. In fact, in the 2001 MPR RAH PAH I, the Supreme Court, through its spokesman Iskandar Kamil, essentially proposed the establishment⁵ the judicial

³Lukman Hakim Saifuddin, *Komisi Yudisial dan Fungsi Checks and Balances Dalam Kekuasaan Kehakiman*, Judicial Commission and Function of Checks and Balances in Judicial Power Buku Bunga Rampai Refleksi Satu Tahun Komisi Yudisial RI, Tahun 2006, hlm. 421 – 422.

⁴Mahkamah Agung RI, Naskah Akademis dan Rancangan Undang-Undang Tentang Komisi Yudisial, diterbitkan oleh Mahkamah Agung RI, Tahun 2003.

⁵Mahkamah Konstitusi RI, Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Buku VI Kekuasaan Kehakiman, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Tahun 2008, hal. 435.

committee or the honorary council is independent and is tasked with conducting external oversight of the behavior of judges in administering justice.

Another aspect that needs to be seen is the same between the Judicial Commission and the Supreme Court after the issuance of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court (hereinafter referred to as the Supreme Court Law). Based on the provisions of Article 32A of the Supreme Court Law, the Supreme Court has the authority to conduct internal oversight of the behavior of the justices, while the external supervision of the conduct of the justices is carried out by the Judicial Commission. The supervision is guided by the code of ethics and the code of conduct of judges which is determined jointly by the Judicial Commission and the Supreme Court.

The full provisions of Article 32A of the Supreme Court Law read:

- 1) Internal oversight of the conduct of Supreme Court justices is carried out by the Supreme Court.
- 2) External oversight of the behavior of the Chief Justice is carried out by the Judicial Commission.
- 3) Supervision as referred to in paragraph (1) and paragraph (2) is guided by the code of ethics and the code of conduct of judges.
- 4) The code of ethics and the code of conduct of judges as referred to in paragraph (3) are established by the Judicial Commission and the Supreme Court.

The provision of Article 32A of the Supreme Court Law has emphasized the realm of supervision of the two institutions, namely as the Supreme Court as an internal supervisor and the Judicial Commission as an external supervisor. What is more encouraging is the provision of Article 32A paragraph (2) of the Supreme Court Act that has revived the oversight function of the Judicial Commission on the behavior of judges who are paralyzed after the Constitutional Court Decision Number 005 / PUU-IV / 2006.

In accordance with Article 32A paragraph (4) of the Supreme Court Law, guidelines for supervision in the form of a Code of Ethics and a Code of Conduct for Judges are determined jointly by the Judicial Commission and the Supreme Court. This article has normatively positioned the relationship of the Judicial Commission with the Supreme Court as a partner in carrying out the oversight function of the judge's behavior. Implementation of Article 32A paragraph (4) of the Supreme Court Law has been established a Joint Decree of the Chairperson of the Supreme Court of the Republic of Indonesia and the Chairperson of the Indonesian Judicial Commission Number: 047 / KMA / SKB / IV / 2009 - 02 / SKB / P.KY / IV / 2009 Concerning Code Judges Ethics and Code of Conduct. This joint decree took effect on April 8, 2009, which was followed by a Joint Decree of the Chair of the Supreme Court and other Judicial Commission Heads as derivatives and instructions for implementation.

In the context of the Judicial Commission's oversight function, the presence of Law no. 48 of 2009 concerning Judicial Power, Law No. 49 of 2009 concerning General

Judiciary, Law No. 50 of 2009 concerning Religious Courts, and Law No. 51 of 2009 concerning State Administrative Court has further strengthened the authority of the Judicial Commission as an external supervisor of the behavior of judges. The important point, before the issuance of Law No. 11 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, the external oversight function by the Judicial Commission is carried out based on the Supreme Court Law, the Judicial Power Act, and the 2009 Judicial Body Law Package. So it cannot be denied that the relationship between the Judicial Commission and the Supreme Court as an implication of the implementation of Law No. 3 of 2009 concerning the Supreme Court along with the Judicial Power Act and the 2009 Judicial Body Law Package can be a strong foundation to build a cooperative relationship between the Judicial Commission and the Supreme Court.

Referring to what is described above, then there are at least 2 (two) foundations that can be used as a meeting point and a connecting point as a basis for building an ideal relationship between the Judicial Commission and the Supreme Court, namely: *First*, the active role of the Supreme Court in assisting the birth of JC, and *Second*, the establishment of cooperation between the Judicial Commission and the Supreme Court after the Decision of the Constitutional Court Number 005 / PUU-IV / 2006 with the issuance of the Supreme Court Act 2009, resulting in the Joint Decision of the Chief Justice of the Republic of Indonesia and the Chair of the Indonesian Judicial Commission Number: 047 / KMA / SKB / IV / 2009 - 02 / SKB / P.KY / IV / 2009 concerning the Code of Ethics and the Code of Conduct for Judges.

The two foundations as mentioned above, if used, can open up very wide space and opportunities for the development of collaboration and synergy between the Judicial Commission and the Supreme Court. With the proviso, both the Judicial Commission and the Supreme Court must legowo to eliminate egocentric and dualistic institutional barriers, the spirit of cooperation, mutual understanding and respect, and mutual trust between one another. These requirements are important to be applied by the Judicial Commission and the Supreme Court to build collaboration and synergy between the two so that each institution can optimally carry out its authority and duties, especially the authority and task of supervising judges' behavior.

It is important to realize that the state budget received and used by the Judicial Commission and the Supreme Court is essentially public money. The salaries and facilities provided by the state to both the leadership and the ranks of the Judicial Commission as well as the leadership and the ranks of the Supreme Court are to carry out the authority and institutional duties in accordance with the mandate of the 1945 CRI and related law orders. They are paid and given facilities not to fight and report to each other to the police, but have the legal obligation to ensure that law and justice are upheld by the judiciary, the justices chosen are trustworthy, have integrity and are professional, and the justices / judges who violate the code of ethics are subject to harsh sanctions and assertive. This is the constitutional and legal obligation carried out by the Judicial Commission and the Supreme Court. So it is very clear that the dispute that

occurred between the two institutions as often happens is very irrational and is a real betrayal of the mandate of the people and the 1945 CRI.

As stated, now is the time for the Judicial Commission and the Supreme Court of each willing to eliminate egocentric and institutional dualistic barriers, build a spirit of cooperation, mutual understanding and respect, and mutual trust between one another in the interests of law enforcement and justice. The Supreme Court as the highest state court focuses on exercising its authority and duties as a court of cassation and judicial review, exercising the right to examine materially, exercising supreme supervision of the proceedings of the judiciary in all judicial environments, and supervising the work of the court and the conduct of judges and the conduct of the Court Officials in carry out tasks related to the carrying out of the principal duties of judicial power.

Whereas the Judicial Commission is obliged to focus on recruiting the best candidates for judges (quality and integrity), so that if elected as justices they can act as agents of change in the Supreme Court. Because more and more integrity and professional justices are recruited by the Judicial Commission, then they can make changes and breakthroughs in carrying out justice reform in the Supreme Court.

Through the external oversight function, the Judicial Commission is obliged to supervise and monitor the integrity and professionalism of judges at all levels of the judiciary by synergizing with the Supreme Court through the Chief Justice of the Republic of Indonesia, Deputy Chief of the Supreme Court of the Republic of Indonesia, the Young Chairperson of the Supreme Court of the Republic of Indonesia, and the Head of the Supervisory Board Supreme Court RI.

There is no denying that the incision in the function of supervising judges' behavior between the Judicial Commission and the Supreme Court is very vulnerable to the emergence of conflict and feud between the two institutions due to differences in views or interpretations of behavior that is considered to violate the code of ethics and guidelines for judge behavior. If it is traced, the implementation of the function of supervising judges' behavior by the Judicial Commission, this often triggers disputes with the Supreme Court. Therefore, in truth the two institutions began to prioritize the interests of law enforcement and justice especially for justice seekers (*justisiabelen*) rather than being shackled to the egocentric and dualistic.

Although the judicial power is independent and its independence as an independent power, it should be maintained, but it cannot negate the application of the principle of mutual balance and mutual control. Another reason also needs to be put forward; out come from the power of the judiciary is law enforcement and justice, where the ultimate goal is the domain of the *justisiabelen* and even everyone. Independence cannot be aimed only at and in the interests of the independence of judicial power alone.

Independence must be accountable, so that legal certainty and justice can be felt concretely by the *justisiabelen*.⁶

The context with accountability, the closure of the Supreme Court as long as it needs to be opened to provide access, convenience, and the best service to the community, especially justice *justisiabelen*. The Supreme Court needs to make a breakthrough by starting to apply the online decision application. Because all this time it has not been easy for justice seekers to get a decision on their case.⁷

Based on the description above, according to the foundations that have been stated, it can be said that the relationship between the Judicial Commission and the Supreme Court is essentially an essential synergy relationship between the two institutions in carrying out their authority and duties in accordance with the mandate of the 1945 CRI and related law orders. Because the synergy relationship is seen as more appropriate in the institutional relationship between the Judicial Commission with the Supreme Court.

Indeed, to build a synergic relationship between the Judicial Commission and the Supreme Court is indeed not easy but can be done if each institution willing to erode the egocentric and institutional dualistic barriers, there is a spirit of cooperation, mutual understanding and respect, and mutual trust between one another as stated. All elements in the two institutions must be able to think of synergy, there is a common view, and mutual respect between one another.

In the context of building such synergy, according to Siti Sulasmi, the notion of synergy has become a word that is often spoken by many people. But building synergy is not as easy as what is said. Synergy can be manifested as maintenance synergy, if the synergy is seen from the closeness of group members that arises as a consequence of the harmonic interpersonal relationships that occur within the group. This synergy is the basis for the realization of productive quality in the form of achieving a common goal. This quality is also called effective synergy.⁸

Synergy comes from the word *syn-ergo*, a Greek word that means to cooperate. In KBBI synergy is⁹ joint activities or operations, and synergy is to carry out joint activities or operations. According to Walton, the simplest definition of

⁶BambangWijayanto, *KomisiYudisial: Checks and Balances danUrgensiKewenanganPengawasan*, Judicial Commission: Checks and Balances and Urgent Supervision AuthorityartikeldalamBukuBungaRampaiRefleksiSatuTahunKomisiYudisial RI, Tahun 2006, hlm. 115 – 116.

⁷ St. LaksantoUtomo, *UrgensiPenerapan Good Governance di MahkamahAgungDitinjauDariPerspektifHukumProgresif*, The Urgency of Applying Good Governance in the Supreme Court Judging from the Progressive Legal Perspective in BukuAkuntabilitasMahkamahAgung, Cetakan ke-1, PT. RajagrafindoPersada, Jakarta, 2016, hlm. 183.

⁸SitiSulasmi, Building Synergy and Morality in Higher Education Organization Environment, Delivered on the Inauguration of the Professor Position in Management Science at the Faculty of Economics and Business, Airlangga University Surabaya Saturday, 18 December 2010, p. 3.

⁹DepartemenPendidikandanKebudayaan, KamusBesar Bahasa Indonesia, EdisiKetiga, BalaiPustaka, Jakarta, 2001, hlm.1070.

synergy is the result of a collaborative effort or 'co-operative effort', therefore the core of the process to produce quality synergies is cooperation. Covey (in Siti Sulasmi) uses the term synergistic in a communication relationship that is formed from the integration of a high-level spirit of cooperation and a relationship of mutual trust. This synergy is a creative process that is built together on the basis of mutual trust and a very high spirit of cooperation. Synergistic communication is built from a form of courage and firmness, with at the same time high consideration. Synergy is more than cooperation. Synergy is to create solutions or ideas that are better and more innovative than collaboration; therefore it is stated by Covey as a 'creative cooperation'.¹⁰ While Bennis and Biederman interpret¹¹ synergistic cooperation if the collaboration is collaborative and is referred to as creative collaboration with a strong commitment to the interests of the organization.

Furthermore, according to Stephen Covey in his book *7 Habits of Highly Effective People*, synergy is a form of win-win cooperation that is produced through the collaboration of each party without any feeling of defeat. Synergy is complementarity and complete differences to achieve greater results than the number of parts by part. The concepts of having synergies include the following:¹²

- 1) Orientation on Results and Positive;
- 2) Diverse perspectives replace or complement paradigms;
- 3) Mutually cooperate and aim together and an agreement exist;
- 4) Very effectively endeavored and is a process.

Referring to Covey's view, the essence of synergy is a form of win-win cooperation that is produced through collaboration between each party without any feeling of defeat.

Synergy is complementarity and complete differences to achieve greater results than done individually. The existence of synergy between the Judicial Commission and the Supreme Court in exercising the authority and task of supervising the behavior of judges will be able to establish more and more judges with integrity and professionalism, so that more and more quality court decisions. A quality court decision is very important, because it is a reflection of the upholding of law and justice. In this realm, professional collaboration and collaboration between the Judicial Commission and the Supreme Court must be maximized.

The synergy relationship between the Judicial Commission and the Supreme Court cannot be interpreted as a mere check and balances relationship, but rather as an institutional relationship that works together, supports each other and complements one another based on a spirit of togetherness to work together and trust each other without the feeling of losing in carrying out the authority and institutional tasks, especially those related to the function of monitoring the

judge's behavior. The synergy relationship can encourage the Judicial Commission with the Supreme Court to be able to openly state their ideas and opinions, without feeling threatened and worried about the possibility of conflict. Synergy between the two institutions can build cooperation to achieve a common goal better in the implementation of the supervisory behavior of judges.

Based on the description above, it is clear that the ideal relationship between the Judicial Commission and the Supreme Court is the synergy relationship between the two institutions in carrying out the authority and duties as mandated by the 1945 CRI and related law orders. So the relationship between the Judicial Commission and the Supreme Court cannot be interpreted as a mere check and balance relationship, but rather as an institutional relationship that works together, supports each other and complements one another based on a spirit of togetherness and mutual trust without feeling defeated in the same exercise of authority and institutional duties, especially those related to the function of monitoring the judge's behavior.

Finally, the synergy between the Judicial Commission and the Supreme Court is an integration of various elements in supervising the behavior of judges, which of course can produce higher quality outputs and increasing in quantity in the implementation of the supervisory behavior of judges rather than being done individually. The values of synergy need to be continually fostered together by the Judicial Commission and the Supreme Court in each individual judge, including their respective officials and employees. The main objective is to establish more and more judges with integrity and professionalism, so that it has positive implications for a growing number of quality court decisions. A quality court ruling is an indicator and reflection of the upholding of law and justice by the judiciary.

4. Conclusion

That the relationship between the Judicial Commission and the ideal Supreme Court is a synergy relationship between the two institutions in carrying out the authority and duties as mandated by the 1945 CRI and related law orders. The relationship between the Judicial Commission and the Supreme Court cannot be interpreted as a mere check and balance relationship, but rather as an institutional relationship that collaborates with each other, works together, supports each other and complements each other based on a spirit of togetherness and mutual trust without feeling defeated in the same exercise of authority and institutional duties, especially those related to the function of monitoring the judge's behavior.

To build a synergy relationship between the Judicial Commission and the Supreme Court, it is suggested that the two institutions to eradicate egocentric and institutional dualistic barriers by prioritizing law enforcement and justice in accordance with their respective authorities and duties, and are committed to continuing to foster a spirit of mutual cooperation, mutual understanding and respect, and mutual trust between one another.

¹⁰SitiSulasmi, Op.cit, hlm. 3

¹¹Ibid, hlm. 4

¹²Stephen R. Covey, *Tujuh Kebiasaan Manusia yang Sangat Efektif, Seven Habits of Highly Effective People (Terj.)* Budijanto, dengan judul asli *The 7 Habits of Highly Effective People*, (Jakarta : Bina Rupa Aksara, 1997).

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