



The Urgency of External Supervision and the Ideal Model of Supervision of Constitutional Judges

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Abstract: External oversight of constitutional judges is a crucial element in maintaining the integrity and accountability of the constitutional judiciary system. The urgency of this oversight lies in its ability to prevent the abuse of power, enhance transparency, and strengthen public trust in the judiciary. In this context, external oversight functions as a control mechanism that helps ensure constitutional judges perform their duties in accordance with principles of justice and applicable law. However, effective external oversight requires an ideal and comprehensive model. The ideal oversight model should include key elements such as the independence of the oversight body, transparency of the oversight process, clear procedures for reporting and handling complaints, and accountability of the oversight body to the public. Additionally, public involvement in the oversight process is crucial to ensure that the oversight reflects the general interest. This study aims to evaluate the urgency of external oversight of constitutional judges and to develop an ideal oversight model that can enhance the effectiveness of external control. By implementing this model, it is hoped that the constitutional judiciary system can operate more fairly and accountably, and maintain public confidence in the constitutional judiciary.

Keywords: MK, Constitutional Judge, Supervision

I. INTRODUCTION

Explaining the importance of judicial oversight in the Constitutional Court involves several key aspects that highlight its role in ensuring integrity, fairness, and accountability within the legal system. Here is an explanation of why judicial oversight in the Constitutional Court is crucial. The Constitutional Court has significant authority in reviewing laws and resolving disputes between state institutions. Without adequate oversight, there is a risk of abuse of power by constitutional judges, which could undermine the legal system and democracy. Oversight helps prevent deviations and ensures that this authority is used fairly and in accordance with legal provisions. Overall, judicial oversight in the Constitutional Court is essential for ensuring that the institution operates fairly, transparently, and accountably. It helps maintain the integrity of the legal system and enhance public trust in constitutional adjudication, ultimately supporting stability and justice within the state.

In exercising its authority, the constitution expressly grants judicial power and freedom to the Constitutional Court in deciding a dispute, however, it is a mouthpiece of law (*la bouche de la loi*) which only pours out what is in the rule of law, but it has individual behavioral competence, which includes individual *behavior (personal)* and judicial behavior. The competence of judges is the *authority of judges judicial behavior*. With this position, judges enjoy a high degree of autonomy without limits, however, judges as actors of judicial power, cannot be allowed to simply carry out the function of judicial power without controllers and counterweights from external institutions. The reason is that this can give birth to absolute judicial power (*judicial*

tyranny), which is a form of statehood (*social institution*) that is as bad as executive tyranny and legislative tyranny where judicial power with its authority can create legitimacy against illegitimate things (*necessitas facit liticum quoad or non est liticum*). However, they cannot be touched by any means and by any institution, including by the institution authorized to carry out supervision. (Adji, 1985) .

Apart from the above explanation, another perspective mentions that supervision is necessary as a reality that judges cannot avoid socio-kultral influences in carrying out their duties. Judges are greatly influenced by diverse identities, at least based on life history, ethnicity, and cultural traditions, class, religious beliefs, political views, class, gender, and even scientific ideology. Thus, juridical-normative decisions actually also contain socio-cultural claims in line with the diversity and overlap of identities in a judge. (Indonesia, Problematika Hakim Dalam Ranah Hukum, 2017) This is reinforced by the school of *legal realism* that argues that judges decide things according to their personal preferences and then construct legal analysis to justify the desired outcome. They are trying to show that the act of adjudicating is not impersonal, but has been influenced by the judge's personal values. In line with this, *The Idiosyncrasy Wing of Realism's* view claims that what determines the judge's response to the facts of a particular case is the special facts about the psychology or personality of the individual judge concerned.

II. METHOD

Based on the objectives to be achieved, The juridical-normative method is an approach in legal research that focuses on the analysis of legal norms and regulations. This method involves studying legal texts such as statutes, regulations, and judicial decisions to understand and interpret applicable legal rules. In this method, researchers aim to identify, assess, and apply relevant legal norms to a legal issue, often using a systematic and doctrinal approach to examine and explain the structure and principles of the law.. As well as analyzing the principles behind legal norms that Written in laws and regulations using *the statue approach* (Ibrahim, 2007) Thus, this paper analyzes the principles related to the supervision of Constitutional Judges by the Judicial Commission, as well as their relation to the principle of *the check and balances system*.

In accordance with the method used, the data source of this paper only uses secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. The secondary data obtained is discussed and analyzed in depth to examine considerations and regulations related to the supervision of Constitutional Judges by the Judicial Commission and its relation to the principle of *the check and balances system*. The data as intended is analyzed in a caulytic, critical and argumentative manner and presented with technical descriptive analysis, thus answering the purpose of this paper.

III. RESULT AND DISCUSSION

1. The Urgency of Supervision of Constitutional Judges

Assess the urgency of supervision of constitutional judges concretely, it will be outlined through several approaches, including the following:

a) Authority possessed by the Constitutional Judge

The authority possessed by constitutional judges as stated in Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia is to adjudicate at the first and last level whose decisions are *final* and binding, making constitutional judges as one of the central actors of power in guarding law and democracy in Indonesia. Moreover, the authority possessed by the Constitutional Court, whose decision is final and binding, shows that there are no more actors of power above the Constitutional Court in the constitutional system who can correct and correct the decision if there is a mistake in it. (Penelitian, 2018).

Furthermore, the jurisdictional authority of the Constitutional Court as stipulated in Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, including:

1. Testing the law against the Constitution

2. Deciding disputes over the authority of state institutions whose authority is granted by the Constitution;
3. Decide on the dissolution of political parties;
4. Deciding disputes about the results of general elections;
5. Give a verdict on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.

In addition to the authority and obligations of the Constitutional Court as enshrined in the constitution, the Constitutional Court also has a function that is a derivative of that authority, namely *the guardian of the constitution, the final interpreter of the constitution, the guardian of democracy, the protector of citizens' constitutional rights, the protector of human rights.* (Rachman, 2022)

The attribution of authority and function shows great power in the constitutional system owned by constitutional judges. Based on data published by the Constitution Magazine, since the establishment of the Constitutional Court in 2003 to 2022, the Constitutional Court has registered as many as 3414 cases. A total of 1573 cases related to Law Testing (PUU), 29 cases related to Disputes over the Authority of State Institutions (SKLN), 676 cases regarding Disputes over General Election Results (PHPU) and 1136 cases regarding Disputes over Regional Head Election Results (PHPKADA). (Konstitusi, 2022)

The above data shows that the Constitutional Court has exercised some of its powers, namely: Testing laws against the Constitution; Deciding disputes over the authority of state institutions whose authority is granted by the Constitution; and Deciding disputes about the results of the general election. Only two authorities have not been exercised so far, namely: Deciding on the dissolution of political parties; and give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution. In particular, the authority of the Constitutional Court in the PUU related to interpreting and enforcing the supremacy of the constitution has so far occupied the highest number of cases, namely 46% of the total 33% of PHPKada; 20% PHPU; and 1% SKLN. (Konstitusi, 2022)

Moving on from the description above, of course, the exercise of the authority of constitutional judges has greatly affected national legal products through the constitutional review adjudication process so that it has a wide impact on all aspects of the nation and state. (Penelitian, 2018) Also, the authority of constitutional judges in deciding disputes over general elections has authorized many people's representatives, regional leaders, and even presidents and vice presidents who directly affect democratic life in Indonesia. Likewise, in the settlement of disputes between state institutions, many decisions have been made that clarify the authority of each state institution. The magnitude of authority and the large number of duties from the authority possessed is one of the strong foundations and foundations that constitutional judges need to be supervised in exercising these powers. This aims to prevent the uncontrolled use of authority in the constitutional system in Indonesia.

b) Exercise of Constitutional Judges' Authority

As previously described, the Constitutional Court has four powers and one obligation in accordance with Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia. The jurisdiction includes:

- a) Testing the law against the Constitution;
- b) Deciding disputes over the authority of state institutions whose authority is granted by the Constitution;
- c) Decide on the dissolution of political parties; Deciding disputes about the results of general elections;
- d) Give a verdict on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.

The four authorities and one obligation in practice are often interpreted broadly and implemented inconsistently by the Constitutional Court, among others, which can be seen in some of the descriptions below:

First, in the constitution (1945 Constitution of the Republic of Indonesia) it is stated that the Constitutional Court has the authority to examine laws against the Constitution. However, in practice, the Constitutional Court's examination of Government Regulations in Lieu of Law (PERPPU), is unconstitutionality of the Constitutional Court in exercising its authority. If the word law is mentioned, then it is clear that only legal products in the form of laws can be the object of testing in the Constitutional Court, and the PERPPU is not a product of laws formulated between the legislature and the executive.

Regarding the content material in the PERPPU that violates the constitution (the 1945 Constitution of the Republic of Indonesia), the constitutional process and adjudication can be carried out through legislative review adjudication. This is as stipulated in Article 22 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that if the House of Representatives does not approve the Perppu, then the Perppu must be revoked. Furthermore, the PERPPU must be approved by the House of Representatives in the next session. If approval is not obtained, the Perppu must be revoked. Thus, it can be concluded that the authority to conduct tests on the Perppu is the House of Representatives. (Hardyanto, 2014)

However, in practice, the Constitutional Court has conducted PERPPU testing. PERPPU that has been tested by the Constitutional Court: (Huda, 2010) Constitutional Court decision No. 138/PUU-VII/2009 on PERPPU No. 4 of 2009 concerning Amendments to Law No. 30 of 2002 concerning the KPK. The Perppu test is based on the fact that Law No. 12 of 2011 concerning P3 aligns the hierarchy between the Law and the Perppu (UU/PERPPU), but in this context the PERPPU has a difference with the Law. After all, the PERPPU test is not under the jurisdiction of the Constitutional Court.

According by (MD, 2009) banyak putusan dari hakim konstitusi yang terkadang melahirkan putusan yang sifatnya *ultra petita*. Mahfud MD pernah menyatakan bahwa terdapat beberapa masalah dalam putusan MK. Ada beberapa putusan MK yang bersifat *ultra Petita* yang mengarah pada intervensi ke dalam bidang legislasi. Ada juga putusan yang dapat dinilai melanggar asas *Nemo iudex in causa sua*, serta putusan yang cenderung mengatur atau putusan yang didasarkan pada pertentangan antara satu undang-undang dengan undang-undang yang lain. (MD, 2009) Ironically, the Constitutional Court has also tested its own authority through testing the law as stated in Decision No. 005/PUU/IV-2006, Constitutional Court Decision No. 48-49/PUU-IX/201, Constitutional Court Decision No. 1-2/PUU-XI/2014, and most recently Constitutional Court Decision No. 56/PUU-XX/2020.

This shows that the exercise of authority possessed by constitutional judges is often interpreted broadly with some of the decisions mentioned above. In carrying out their duties, constitutional judges are not always in the consistency of their authority and sometimes tend to exercise some kind of discretion to fill the gaps in the existing legal rules. In this context, *ultra petita* cannot be avoided in order to fill and uphold substantive justice, but its collection must still be limited in a measurable manner that reflects the principle of legal certainty and democratic principles. Therefore, the existence of a supervisory mechanism for constitutional judges to clarify the use of *ultra petita* is very necessary.

In addition to the problematic decisions mentioned above, there has also been legal uncertainty, especially in the process of testing the law. This can be seen in the explanation below:

- a. The length of the test of the law at the Constitutional Court cannot be predicted with certainty. The average time used by the Constitutional Court to decide on the test of the law, starting from the registration process to the reading of the verdict is 6.5 months. However, if you look at it per year, the average testing time varies, sometimes as fast as 4 months and sometimes quite long up to 10 months.
- b. The disparity in case handling time is shown by some cases that are completed in days and some cases that are completed in years. (Junaidi, 2016)

The two problems above, it seems that the obstacle is related to the Constitutional Court's procedural law. But on the other hand, even so, the aspect of supervision also affects the uncertainty of the time of the event at the Constitutional Court. The uncertainty of the time for handling cases at the Constitutional Court shows that supervision is not running effectively.

Therefore, supervision is urgently needed to improve the quality and time of handling cases at the Constitutional Court.

c) Judicial Corruption Practices

The main cause of weak law enforcement in Indonesia is the low morality and integrity of law enforcement officials. The increasing abuse of authority and *judicial corruption* is due to the weak supervision system, especially the internal supervision system that does not operate effectively. The Supreme Court Supervisory Body, which is the internal supervisor of the Supreme Court and the Honorary Assembly of the Constitutional Court, has not worked well. (Isnaldi, 2013) The mode of *judicial corruption* boils down to the efforts of the parties to be able to influence the judge's decision. Decisions that should be the crown of a judicial institution are often traded at low prices. *This judicial corruption* then annuls the principles of independence and impartiality that should be upheld by judges in carrying out their duties.

The practice of *judicial corruption* has infected the Constitutional Court institution, with the case of the entanglement of judge Akil Mochtar in a bribery case related to the dispute over the Palangkaraya Regional Election, Central Kalimantan, which was won by Riban Satia. The Palangkaraya Regional Election was sued to the Constitutional Court in July 2013. Akil Mochtar became the chairman of the panel of judges who heard the case. In the trial, Akil Mochtar was proven to have received bribes related to four of the five election disputes in the first indictment, namely the Gunung Mas Regency Regional Election (Rp 3 billion), Central Kalimantan (Rp 3 billion), Lebak Regional Election in Banten (Rp 1 billion), Four Lawang Regional Election (Rp 10 billion and 500,000 US dollars), and Palembang City Regional Election (around Rp 3 billion). Until finally the Panel of Judges of the Jakarta Corruption Court sentenced Akil Mochtar to life imprisonment. (Maharani, 2014)

In another case, for example, judge Patrialis Akbar was proven to have received USD bribes. 10,000 (equivalent to Rp. 133.53 million) and more than Rp. 4,043 million. For this act, Patrialis Akbar was sentenced to eight years in prison and a fine of Rp. 300 million with a subsidy of 3 months of imprisonment and an additional penalty, paying compensation of Rp. 4.04 million and USD. 10 thousand with the provision that if the defendant Patrialis Akbar does not pay after one month of the court decision with permanent legal force, his property will be confiscated, if he does not have sufficient property, he will be replaced with a six-month prison sentence. (Maharani, 2014)

Begitu pula kasus pelanggaran kode etik yang dilakukan oleh ketua MK, Arief Hidayat based on the decision of the Ethics Council of the Constitutional Court. Arief was proven to have held meetings (political lobbying) by giving promises related to the testing of Article 79 paragraph (3) of Law No. 17 of 2014 concerning the MPR, DPR, DPD, DPRD (MD3) regarding the DPR's right of inquiry related to the existence of the KPK Inquiry Committee (Martilah, 2018). Previously, the Chairman of the Constitutional Court Arief Hidayat had committed a minor violation of the code of ethics, namely sending a memo of *the katebelece* or memo to the Deputy Attorney General for Supervision Widyo Pramono, the Chief Justice of the Constitutional Court (MK) Arief Hidayat was given a light sanction in the form of a verbal reprimand by the Constitutional Court Ethics Council. The Ethics Council considers that Arief's act of sending the memo to entrust the Prosecutor to the Trenggalek District Prosecutor's Office (Kejari), M. Zainur Rochman, is a form of ethical violation. (ASH, 2106)

The above case is proof that with considerable authority but not shared with adequate accountability and control, it will give birth to power that tends to be corrupt. This applies to all branches of power, including judicial power. The absence of accountability and adequate supervision mechanisms are the main factors in the occurrence of *judicial corruption*. Ideally, supervision steps should not only be carried out after a case has occurred, but supervision should indeed be attached to every authority, including the position of constitutional judge to avoid the practice of *judicial corruption*.

d) Reinforcing the Principles of Checks and Balances

The idea of the mechanism of mutual supervision and the relationship between the branches of state power gave birth to theories of modification of the doctrine of separation of

powers, namely the theory of *checks and balances* and the division of power that emphasizes the division of government functions, not the separation of organs. Furthermore, that the relationship between state institutions in the doctrine of *separation of power* is tied to the principle of *checks and balances*, these institutions have an equal position, but control each other and supervise each other. (Asshiddiqie, 2006)

The *checks and balances mechanism* is needed as a form of accountability so that every state institution must have one with another. Especially the existence of the Constitutional Court must also be integrated with the checks and balances mechanism through a form of supervision so that an Constitutional Court institution that has accountability is created. Muchmad Ali Safa'at assessed that the institutional existence of the Constitutional Court can basically be approached from two different aspects, namely the political aspect and the legal aspect. From the political aspect, the existence of the Constitutional Court is understood as part of an effort to realize a mechanism of *checks and balances* between branches of state power based on democratic principles. (Safa'At, 2014)

In the context of statehood in Indonesia, the principle of *checks and balances* has been implemented by several state institutions, such as *checks and balances* carried out by the Constitutional Court against legislative and executive powers through *the judicial review process*, as well as the legislature against the executive through the right of interposition and the right of inquiry. However, the relationship of *checks and balances* carried out by the executive and legislature to the judicial power (MK) is only limited to the process of recruiting constitutional judges. Indeed, basically the construction of judicial power in the constitution upholds independence and impartiality in carrying out its duties, but it does not mean that it must be avoided from the principle of checks and balances. Although in its journey the Constitutional Court institution was once supervised by the Judicial Commission as an external supervisor which was ultimately considered *unconstitutional* by the Constitutional Court itself. (Penelitian, 2018)

Efforts to strengthen the principle of *checks and balances* through the form of supervision of constitutional judges must still be carried out, for example through internal supervision, namely the Honorary Assembly of the Constitutional Court which has been implemented so far, and it is also necessary to have an external supervision system for constitutional judges to further strengthen the principle of *checks and balances*. This aims to eliminate the practice of uncontrolled power, in addition to eliminating indications of *judicial corruption* practices in the Constitutional Court institution that have occurred.

That effective supervision is necessary for the enforcement of the Code of Ethics and Conduct of Constitutional Judges as declared on October 17, 2005, which was perfected on December 1, 2006, stipulated as the Code of Ethics and Conduct of Constitutional Judges (Sapta Karsa Utama) which contains the principles of independence, *impartiality*, integrity, *propriety and civility*, equality, competence and *diligence*, as well as values that live the principles of wisdom and *wisdom*.

e) Reconstruction of the Supervision System for Constitutional Judges

a. Internal Supervision

Regarding the supervision of behavior and ethics against Constitutional Judges, the Constitutional Court currently has and implements an internal supervision mechanism through the enforcement of the code of ethics. In carrying out their duties and functions, Constitutional Judges work within the corridor of the code of ethics that has been agreed upon and outlined in Constitutional Court Regulation No. 9/PMK/2006 concerning the Enforcement of the Declaration of the Code of Ethics and Conduct of Constitutional Judges, Constitutional Court Regulation No. 10/PMK/2006 concerning the Honorary Assembly of Constitutional Judges. In addition to the Honorary Assembly of Constitutional Judges, the Constitutional Court based on Constitutional Court Regulation No. 2 of 2013 also internally formed an Ethics Council. Alleged violations of the code of ethics of constitutional judges will be processed internally by the Constitutional Court, in accordance with the Constitutional Court Regulation. The

examination process is carried out by the Ethics Panel, which was formed to examine the alleged ethical violations. (Rolihlahla, 2021)

Furthermore, the pattern of internal supervision of Constitutional Judges has undergone significant changes as stipulated in Law Number 7 of 2020 concerning the Third Amendment to Law Number 23 of 2004 concerning the Constitutional Court, which stipulates that supervision of the behavior of Constitutional Judges is carried out by the Honorary Assembly of the Constitutional Court as a permanent supervisory institution and removes other internal supervisory institutions such as the Constitutional Judges Ethics Council and/or Honorary Assembly of Constitutional Judges. Precisely in Article 27A paragraph (2) which states:

In order to enforce the Code of Ethics and Code of Conduct for Constitutional Judges as referred to in paragraph (1), the Honorary Assembly of the Constitutional Court was formed whose membership consists of:

- a. 1 (one) constitutional judge;
- b. 1 (one) member of the Judicial Commission;
- c. 1 (one) academic with a background in the field of law.

The Honorary Assembly of the Constitutional Court (MKMK) is authorized to examine judges who are suspected of committing ethical violations and also ask for information from parties who are considered to need to be listened to for explanations and statements related to the allegations being investigated. The estuary of the MKMK is about imposing sanctions if proven guilty, and rehabilitation of the judge concerned if it is proven that there is no violation of the code of ethics.

Therefore, it can be said that the mechanism for the supervision of constitutional judges, which only uses the Honorary Assembly of the Constitutional Court, has weaknesses when compared to the mechanism for supervision of judges according to the 1945 Constitution of the Republic of Indonesia, because the mechanism for supervision of judges basically involves institutions outside the organizational structure. An independent and free from other interference is absolutely necessary in order to uphold honor, maintain the nobility, dignity and behavior of judges to realize a good and clean government.

b. External Supervision

External supervision is supervision carried out by supervisors from outside the agency/organization environment which can be in the form of: *constitutional control*; political control; judicial control; and social control). (Abdoellah, 2016). In the course of his journey, the Constitutional Court judges were once externally supervised by the KY, but through Amar Decision Number 005/PUU/IV-2006, the supervisory authority of the KY has been abolished. In Decision No. 005/PUU/IV-2006 states that:

First, the petitioners' application concerns the expansion of the definition of judge according to Article 24B paragraph (1) of the 1945 Constitution which includes constitutional judges 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. The Judicial Commission's supervision of the Constitutional Court will shrinefully establish the Constitutional Court as a dispute deciding institution for the constitutional authority of state institutions;

Second, the petitioners' application regarding the definition of a judge according to Article 24B paragraph (1) of the 1945 Constitution of the Republic of Indonesia is not sufficiently reasonable. Therefore, the petitioners' application as far as the Supreme Court Justice is concerned, there are not enough reasons to grant it. The Constitutional Court found no basis for the constitutionality of the abolition of the Judicial Commission's supervision of the supreme court justice; and

Third, regarding the supervisory function, it is declared contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force because it is proven to cause legal uncertainty (*rechtsonzekerheid*) Likewise, the Constitutional Court Decision No. 1-2/PUU-XI/2014 (Syahayani, 2014) on the *judicial review* of Law No. 4 of 2014, has eliminated the existence of a form of external supervision by Constitutional Court Judges.

However, in this case, the supervision of the Constitutional Judge and the institution of the Constitutional Court externally is still necessary and is an absolute. Although judges have independence, in this case, the independence of judicial or judicial power should not be interpreted absolutely. *The International Commission of Jurists* underlines that "*Independence does not mean that the judge is entitled to act in an arbitrary manner*". In addition, the external supervision of Constitutional Judges aims to create the principle of checks and balances, as well as to minimize the existence of excessive power.

so that the range of abuse of authority. (Penelitian, 2018)

Because so far, the supervision mechanism of Constitutional Court Judges, which only adopts the Honorary Assembly of Constitutional Judges, has weaknesses when compared to the supervision mechanism of judges according to the 1945 Constitution of the Republic of Indonesia, because the supervision mechanism of judges basically involves two supervisory institutions, namely internal supervisors and external supervisors who involve outside the organizational structure. An independent external supervisory institution for Constitutional Judges, and free from interference from other institutions, is absolutely necessary in upholding honor, maintaining the nobility, dignity and behavior of judges in order to realize good *governance*.

f) Effectiveness and Urgency of Supervision of Judges by the Judicial Commission

a. Effectiveness of Supervision of Judges by the Judicial Commission

Strengthening the institution of the Judicial Commission as referred to in Law Number 18 of 2011 concerning the Judicial Commission which in carrying out supervision makes a report on the results of the examination in the form of recommendations regarding the proposal to impose light, moderate, and heavy sanctions and submits it to the Supreme Court. Which is then carried out a joint examination between the Supreme Court and the Judicial Commission on the judge concerned, where if the Supreme Court does not impose sanctions as referred to in Article 22D paragraph (3), then the Judicial Commission's proposal applies automatically and must be implemented.

In accordance with the mandate of the Law on Judicial Power and the Law on Judicial Commissions, that to carry out supervision is based on norms and laws and regulations, guided by the Code of Ethics and the Code of Conduct for Judges. Specifically related to supervision guidelines based on the Code of Ethics and Guidelines for Judges' Conduct, the Supreme Court and the Judicial Commission have made a Joint Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission No. 047/KMA/SKB/IV/2009 and No. 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Guidelines for Judges' Conduct. The joint decision contains 10 basic principles of the Code of Ethics and Guidelines for Judges' Conduct, namely: Behaving fairly; Behaving honestly; Behaving Wisely and Wisely; Be independent; High Integrity; Responsible; Upholding Self-Esteem; Highly disciplined; Behave Humbly, and Be Professional.

In an effort to implement the supervision policy, the Judicial Commission is carried out by the field of supervision and investigation, where the bureau in this case has implemented several functions, namely preventive and repressive supervision. In the perspective of preventive supervision, the investigation bureau traces the track record of candidates for supreme court justice, candidates *for ad hoc* judges in the Supreme Court, and candidates *for ad hoc judges for* corruption crimes. The Bureau of Investigation seeks and excavates information and/or data and researches information or opinions submitted by the public related to data and information related to the reputation and profile of candidates for supreme court justice and *ad hoc* judges at the Supreme Court.

The results of the track record tracing will be used by the Judicial Commission as a consideration to determine the graduation of candidates for Supreme Court Justice and *ad hoc* judges at the Supreme Court. The series of track record tracing activities aims to get candidates with integrity and a good reputation so that they are trusted by the justice-seeking community as the spearhead of law enforcement in the corruption eradication agenda in Indonesia. (Hasan, 2018). Furthermore, the repressive function is carried out by the Investigation Bureau related to the authority of Enforcement of the Code of Ethics and the

Code of Conduct of Judges. In order to support the implementation of this authority, the Investigation Bureau conducts a search of reports or information to obtain information materials (supporting data/evidence, witnesses, etc.) needed in order to prove alleged violations of the KEPPH.

The results can be seen in an integrity survey issued by the Corruption Eradication Commission (KPK) with 7 main indicators in the survey, namely: transparency, human resource (HR) management, budget management, integrity in the implementation of duties, trading *in influence*, management of procurement of goods and services, and anti-corruption socialization. (Korupsi, 2023). It shows that there has been an increase in the institutional integrity of the Supreme Court from year to year, for example from the period of 2018 with 61.11%, 2019 to 72.17%, 2020 to 77.18%, 2021 to 82.72%, and 2022 to 74.61%. (Korupsi, 2023) Although there was a decline in 2022 which was indicated to have occurred due to the OTT of Supreme Court justices, it cannot be closed that there is a positive trend of public trust in the Supreme Court institution which is directly supervised externally by the Supreme Court.

b. The Urgency of Supervision of Judges by the Judicial Commission

One of the main points that must be possessed in the conception of the state of law is the realization of the nature of independence and impartiality in the territory of judicial jurisdiction. A free judiciary is oriented towards the realization of decisions that are as fair as possible to people seeking justice. However, the freedom of judges needs to be interpreted more deeply, the freedom of judges is not absolute but must still be limited by signs of accountability, moral and ethical integrity, transparency, and supervision. In relation to the duties of judges, the independence of judges must still be complemented by impartiality and professionalism in their fields.

Therefore, the freedom of judges as law enforcers must be associated with accountability, moral and ethical integrity, transparency, supervision, professionalism, and impartiality. Therefore, it can be said that the aspects of accountability, integrity, transparency, and supervision are 4 (four) signs that complement the recognition of the independence and independence of judicial power. (Jabbar, 2022). As is known, the position of the Judicial Commission is determined by the 1945 Constitution as a separate state institution because it is considered very important in an effort to maintain and uphold the honor, nobility, dignity and behavior of judges. If judges are respected for their integrity and quality, the *rule of law* can be truly enforced as it should be, the upholding of the *rule of law* is actually a prerequisite for the growth and healthy development of the democratic system that is to be built according to the constitutional system of the 1945 Constitution. Democracy cannot grow and develop, if *the rule of law* is not upheld with its honor, authority, and trust. (Asshiddiqie, 2006)

That the presence of the Judicial Commission is considered as a development of the ethical authority *of the auditor* from the internal institution, which is then personified in such a way as to ensure the effectiveness of his work in order to supervise the behavior of judges, then its function is drawn out to be an *external auditor* whose position is made equal to that of the judges in the same institution as their supervisors. It can be said that the presence of the Judicial Commission as an institution to enforce the code of ethics for judges is a manifestation of the ideal of a democratic legal state which is the purpose of the amendment of the 1945 Constitution, that it is hoped that with the presence of the Judicial Commission institution which with its authority to maintain and uphold the honor, dignity and behavior of judges can realize judges with integrity.

c. The Ideal Model of Supervision of Constitutional Judges

a) Supervision model of judges in several countries

To give birth to an ideal model of supervision of Constitutional Judges, it is important to look at the model of supervision of judges in several countries, including the following:

1) Model of Judicial Supervision (Judicial Commission) in Italy

The KY in the State of Italy is called *the Consiglio Superiore della Magistratura*, or in United Kingdom *The Superior Council of the Judiciary* (hereinafter referred to as CSM), which

in Article 104 of the Italy Constitution is referred to as *The High Council of the Judiciary*. The conception of the KY model in Italy can be seen through the membership and position of the CSM itself, namely the membership of the CSM consists of 33 members, namely 3 (three) members determined by the constitution, namely the President of the Republic (who officially chairs the CSM), the President of the Court of Cassation, the Public Prosecutor at the Court of Cassation: the President of the Republic (who officially chairs the CSM), the President of the Court of Cassation, Public Prosecutor at the Court of Cassation. Then 20 (twenty) members of the judiciary and members of the OM (*'togati'*) are elected by judges and prosecutors, and 10 (ten) members of the body are members from outside the judicial organization itself (*laic'*) elected by the Parliament. CSM members, whose term of office is 4 (four) years. The composition of the CSM is representative of the elements in the government, except for the parliament which delegates to non-permanent members of the CSM.

If we pay attention to the configuration of the text of the CSM regulation in Italy in Chapter IV of the Italy Constitution, it can be assumed that the CSM is part of the judicial/judicial power, although the CSM does not have judicial authority in the context of law enforcement, but its existence in the Chapter on Judicial Power shows the importance of the existence of the CSM in order to maintain the independence of the judicial power. The duties and authorities of this CSM are, the authority to enforce judge discipline, the authority to impose ethical sanctions against judges, the selection and appointment of judges, the training and education of judges, mutation and promotion, and the evaluation of judge performance.

2) Model of Supervision of Judges (Judicial Commission) in the Philippines

The Supreme Court in the Philippines is known as *the "Judicial and Bar Council"* under Article VIII Section 8 of the Department of Justice of *the Philippine Constitution of 1987*, which is under the supervision of the Supreme Court. If you pay attention to the configuration of the text of the JBC regulation in Article VIII of *the Philippine Constitution of 1987* concerning the Ministry of Justice, it can be assumed that the JBC is part of the judicial/judicial power, even though the JBC does not have judicial authority in the context of law enforcement, but its existence in the chapter of the Ministry of Justice shows the importance of the existence of the JBC in the context of law enforcement.

The membership of the Supreme Court in the Philippines amounted to 7 (seven) people, consisting of the Chairman of the Supreme Court *ex officio* as chairman, the secretary of justice, representatives from the *ex officio congress* as members, representatives from the bar association, a professor in the field of law, retired members of the Supreme Court, and representatives from the private sector. The JBC has the duty to recommend the appointment of judges before they are appointed by the president as stipulated in Article VIII Section 8 (1) of *the Philippine Constitution of 1987*.

3) Model of Judicial Supervision (Judicial Commission) in Thailand

Judicial Commission of The Court and Judicial Commission of Administrative of Court (hereinafter referred to as JCAC). The JCAC is regulated in Part 2 concerning the Judiciary (General), in particular Articles 218 to 222, and the JCAC is also regulated in Part 3 concerning the Administrative Court, especially Articles 223 to 227 of the Constitution of the Kingdom of Thailand in 2007. Although it is located in the Court Chapter, the two *Judicial Commission* institutions do not have judicial authority, namely in the context of law enforcement, but in the context of the effectiveness of law enforcement, the JCAC has authority related to judicial power. So, from the explanation above, it can be concluded that JCAC is another institution attached to the (general) judicial institution itself, while the administrative court KY is part of the administrative court itself.

The General Judiciary consists of 15 (fifteen) members, of which the fifteen people consist of a chairman who because of his position (*ex officio*) as the Chairman of the Supreme Court of the General Judiciary serves as the Chairman of the Supreme Court, 12 (twelve) people who have met the requirements from all levels of the court, each level of the court consists of 4 (four) judges, and elected by court officials of all levels of the court, as well as 2 (two) qualified persons, who are not of judicial origin, elected by the senate. So the

composition of its membership is a representation of the judge profession itself. Meanwhile, the membership of the Administrative Court consists of a chairman who because of his position (*ex officio*) as the Chairman of the Administrative Court then becomes the Chairman of the Administrative Court. 9 (nine) members of judges who are considered to meet administrative requirements and are elected by administrative judges among themselves, as well as 3 (three) members who have met the requirements, 2 (two) two of them are elected by the Senate and the others by the Council of Ministers.

The authority of the General Judiciary is regulated in Article 220 of the Constitution of the Kingdom of Thailand. The following are 2 (two) authorities regulated in the article:

1. Giving approval for the appointment and transfer of judges before being sued to the King;
2. Give approval for promotions, salary increases, administrative penalties for judges.

The authority of the Administrative Court is regulated in Articles 224 and 227 of the Constitution of the Kingdom of Thailand of 2007 which in essence are as follows, Giving approval for the appointment and transfer of an administrative judge before it is proposed to the King; Such appointments shall be made in the number of not less than one-third of the number of judges of the Administrative Supreme Court and shall be approved by the Commission of Administrative Courts as prescribed by law and by the Senate before being proposed to the King; Giving approval for promotions, salary increases, administrative penalties for judges; Even the Judicial Commission has the authority to give approval to the appointment of the Secretary General of the Supreme Court.

4) Model of Supervision of Judges (Judicial Commission) in the Netherlands

(Indonesia, Comparative Study of KY around the world, 2014) *Raad Voor de Rechtspraak atau Netherland Council for Judiciary* (NCJ). Nama tersebut diatur dalam *Netherland Judicial Act 1827, Section 83a PART 6. Council for Judiciary*. NCJ secara resmi dibentuk pada tanggal 1 Januari 2011 sebagai lembaga independen yang memiliki tujuan utama untuk mengatasi beberapa masalah yang dihadapi oleh peradilan Belanda termasuk di antaranya soal anggaran. NCJ memiliki 4 (empat) anggota yang diusulkan oleh *Minister of Justice* (Kementerian Hukum) dan disetujui oleh Kerajaan Belanda. Komposisi keanggotaan NCJ berasal dari 2 (dua) orang dari latar belakang hukum dan 2 (dua) orang dari non-hukum dengan masa jabatan 6 (enam) tahun dan dapat diperpanjang selama 3 (tiga) tahun, sementara NCJ sendiri didukung oleh 140 orang staf. (Indonesia, Studi perbandingan KY diseluruh dunia, 2014)

The duties and authorities of the Netherlands Court of Justice can be seen in the *Netherland Judicial Act Division 2. Duties and powers Section 91*. On this basis, the duties and authorities of the NCJ are broadly divided into two parts, namely:

a) Statutory tasks

- 1) *Preparation of the judiciary budget* (preparation of the judiciary budget);
- 2) *Allocation of funds to the courts* ;
- 3) *Operational support* ;
- 4) *Support to recruitment and selection procedures* ;
- 5) *Promotion of quality and uniformity of law* ;
- 6) *General advisory task regarding new legislation* .

b) Non-statutory tasks/ Other tasks

- 1) *Spokes person of the judiciary* ;
- 2) *International cooperation* .

In addition, with this role, the NCJ can also control the performance of the court and encourage all judicial bodies there to further increase their productivity and transparency to the public, even for courts that do not show satisfactory performance or are strongly suspected of deviating from existing rules, the NCJ has the power to give penalties or budget cuts to certain courts.

5) Model of Supervision of Judges (Judicial Commission) in South Africa

According (Muqoddas, 2009) *Judicial Service Commission* di Afrika Selatan di luar Bab tentang Kekuasaan Kehakiman, yang secara fungsi memiliki kewenangan yang lebih luas dari KY di Indonesia. Komisi ini memiliki fungsi memberikan (Muqoddas, 2009) *advis* (rekomendasi) kepada Presiden dalam pengangkatan dan pemberhentian Ketua dan Wakil Ketua MK, Ketua dan wakil Ketua MA, dan hakim di semua lembaga peradilan.

6) Model of Judicial Commission Supervision in Islam

Accordinf by (Djalil, 2012) *Qadhi Al-qudhat*, yang mana kewenangannya berfokus pada mengawasi tingkah laku seorang *Qadhi*. (Djalil, 2012) Sebagai salah satu pelaksana kehakiman *Qadhi al-Qudhat* menjadi sarana *cheks and balances* dalam lembaga peradilan Islam, yang melakukan fungsi pengawasan atas kewenangan yang diberikan oleh khalifah. Khalifah Harun ar-Rasyid merupakan khalifah pertama yang mengangkat sorang kepala *Qadhi al-Qudhat* bernama Abu Yusuf. Sebagai suatu amanah dalam asas-asas fiqh siyasah dengan prinsip *al-muraqabah* (pengawasan) *Qadhi al-Qudhat* hadir dalam praktek ketatanegaraan Islam, selain kewenangan pengawasan tersebut *Qadhi Al-qudhat* juga memiliki kewenangan dalam hal pengangkatan hakim. (Manan, 2007)

a) Ideal model of supervision of Constitutional Judges

Supervision of the behavior of constitutional judges is absolute and is a non-negotiable dead price. Denying the supervision of constitutional judges and negating the role of external institutions such as the Judicial Commission which constitutionally has the authority over this matter in the supervision of constitutional judges is a step backwards in building the top of the judicial institution as an institution with the principles of *clean government* and *good governance*. The Constitutional Court in the Blueprint for Building the Constitutional Court Chapter IV Realizing Accountability and Transparency of the Constitutional Court part B The Strategic Objectives of the Constitutional Court state:

"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 authority for it. The Judicial Commission, juridically, has the authority to supervise judges both in the general judiciary and the Constitutional Court". (RI, 2006)

Based on the provisions of the Constitutional Court's Blueprint and these opinions, it is clear that the Constitutional Court is basically open to external supervision mechanisms for the integrity and behavior of judges and explicitly legitimizes the existence of the Constitutional Court as a supervisory institution for Judges in addition to the Constitutional Court's Honorary Assembly and public control. In a broader context, in this case it signals that *"the subject of the KY's supervision can be extended to all judges, including constitutional judges"*, so that the conduct of the Constitutional Judge includes those supervised by the Judicial Commission. (Tutik, 2006). From several models of judge supervision presented in the previous discussion, the same conclusion can be drawn that all of these models affirm the urgency of external institutions for the supervision of Constitutional Judges, because it is based on the argument of the importance of the principle *of checks and balances* in the institutional structure of the state, especially in the judicial area. In the end, the ideal model of supervision of Constitutional Judges is to involve external and internal supervisory institutions.

However, in this case, it is necessary to reaffirm which external institutions are relevant to supervise Constitutional Judges, and this research still adheres to the mandate of the 1945 Constitution in Article 24B which gives the authority to supervise Judges to the Judicial Commission. Regardless of whether it is the Supreme Court Justice or the Constitutional Judge, because the two are the same, do not have differences and do not have to get privileges between each other. The affirmation of the authority of the Judicial Commission needs to be affirmed in the 1945 Constitution, therefore it is necessary to amend the 1945 Constitution, especially in the chapter on judicial power by emphasizing the authority of the Judicial Commission, especially regarding the supervision of Constitutional Judges. Because

the problems that have occurred so far are due to the lack of firmness in the 1945 Constitution about the extent of supervisory authority possessed by the Judicial Commission.

IV. CONCLUSION

External oversight of constitutional judges plays a crucial role in ensuring the integrity and fairness of the constitutional judiciary system. The urgency of this oversight lies in several key factors. Maintaining Integrity, External oversight helps prevent the abuse of power by constitutional judges and ensures that decisions are made in accordance with constitutional principles and the law. Enhancing Accountability, Effective oversight mechanisms increase public trust by ensuring that constitutional judges act transparently and accountably, thereby fostering greater confidence in the judiciary. Preventing Corruption and Bias Independent external oversight can reduce the risk of corruption and bias in decision-making by constitutional judges, supporting fair and objective rulings.

The ideal model for external oversight of constitutional judges should include several key elements The external oversight body should have strong independence to ensure that it can carry out its functions without political or other undue pressures. The oversight process should be conducted transparently, with public access to reports and findings to allow the public to understand and monitor the process and outcomes. There must be clear procedures for reporting violations, handling complaints, and evaluating and resolving cases. This includes accessible reporting mechanisms and fair examination processes. The external oversight body must be accountable to the public and the judiciary. This involves implementing appropriate sanctions when violations are found. The public should be involved in the oversight process through mechanisms such as public forums or consultations to ensure that oversight reflects the general interest. By implementing this ideal model, it is hoped that external oversight of constitutional judges will be more effective, thereby strengthening justice and confidence in the constitutional judiciary system.

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