

Judicial Commission Supervision For Judges Behaviour In Independent Judiciary

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ABSTRACT: The study aims to identify and explain the relevance of the substantive law of the Judicial Commission in conducting supervision to judges with the principles of independent judicial power, including the models used in monitoring the behavior of the Judicial Commission judges, and the impact of monitoring the behavior of judges. The study was conducted in Jakarta, the place of the Judicial Commission, as the targeted institution, because it focuses in supervising the activities of judges of the Supreme Court and the Constitutional. The type of research is empirical legal research through the three-level approaches of philosophy, dogmatic, and theoretical laws. The research sample was determined by purposive sampling technique. Data collection instruments used where interviews and documentation collection then analyzed qualitatively. Results of the study revealed that the substance of the law governing the authority of the Judicial Commission to supervise the activity of judges is broadly in line with the principle of independent judicial power, except the setting of membership composition and procedures of decision making of Honorary Judges. This is potentially affecting the independence of the judicial power. Judicial Commission applies the eclectic model of supervision, by combining the model of supervision; preventive (but not include the recruitment, promotion and transfer), limited repressive, and limited external supervision models (external quasi). The Model of Judicial Commission monitoring for the behavior of judges is not included in the checks and balances surveillance. The Supervision of the Judicial Commission for activity of judges is not implemented significantly in the form of supervisory authority (especially the preventive acts), the application of sanctions toward judges who violate the KEPPH, human resources (quantitatively), and justisiabelen sound impact. It is recommended to the government and the Parliament to change the Article 22F par. 2 on the composition of 4 Commissioners and 3 justices to 3 Commissioners, 3 justices, and 3 elements of the society. Also, it is recommended to amend the Law No.18 of 2011 to expand the Judicial Commission oversight duties including the recruitment, the promotion, the transfer of judges, and in order to confirm the existence of the Judicial Commission as an external supervisor. The consequence is that the place of the Judicial Commission should be moved to outside the chapter of the judicial authority. In order to improve more on the effectiveness of supervision the activity of judges, it is necessary to have capacity building on the Judicial Commission. It is recommended to the government and parliament to significantly increase the budget of the Judicial Commission. Also, the Judicial Commission should improve more on the coordination, cooperation with the Supreme Court so that recommendation on more sanctions is effective.

Keywords: Monitoring the behavior of judges, the Judicial Commission, independent judiciary power.

1 INTRODUCTION

Indonesia is a law-based country, as stated in the constitution and various legislations. As its name, the country is not ruled by men but by law because rights of the people are fully guaranteed by the state. On the other hand, it is the obligations of the people to be subjected and obey all regulations and laws. The explanation of the State law is rooted in the belief that the power of the state should be run on the basis of good and fair law.¹ Essential and universal principle in the state law is recognized and guaranteed as an independent judiciary. The idea of the independence of the judiciary was known since the idea of the democracy and constitutional state, which emerged in the Enlightenment in the Western world. "Judicial independence is a pillar of state law". The independence of judges and the judiciary as a safeguard of the rule of law reflected in the basic principles on the independence of the judiciary". The principle of independent judicial power in Indonesian law states is not only at the level of abstract theory, but it has become an integral part of positive law. Judicial independence as constitutional requirements that then outlined in the organic law is one essential aspect, even fundament element of Indonesian law.

Organization of independent judicial power is not in a vacuum, but are vulnerable influenced by various factors, then to the Supreme Court was given the authority to conduct internal control. In empirical reality, internal control is not effective. Therefore, in order to maintain the independence of the judicial power of the 1945 amended Constitution, it is formed a new agency which one of its authority is to monitor the behavior of judges. The substance of the laws governing the implementation of the authority of the Judicial Commission, in particular the supervision of the conduct of judges should always be in line with the principle of independence of the judicial power as a universal principle, and in terms of ius constitutum that has been guaranteed in the Constitution NRI of 1945, the Judicial Authority Law, and the law of the Supreme Court. It appears that based on a preliminary analysis, some normative formulation supervisory authority of the Judicial Commission has great potential is not in line with the principle of independent judicial power, including about the Honorary Council of Judges (MKH). Empirically, in the practice, Judicial Commission is confronted by various obstacles such as the existence of differences in the extent of the authority of Judicial Commission that shall supervise the conduct of judges whether the technical concerns of judicial or non-judicial. During 2009, the Judicial Commission has imposed sanctions on for 16 judges to the Supreme Court. Recommended sanctions for judges by the Judicial Commission of the Supreme Court responded by sending a reply letter to the Judicial Commission. Of the 16 judges recommended, only 4 judges could be followed for alleged violations of the code of ethics and code of conduct of judges. The rest is considered as technical fault in judicial, administrative and financial mistakes that sanctions are taken over by the Supreme Court. In fact there are 3 people judge recommended sanctioned by the Judicial Commission declared a purely technical mistake judicial correction process

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through judicial mechanisms on it. In the span of nine years since of its inception (2005-2013) complaints of alleged violations of KEPPH is reaching 7146 reports with an average of 794 reports per year. It is a relatively large amount. From the above discussion, there is a tendency that the substance of the laws governing the supervision of the judge's behavior could potentially affect the principle of the independence of judicial power, by meaning that the control model of the Judicial Commission on the activity of judges is not effective.

BASIC THEORY OF JUDGES CONDUCT SUPERVISION

The understanding of the State law is rooted in the belief that the power of the state should be run on the basis of good and fair law. Independent judiciary is a universal ideology of the present and future. It is an ideological conception that sparked the revolution that coincided with the flow "trias politica". In the modern state system, judicial authority is a branch of organized activities of the state. In the doctrine triad politics, meaning separation of powers and the doctrine means a power sharing, where justice is placed as an independent branch of state power. Independence of the judicial authority or independence of judges is also a universal principle anywhere and anytime. This principle means that in carrying out justice and the judge essentially free to examine and adjudicate cases and free from interference or extra-judicial powers to intervene. So basically in check and judge, judges are free to determine their own ways and adjudicates. Unless it is basically no parties, both the boss and the judge concerned extra judicial proceedings that may interfere with the judiciary. Judicial independence implies that in carrying out justice, judges are free from the interference of extra-judicial powers, both executive power and legislative power and other extra-judicial powers in society, such as the press, and political power and influence of the litigants. Judicial independence is defined as independence or freedom, in the sense of the presence of complete freedom and the absence of intervention in the judicial power, it includes three things: (1) free from interference of any power, (2) clean and integrity, and (3) professional. The independence of judges is free from any pressure in deciding the case, both in implementing the provisions of the legislation as well as career. The regular judges are free, that is, they are subject only to the law and not subject to orders or instructions of a judicial or administrative higher organ. At the final destination, both control and state laws have a clear direction that is a means to realize the people's welfare and social justice which is the main goal of the state law and the law of the country that holds the principle of constitutionalism that become the basis of the constitution. According Lotulung: "supervision or control is an attempt to avoid the occurrence of errors, either intentionally or unintentionally, as a preventive, or also to fix the error when it occurs, as a repressive". George R. Terry: "Control is to Determine what is accomplished, Evaluate it, and apply corrective measures, if needed to Ensure result in keeping with the plan" Paul E. Lotulung classifies the various institutions using three benchmarks: (1) From the position of institutions that carry out control can be distinguished on internal control and external control, (2) in terms of execution time can be divided into control and control a priori posteriori; (3) of the controlled object, then a control can be divided into control and control in terms of the law in terms of expediency. Olowu and Ayeni suggested external controls, among others, in the form of political control derived from political institutions,

control of the judiciary and the courts, public complaints commission, mass media, code of conduct, and pressure groups. The nature of impartiality and objectivity of judicial power requires control to occur checks and balances, and further, that the judicial authorities did not give birth to tyrannical judges who will be the absolute isolation of the judicial power. Because of the existence of an agency that will oversee judges and independent judiciary be so urgent. Internal criticism as a form of introspection Supreme Court regarding internal control weaknesses seen in the records of the Supreme Court, there are at least six internal control weaknesses that made the Supreme Court for this: (1) Lack of transparency and accountability. It can be inferred from the absence of a mechanism that provides for the right of the complainant to know the progress report that they enter, (2) the existence of the alleged spirit of defending the judge corps or reluctance to take up cases affecting its members, which has indirectly fertilize practice-justice is not a good practice, (3) Less full control method, and no exercise of supervisory methods effectively, (4) weakness of human resources. On the whole the head of the Supreme Court justices young and automatically become a supervisor. The majority of supervisors does not work in full because it is the primary duty of justices are deciding the case, (5) Supervision has been running less involved community participation, (6) The complexity of the bureaucracy that must be passed to report / complain judges deviant behavior.

2. RESEARCH METHODS

The study was conducted in Jakarta, the seat of the Judicial Commission, the Supreme Court and the Constitutional Court as an institution of research objectives. This research includes empirical legal research or legal research sociological, philosophical approach, dogmatic, and theoretical laws. Samples determined by using purposive sampling. Data collection instruments are interviews, and documentation, which is then analyzed qualitatively.

3. RESULTS AND DISCUSSION

The supervision of the activity of judges by the Judicial Commission is mentioned under the Article 24B of the Constitution 1945 and further elaborated in the Act No. 22 (2004) of Judicial Commission jo. Law Decree No.18 Year 2011 of the Amendment of Law Decree No. 22 (2004) on Judicial Commission. As the implementing regulations, it has passed several Joint Rules of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia. Regulations together referred to, among others:

1. Decision of the Joint Chief Justice of the Republic of Indonesia and Chairman of the Judicial Commission of the Republic of Indonesia Number: 047 / KMA / LCS / IV / 2009-02 / LCS / P.KY / IV / 2009 on the Code of Ethics and Code of Conduct of Judge.
2. Joint Rules of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number: 01 / PB / MA / IX / 2012-01 / PB / P.KY / 09/2012 About Selection Appointment of Judges.
3. Joint Rules of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number: 02 / PB / MA / IX / 2012 - 02PB / P.KY / 09/2012 About Free Enforcement Code of Ethics and Code of Conduct of Judges.

4. Joint Rules of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number: 03 / PB / MA / IX / 2012-03 / PB / P.KY / 09/2012 on the Joint Inspection Procedures.
5. Joint Rules of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number: 04 / PB / MA / IX2012 - 04 / PB / P.KY / 09/2012 on Procedures for the Establishment, Work Procedures and Decision-Making Procedures Honorary Council of Judges.

The substance of the law as formulated in various forms of legislation in order to implement the authority of the Judicial Commission, broadly related to the subject: (1) The position of the Judicial Commission as an independent state institution, and free from interference or influence of other powers, (2) the Commission judicial may appoint a liaison in the area in accordance with the needs, (3) the composition of the Judicial Commission consists of leaders and members. Leadership consists of a Chairman and a Vice Chairman and member. The Judicial Commission has seven members and the status of state officials. Membership Judicial Commission consists of: two persons former judges, two persons of legal practitioners, 2 legal academics, and 1 member of the community. Governing Judicial Commission elected from and by the members of the Judicial Commission, (4) the right protocol, finance and police action members of the Judicial Commission, (5) the Secretariat General of the Judicial Commission, (6) The authority of the Judicial Commission: a. Justices and propose the appointment of ad hoc judges in the Supreme Court to Parliament for approval; b. Maintaining the honor, dignity, and the behavior of the judge; c. Assign Code and / or the Judicial Code of Conduct together with the Supreme Court; and d. Maintain and enforce the implementation of the Code and / or the Judicial Code of Conduct, (7) Duties and mechanisms, procedures for exercising the authority to propose the appointment of Supreme Court judges and ad hoc judges in the Supreme Court, (8) The guidance in implementing the authority maintaining the honor, dignity as well as the behavior of judges, (9) the task of the Judicial Commission in the framework of the implementation of the authority maintaining the honor, dignity and conducts of judges: a. Monitoring and supervision of the conduct of judges; b. Receive reports from the public relating to violations of the Code and / or the Judicial Code of Conduct; c. Perform verification, clarification, and investigation of reports of alleged violations of the Code and / or the Judicial Code of Conduct is closed; d. Deciding whether or not the reports of alleged violations of the Code and / or the Judicial Code of Conduct; and e. Take legal action and / or other measures against those individuals, groups, or legal entity degrading the honor and dignity of judges, (10) Judicial Commission is also in charge of the increased capacity and welfare of judges, (11) The Judicial Commission may have recourse to the apparatus law enforcement to wiretap and record the conversation in terms of the alleged violations of the Code and / or the Judicial Code of Conduct by the judge, (12) Judicial Commission in implementing the authority maintaining the honor, dignity and conducts of judges, shall: a. Obey the laws and regulations; b. Enforcing the Code of Conduct and / or the Judicial Code of Conduct; c. Maintain confidentiality of information or information that is obtained which by its nature is a secret Judicial Commission

obtained based on its position as a member; and d. Maintain the independence and freedom of judges in check, try and decide the case, (13) The Judicial Commission may request information and / or data to the Justice agencies and /or Judge, along with its operation, (14) In carrying out the task of maintaining the honor, dignity as well as the behavior of judges, the Judicial Commission verifies, checks (alleged violation, request clarification), call and ask for information from the judge reported, the complainant and witnesses, (15) The results of such examination revealed violations proved or disproved, (16) types sanctions, (17) The mechanism for imposing sanctions on the recommendation of a judicial commission, (18) Honorary Council of Judges (arrangement, the mechanism of action, decision-making procedures, and implementation of the recommendation), (19) The procedure for the decision-making of the Judicial Commission, (20) Appointment of Commission judicial, (21) Prohibition of dual office of the members of the Judicial Commission, (22) The procedures of the Chairman, Vice Chairman, and members of the Judicial Commission, (23) Accountability and reporting. The substance of the law on the subject as noted is generally in line with the principles of independent judiciary. In other words do not contradict or negatively affect the implementation of the independent judicial power, unless the substance of the legal regulation of the Honorary Council of Judges (MKH). Looking the perspective of the independence of the judicial authority / independence of the judiciary, the law governing the substance of the existence of MKH potentially negative effect when viewed from two (2) aspects, namely (1) the composition of the MKH, and (2) a mechanism decision making of MKH. Section 22F (2) of the Act NO. 18 (2011) asserted that "MKH referred to in paragraph (1) shall consist of four (4) members of the Judicial Commission, and three justices".² Decision-making mechanism in Article 22F (4) of the Act NO. 18 (2011), affirmed "MKH decision referred to in paragraph (3) is taken as a consensus and if not reached a decision taken by a majority vote". MKH composition, which consists of four Judicial Commissions, and three Supreme Court Justices, and decision-making mechanisms through a majority vote, if analyzed in a series or a single entity can provide opportunities hegemony of Judicial Commission, and of course, these conditions will have a negative impact on the principle of judicial independence. If only in terms of the composition can be no presumption that the Judicial Commission has a dominant position, and if forced decisions on the basis of voting, then the Judicial Commission can impose his judgment, and this can be considered direct intervention. But it should also be understood that why the number four in the Judicial Commission, due consideration is to be assessed is the judge. If those four justices in itself it will be more subjective view of people going to defend its institution. The Justice Gayus Lumbuun held that the composition of 4-3 in this MKH is to make an euphoria of the Parliament to be able to support the supervision of the Judicial Commission. Actually, this spirit is very exaggerated. The problem is that the composition of the 4-3 is allowed to use excessive. The supervision of the judge's behavior will cause any problems esprit de corps of each institution, the Judicial Commission and the Supreme Court. But the Judicial Commission also balances the Supreme Court. For MKH composition, it is ideal to be 3 justices, three Judicial Commission, and one independent. Independent are from

campuses, community leaders or who is elected jointly. Both of these different views between the Judicial Commission and the Supreme Court concerning the composition of the MKH, empirically probability to form the necessary conditions for it. The Composition of 4-3 did not leave a dominant position or a position that allows the Judicial Commission does not impose its will in the decision making MKH only if the judicial commission and the Supreme Court can maintain an atmosphere of understanding, mutual respect, dignity, and productive cooperation. This condition can also be maintained when there are favorable conditions of justice seeker. Empirical experience shows that in the early years of implementation supervision of judges by the Judicial Commission, especially the leadership phase Busroh Muqoddas, Judicial Commission faced a relatively strong resistance on the part of the Supreme Court. Resistance is partly due to the strong spirit of the Commission in carrying out judicial authority, which is on the side of excessive Supreme Court. Faltering public credibility of the condition of the rule of law and justice by judicial institutions will affect the composition of 4-3 in the MKH. It is because the law was never fully able to free themselves from sociological factors in its implementation. Subjectivity of the Judicial Commission with the composition of 4-3 would adversely impact the impartiality and independence of the judiciary. Opportunities in Judicial Commission is arises when the factors driving force, namely; (1) the emergence of institutional egoism. This can happen if the atmosphere of cooperation between the Judicial Commission and the Supreme Court experience disharmony, (2) has not been the establishment of law enforcement justice atmosphere with a variety of factors, and (3) strengthening distrust among justisiabelen to the practice of law enforcement. Distrust is potentially a strong pressure to the Judicial Commission, and may be affected by the performance of the Judicial Commission and the pressure of public opinion in seeking justice. KEPPH socialization activities, dissemination of information choices, human resource development, research and development, study of the judge's ruling, the judge capacity building workshops, and monitoring of trials that have been carried out by the Judicial Commission, in principle, the implementation of preventive supervision models. Article 24B of the Constitution 1945 as a constitutional basis supervision of the Judicial Commission to conduct surveillance terminus judges do not use, but use the terminus "maintain" and "enforce". Terminus supervision used in Republic Act NO.18 of 2011, particularly in Article 20 paragraph (1) a and Article 22 paragraph (1) and paragraph (2) Judicial Commission in implementing the authority granted by the Constitution to translate the term "maintain" as a preventive supervision (including preemptive). Preventative as an adjective which means is prevented (so as not to happen). Preventive as a noun means a process, a way, an act to prevent, prevention, rejection: the business of the factors that could cause damage. Preventive supervision of the Judicial Commission has not been implemented include aspects of recruitment, promotion and transfer of judges. The third aspect is not found explicitly affirmation, either in Article 24B of the Constitution NRI 1945 as the constitutional basis as well as in the legislation of the Judicial Commission. Problem recruitment, promotion and transfer in principle is an important part, even in the context of strategic preventive supervision. In practice, these three still pose a different attitude and outlook between the Judicial Commission of the Supreme Court. It is

understandable when the Supreme Court to be rejected if the issue of recruitment, promotion and transfer transferred to the Judicial Commission. From the juridical perspective, not available legal basis for devolved recruitment, promotion and transfer of judges. In the perspective of practical interest, the transfer of this authority led to erosion, or the smaller the jurisdiction of the Supreme Court. This can be interpreted as a reduction of the authority of the Supreme Court. Of course natural that resistance arises from the Supreme Court. Recruitment of judges is one variable that contributes significantly or even a *conditio sine qua non*. Recruitment of judges can be seen as a long series of processes upstream of law enforcement, and equitable decision and is downstream of law enforcement activities. When in the upper well, of course, expected to be good in the downstream. In this context, the recruitment of judges is upstream of preventive supervision, and judicial conduct an oversight in the downstream. In the perspective of fair law enforcement, forward, transfer of recruitment, promotion and transfer of judges is an ideal idea. Recruitment, promotion and transfer if submitted to the Judicial Commission, will be applied merit system, the selection of candidates for judges adjusted on objective criteria such as; capacity, capability, intelligence, integrity. In addition, recruitment can be done with a more transparent and high accountability since the Judicial Commission are free of conflicts of interest, nepotism nuanced interest. Through the merit of this system is expected to give birth to the judges of quality and integrity. So that a just law enforcement can be presented in empirical reality. Similarly with the recruitment of judges, promotion issues are also an important variable to bring the quality of law enforcement if the promotion is based on the principles of objectivity, and transparency. Promotion should be viewed as a reward for achievement, good performance of the judge concerned. With this principle will create a productive work environment with fair competition, encouragement, and motivation to work better. On the basis of such promotion, it will be a process of internalization that work up to upholds justice is a way to achieve a better career. Preventive surveillance by the Judicial Commission carried out in parallel with the implementation of repressive control. The activity of monitoring and supervision of the conduct of judges, receive reports from the public relating to violations of the Code and / or the Judicial Code of Conduct, conduct verification, clarification, and investigation of reports of alleged violations of the Code and / or the Judicial Code of Conduct is closed, decide whether or not reports of alleged violations of the Code and / or the Judicial Code of Conduct, basically within the framework of supervision activities that are repressive. Repressive surveillance is translated from the word "uphold the honor, dignity, and the behavior of the judge" as defined in Article 24B of the Constitution of 1945. The Supervision repressive in meaningful word punishment, punishment, against judges who commit acts of deviation/violation of KEPPH. Repressive supervision over the judge's behavior is implied from the provisions set forth in the Article 20 of the Law NO.18 of 2011 in order to maintain and uphold the honor, dignity and conducts of judges, the Judicial Commission in charge; monitoring and supervision of the conduct of judges, receive reports from the public related to the infringement of KEPPH, verify, clarify, and investigation of reports of alleged violations KEPPH closed, decide whether or not the alleged violation report KEPPH. Furthermore, the nature of this repressive surveillance knotted also in Article

22A of the governing authority of the judicial commission to verify the report, an examination of the alleged violation, call and inquire both judges and witnesses reported, summing up the results of examination, Article 22B of the procedure of examination and clarification, Section 22C of the verdict form examination results, Article 22D of the types of sanctions that can be recommended, Section 22E of the execution procedure recommended sanction, and Article 22F and 22G Article deals with MKH. The series of repressive surveillance activities initiated from any public statements about the alleged violation KEPPH. In contrast to general repressive surveillance, repressive supervision of the Judicial Commission in enforcing the honor, dignity, and the behavior of judges are things that need to be clarified. First, the Judicial Commission sanctions only make recommendations to the judge reported that it violates KEPPH. The implementation of sanctions remains of the Supreme Court. In practice, not all the recommendations of the Judicial Commission followed up with various reasons. Second, sanctions recommendation by the Judicial Commission, the law was given authority applies automatically when the sanction recommended in a certain period is not executed by the Supreme Court for no apparent reason. The problem is that the juridical law does not regulate how the automatic enforcement mechanisms to sanction until after the time limit set by law. Law on the Judicial Commission, as well as the Joint Rules of the Supreme Court and the Judicial Commission does not regulate where, in what way it applies automated recommendations, and what the legal consequences when sanctions on purpose is not adhered to. In a legal perspective, the provisions on automatic sanctions has no legal force because the norm is not forced by the firm, or maybe even a vague, making it impossible to apply. Formulation of norms that are not expressly, or even blurred related recommendations of the Judicial Commission which automatically applies this may be due to the dilemma between the interests of judges in order to control the behavior of law enforcement justice on the one hand, and on the other hand is of interest to keep the principle of independence of the judicial power. Supreme Court as an institution does not recognize the term oversight of the external and internal oversight, just use the term supervision only to subordinates Judexpacti. After the birth of the Judicial Commission Act, the Supreme Court determined that the internal controls in line to the bottom, external supervision provided to the Judicial Commission but there is scope, which is a matter of conduct of judges, violating the code of conduct, misconduct, not the judge's decision regarding the assessment. The assertion explicitly that control the behavior of judges Judicial Commission is monitoring the external is affirmed in Article 32A NO.3 Act of 2009 on the Second Amendment Act No. 14 of 1985 on the Supreme Court. It is asserted that the internal control over the behavior performed by the justices of the Supreme Court (paragraph (1), and external supervision over the conduct of justices conducted by the Judicial Commission (paragraph (2). In general explanation stated that the Supreme Court is the highest state court of all courts there under. Therefore the Supreme Court supreme supervision of the judiciary in general courts, religious courts, military courts, and administrative courts of the country. However, the Supreme Court is not the only institution that monitoring since there are external oversight conducted by the Judicial Commission. The existence of external supervision properties Judicial Commission also affirmed in Article, 40 paragraph (1) of Act

48 of 2009 on the Judiciary, Article 13A (2) of Act 49 of 2009 on the Second Amendment Act No. 2 of 1986 on General Court. The use of the term external monitoring of several laws related to the judicial power is only on the basis of the interpretation that the Judicial Commission is institutionally not be part of the Supreme Court, the Judicial Commission are outside the organization of the Supreme Court, while the Constitution NRI 1945 put the Judicial Commission in the chapter on power judiciary. The idea of externality judges supervision meetings Ad-hoc Committee of the 1945 changes, especially during the discussion of Chapter IX of the Judiciary more connected with the Honorary Council of Judges (HPD). No external Understanding where HPD is attached to or placed, but the external sense attached to the source or from which members of HPD derived. In this sense it is not important whether the HPD inside or outside the institution of the Supreme Court, but the members of HPD recruited from outside the institution of the Supreme Court. When the discussion to the Judicial Commission as an institution that will be the function of supervision, particularly the behavior of judges, the view of most factions put the supervision of the Judicial Commission as an internal control. MPR, in turn establishes the Judicial Commission as an institution in place the supervision of judges remain within the judicial power, but outside the institution of the Supreme Court. So the original intent of the Assembly as an institution has the right to change and set the NRI Constitution of 1945 does not establish the Judicial Commission as a supervisory board of judges that are external. External control is carried out by the supervisory organ or agency organizational / structural located outside the supervised institutions. The government in the sense of the executive, for example, financial supervision conducted by the Financial Supervisory Agency is external supervision, social watch conducted by the public through the press / mass-media, is an external oversight, political surveillance conducted by representative bodies of the people is the external supervision. Included also in this external monitoring is monitoring done indirectly through justice agencies (judicial control) in the event of any dispute with the government. Conducted surveillance of the Constitutional Court of the legislative product (DPR) is the external supervision. So plumb externalities of an oversight agency must meet two criteria; (1) The institution shall be outside the organizational structure of the supervised institutions, (2) the institution is also not in a ward or branch of power. Based on these two criteria, can be brought to the Judicial Commission as an institution conducting oversight of the judge is not entirely external. Supervision of the Judicial Commission is not entirely external due to: (a) MKH, which is a combination of Judicial Commission (external elements) and the Supreme Court (internal elements), (b) joint examination between the Judicial Commission (external elements), and the Supreme Court (internal elements). Both of these mechanisms can be viewed as a joint control over the behavior of judges. The Supreme Court's response to the recommendation for imposition of sanctions on judges reported that it violates KEPPH broadly grouped into two categories: (1) the recommendations accepted by the Supreme Court, and (2) the recommendations are still under review by the Supreme Court. The first category consists of a special category; (a) accepted and sanctioned by the Supreme Court (73 cases), (b) taken over to be followed by the Supreme Court (43 cases), (c) is accepted but awaiting further investigation by the Supreme Court (19 cases), (d) the

proposed to MKH (13 cases). The number of cases for the first category of 148 cases. The second category consists of a special category; (a) rejected on technical grounds in the domain of judicial (16 cases), (b) has been sanctioned by the Supreme Court (30 cases), (c) is rejected for other reasons (4 cases), (d) waiting for the response of the Judicial Commission (11 case), (e) was rejected on the grounds closed (13 cases), and (f) does not or no response (33 cases). The number of cases to 107 cases a second category. Number of recommendations were accepted by the Supreme Court 148 cases, or about 58.03%. Number of recommendations were still being studied 107 cases of the Supreme Court or about 41.97%. Based on this percentage, qualitative execution of the Supreme Court of recommendation for imposition of sanctions for judges who violate KEPPH relatively ineffective. There are several contributing factors. In certain cases arise debates between the Judicial Commission and the Supreme Court whether the Judicial Commission may also interfere with an indication of the behavior of the judge in the decision, and this is indeed a fine line between technical judicial behavior. In the view of commissioner Judicial Commission that it is possible there are things that even though it concerns the procedure for hearing to the decision, but there is the possibility that judges perform behaviors that are not professional. In such conditions it is often rather difficult Judicial Commission separately prove whether it violates a code of conduct relating to the conduct or the technical problems judicial under the authority of the Supreme Court. For example there are litigants in civil cases. First it was the execution of the contract. In the contract it had included a clause settlement if any dispute arises on the implementation of the contract. The parties agreed for example, that if there is a dispute in the future, then this case will be resolved through arbitration. That means that the parties have determined that the arbitration as a dispute settlement. But if there is one party that is broken and then filed a lawsuit in court, it is actually true according to the provisions of this lawsuit should in NO (not received the lawsuit), by declaring themselves have no authority. In practice, the lawsuit was accepted. The question, in this case whether this purely technical or whether judicial conduct of judges. Things like this often give rise to a dispute between the Judicial Commission of the Supreme Court. Had the judge received the lawsuit and examine the principal case. The question is whether it meets the technical judicial or is there any other influences? In these circumstances, the Judicial Commission chose that if there are no factors that influence the judge in deciding the case and solely because of legal considerations, then it can be referred to as the implementation of the independence of judges on one side. But if there are other factors that influence the judges act like it, then the other actions that affect the behavior that is the problem. The behavior of the judges there are over behavior (real behavior), for example, the judge accepts bribes, and cover behavior (behavior that is not real) example hides or as if there is or is not supposed to apply the law to a fact. In the case to examine and decide cases is the area that should not be entered, including the judge's own self. But ask any questions that ensnare, shows countenance like or dislike the defendant or plaintiff, using words that indicate a tendency, sifting through witnesses or facts which examined a form of behavior of judges. Judges have authority assess the evidence, but whether the judge justified intentionally or through negligence did not consider the evidence? When the

judge deliberately ignoring the real facts significantly determine whether or not the defendant guilty, the case where the wedge between the technical judicial behavior. Assessing the evidence is the authority of judges, judicial technical, but manipulate fact is the behavior. This is often difficult to see the Judicial Commission. Is the Judicial Commission should not be entered on the sphere? It is now to be encouraged to reach agreement between the Judicial Commission and the Supreme Court One difference (that cause rejection) The Supreme Court is the interpretation / assessment of the level of a judge's behavior associated with the type of sanctions. Case in Daming judges, the Supreme Court rejected the proposal of the Judicial Commission for the MKH, For Gayus Lumbuun, Parliament was a public place. Anywhere either in the trial, a fit and proper test, in association though, in cafe, keep the words of a judge it to be an example. Remarks judge out of court or in the court not to impose dignity should judge such information Daming judges in the House that rape not need to be put to death because "the same good good", to be questioned by the Judicial Commission, it needs to be investigated. However the judge's role, the judge's words are wise words, the words of a man who in his position should not be arbitrary. Judges should not throw a joke or joking that could injure the victim, which could hurt the community. Remarks like this Daming could be investigated, but not with the decision as a judge, it must be distinguished. The judge is twofold Das Sein and Das Sollen. The trial judge when no means he must das sollen that should voice the law. Outside anywhere, in a coffee shop law judges are obliged to build Das Sein. Das Sein is what distinguishes the behavior of judges with other law enforcement agencies. Before the decree issued by the Judicial Commission of the Supreme Court on the implementation of inspection guidelines, there are often differences in the interpretation of the things that may be the authority of the Judicial Commission in the matter of monitoring the behavior of judges. With the start of the LCS between these two institutions decreased tension in a matter of difference of supervision. If there are cases, such claims should be rejected, but received or ignorant of the fact, the Judicial Commission may submit to the Supreme Court of a violation, in this case violated the procedural law. This is already set up in the LCS between the Judicial Commission and the Supreme Court that if there are matters of a technical nature of the judicial execution of the procedural law will be submitted to the Supreme Court. Such cases the Supreme Court will give judgment or conduct training. But if it was mainly done because there are other factors, and can be proven, then the Judicial Commission to enforce the code of conduct. With the completion of the four rules together, the enforcement mechanism of the code of ethics and conduct of the judge is expected to be more optimal, and in accordance with the mandate of the legislation. Especially to achieve synergy with the Judicial Commission in the handling complaints against the code of ethics. With the joint regulations guide the implementation code of ethics and code of conduct of judges, then it is no reference was agreed on sanctions for any violations of the code of conduct, and also the most important is the deal for violations under the authority of the Supreme Court and which are not. About the interpretation of the behavior of the judge now says it is relatively not subject to dispute between the Judicial Commission of the Supreme Court. For comparison, in Australia the Judicial Commission initially they got a very strong resistance, now it is supported

and defended by the judge. Therefore, the Judicial Commission today put forward the principles of fairness, professionalism, accountability in carrying out supervisory duties. Regarding the response of the Supreme Court of the Judicial Commission's recommendations, one of the justices of the view that the Supreme Court would not want to have to accept and process, should not ignore. The Supreme Court must give a response. If rejected by the Supreme Court with a variety of arguments. The Supreme Court should be able to give an argument that the public can observe that the Supreme Court reasoned argument and the Supreme Court should not neglect to keep all the recommendations of the Judicial Commission for not processed. So the Supreme Court must accept or reject with an objective reason. Response to the Supreme Court in general good, but for specific cases sometimes the Supreme Court questioning (style of Hatta Ali). At the time Mr. Arifin Tumpa was very confrontational. The Supreme Court today (under the leadership of Hatta Ali) is more persuasive, more communicative. If there are differences, the Supreme Court sent a messenger to resolve the differences. Therefore, after 2012 the atmosphere changed to be more respectful and open. This atmosphere not only of the Supreme Court, but all parties. Trigger is salary and reward. Especially for conditions justices, unprofessional conduct one caused by a pile of cases. Therefore, there needs to be a mechanism restriction case, in the sense that not all things can go to the Supreme Court. All developed countries do this restriction. Today there are 13,000 pending lawsuits. 3000 cases completed, the incoming 4000, the effect of judges pursuing settlement of arrears cases. In this condition is difficult to expect a quality decision, not to mention negligent, err. Moreover, no judge lazy to read, only to agree on what was decided his company members. In connection with the authority of the Judicial Commission provides recommendation for imposition of these sanctions, the juridical perspective actually have binding force. In NO.22 Act of 2004 stipulated that in accordance with the level of offense committed, proposed the imposition of sanctions against judges may be; written warning, suspension, or dismissal. Proposal for the imposition of sanctions and the reasons for his mistake binding, submitted by the Judicial Commission to the leadership of the Supreme Court. Thus the leadership of the Supreme Court can not be (subjectively) disregard the recommendations of the Judicial Commission. Even in NO.18 Act of 2011 on the first amendment NO.22 Act of 2004, the legal power / strength of binding of the recommendations of the Judicial Commission more and more strengthened. In NO.18 Act of 2011 stipulated that in the case of alleged violations of the Code and / or the Judicial Code of Conduct convicted, the Judicial Commission proposed the imposition of sanctions against the judge who allegedly committed the violations to the Supreme Court. Supreme Court judge to impose sanctions against violating KEPPH proposed by the Judicial Commission within a period of 60 (sixty) days from the date the proposal is received. In the unlikely event there is a difference of opinion between the Judicial Commission and the Supreme Court of the Judicial Commission's proposal concerning the imposition of sanctions and the Supreme Court has not imposed sanctions within 60 days, then the Judicial Commission proposal applies automatically and must be implemented by the Supreme Court. In the event of disagreement between the Judicial Commission and the Supreme Court of the Judicial Commission's proposal of

imposing mild sanctions, sanctions moderate, and severe sanctions other than dismissal sanction remains with pension rights, or dismissal remain with respect, joint examination between the Judicial Commission and the Supreme Court against judge concerned. But when the 60-day grace period has not come to an agreement, then the recommendation of the Judicial Commission is automatic and must be implemented by the Supreme Court. In a juridical perspective, if carefully analyzed law enforcement authority of compliance recommendation of the Judicial Commission as stipulated in the Act NO. 18 In 2011, the principle is not significant because of the assertion that the recommendations of the Judicial Commission applies automatically within 60 days unclear implementation. There is no clear mechanism. So that in principle can not be executed. Thus the norms regulating the entry into force of the Judicial Commission's recommendations automatically this is the norm fuzzy / vague norm. Supervision of the conduct of judges who conducted the Judicial Commission is expected to give effect, effect or result of any change and / or improvement of the behavior of judges in accordance with the guidance KEPPH, the improvement of the quality of decisions and law enforcement atmosphere felt more fair justice seekers. So far, the results achieved significant is the establishment of atmospheric monitoring the behavior of judges. Among judges (law enforcement officers in general) has awakened awareness of the importance of monitoring the behavior of judges in order to realize a just law enforcement. Indication of this is the awakening of consciousness among their participation for each report against alleged violation of KEPPH. The founding of the atmosphere can be achieved by monitoring for strategy and approach built contrast Judicial Commission is not, but it is more persuasive dialogue and thereby building communication, coordination and understanding between the Judicial Commission with the judge / justice, especially the Supreme Court, although it impossible, could not deny the fact that in some extent still arise tension or disagreement between the Judicial Commission. It is reasonable cause to achieve ideal conditions takes time and effort better future. The Judicial Commission is important to be realistic, build compromises, but not to delegitimize or reduce the authority granted by the Constitution and relevant legislation. Establishment of monitoring the atmosphere can not be separated from the understanding that the Judicial Commission is not solely in charge of supervising, but also seeks to improve the welfare of judges. This resulted in the formation of a positive perception of the existence of the Judicial Commission. Regarding the improvement of the welfare of judges, NO.18 Act of 2011 stipulates that one of the tasks of the Judicial Commission in order to maintain and uphold the honor, dignity, and the behavior of judges is increased capacity and welfare of judges. This task is an additional duty of the Judicial Commission, as previously stipulated in the Act NO. 22 of 2004. The addition of capacity building and welfare tasks is true judge can change the perception of the judicial authority of the Commission to be more positive. Therefore, the Judicial Commission is not just to supervise the conduct of judges, but at the same time improving the quality and welfare duty judge. The creation of atmospheric monitoring of the behavior of judges, in the view of justice seekers are not necessarily positive effect on behavior change significant judges. Even supervision of the conduct of judges bore side effects (effects not expected). Side effects such as birth is practical-pragmatic

attitude among judges in performing its main task, which is to receive, examine, hear and decide cases submitted to it. In this case and argued that the judges to be important in deciding the case they do not get reported or called by the Judicial Commission. The view that what is important is not reported or called by the Judicial Commission could have a negative impact on the quality of the judge's decision. Against a case that widespread public concern, which is accompanied by a certain opinion, the judge will tend to follow the opinions that have been formed, and do not have the courage to opposite, though in view and belief that public opinion has been formed not really be seen from a legal perspective and justice. As with influence on behavior improvement, quality improvement of our decision in view of justice seekers have not yielded significant results. Nevertheless, monitoring the behavior of the judge who conducted the Judicial Commission relative to give satisfaction to the community. Outcomes as a result of monitoring the behavior of judges of the Judicial Commission, which have not been up this course is influenced by many factors simultaneously. Quantitatively, the budget is one of the factors, which by the Judicial Commission is perceived as a serious limiting factor. During the 5 (five) years (2010 to 2014) Judicial Commission budget of only 500 billion. The amount of usage per year submitted to the Judicial Commission. This condition causes the budget monitoring is not maximal activity. Judicial Commission should budget one trillion, mainly to enhance the competence of judges amid extraordinary legal dynamics. Training thematic e.g training business law, tax law training. Knowledge of judges (in the district court and the high court), especially in the areas of relatively still limited. If conditions are such judge's knowledge of the law, of course, very difficult to expect a quality decision childbirth Carrying capacity is still relatively limited staff obstacle factor in encouraging the optimization of the implementation of supervisory duties of the Judicial Commission. Ideally Judicial Commission investigations require 100 personnel to investigate violations of the code of ethics, supervision, and monitoring. In the perspective of the Judicial Commission, regarding the recruitment, promotion and transfer of judges qualified as part of a resistance factor (properties indirectly) in monitoring the implementation of the behavior of judges. In addition to the regulation, there is a refusal of the Supreme Court if the recruitment, promotion and transfer of judges the authority of the Judicial Commission. In the Supreme Court can be understood if a resistant or disagree transfer of authority recruitment, promotion and transfer of judges to the Judicial Commission because the Supreme Court was going to experience a reduction of authority, so worried occur powerless. A special recruitment of judges, recruitment system used was the system of recruitment of civil servants, whereas according to the law judges are state officials. So the recruitment system must judge the recruitment system of state officials.

4. CONCLUSION

1. The substance of the law governing the authority of the Judicial Commission to supervise the conduct of judges is broadly in line with the principle of independent judicial authority, unless the arrangement of the composition of the membership and decision-making procedures MKH as regulated in Article 22F paragraph (2) and paragraph (4) of Law No .18 In 2011 jo. Article 3 paragraph (1) and Article 8 paragraph (2) Joint Rules of the Supreme Court and the

Judicial Committee on Procedures for the Establishment, Work Procedures and Procedures for Decision of MKH, potentially very large affect the independence of the judicial power.

2. Judicial Commission in monitoring the behavior of judges applying the model of supervision of eclectic, combining models of supervision; preventive (but not include the recruitment, promotion and transfer), repressive limited, limited external supervision models (external quasi). The Model of Judicial Commission in monitoring the behavior of judges is not included in the perspective of surveillance checks and balances. Therefore, the Judicial Commission as state institutions remain within the judicial power, in addition to his position is not equivalent to the Supreme Court. In carrying out surveillance on the behavior of judges, the Judicial Commission to apply participatory and transparent approach.
3. Implementation of the Judicial Commission monitoring to the behavior of the judge is not implemented effectively viewed from the standpoint of coverage supervisory authority (especially preventive), response and / or the execution of the application of sanctions on judges who violate the KEPPH by the Supreme Court, the carrying capacity of resources (in quantitative), the impact of perceived control justisiabelen.

5. RECOMMENDATIONS

1. To the government, and the Parliament to amend Article 22F paragraph (2) of the composition of the MKH of 4 (four) Commissioner of the Judicial Commission, and 3 (three) justices, three (3) Commissioner of the Judicial Commission, three (3) judges grand, and 3 (three) elements of society.
2. Recommended also to the government and Parliament to amend the Law NO.18 of 2011 to expand the Judicial Commission oversight duties include recruitment, promotion and transfer of judges, and in order to confirm the existence of the Judicial Commission as an external supervisor, then the placement of the Judicial Commission should outside chapter of judicial authority.
3. That in order to further improve the effectiveness of supervision of the Judicial Commission of the conduct of judges, it is necessary to capacity building of the Judicial Commission. It is recommended to the government and parliament to significantly increase the budget of the Judicial Commission in the state budget. Also recommended to the Judicial Commission further improve coordination, understanding and synergy with the Supreme Court, so the recommendation is more effective sanctions.

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