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Abstracting

STRENGTHENING THE POSITION AND FUNCTION OF THE JUDICIAL COMMISSION IN THE CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF INDONESIA

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Abstract: *This paper aims to analyze the position of the Judicial Commission in the constitutional system according to the Constitution of the Republic of Indonesia from 1945. This research is normative, legal research, with historical and philosophical approaches. The research results showed that the position of the Judicial Commission in the Indonesian constitutional system is a state institution that has the same position as other high institutions. The existence of the Judicial Commission in the judicial authority system is an auxiliary and supporting body that promotes the implementation of the judicial power to uphold the law and justice carried out by the Judicial Commission and the Supreme Court. Thus, the Judicial Commission is not an institution that runs judicial power, but a state institution that assists the implementation of judicial power by the Supreme Court and the Constitutional Court of Indonesia.*

Keywords: *the judicial commission; Indonesia; constitution; system*

INTRODUCTION

A characteristic of the legal state is the existence of a justice system that upholds the freedom of justice, impartiality, freedom of duty and independence. Justice that meets the expectations of the community is a reflection of the right legal principles in order to meet the demands and expectations of justice seekers (Mahfud 2007, 214). The main factor in realizing this expectation is the high integrity of the judge. The judges' role is important in upholding law and justice in the Indonesian judicial council (Ashiddiqie 2006, 1).

The fundamental problem within the law enforcement in Indonesia is the loss of public trust in law enforcement agencies; in these case the judges as forerunners in the judiciary (Zen 2007, 1). The judges' behavior tends to gain personal profit in cases that are handled in various ways and opportunities by abusing the assumed position. The authority of the judiciary is largely determined by the extent to which the attitudes and behavior of the judges both on and outside the role duty.

The reform movement in 1998 marked the end of the despotic new order system of government power and the beginning of a new order of nationalism in a clear and directed democracy. One of the reform assertions was the amendment to the Indonesian Constitution, which is the Constitution of the Republic of Indonesia from 1945, as the basic foundation in the life of the Indonesian nation. The Constitution of the Republic of Indonesia from 1945 so far has been considered as a very sacred matter, so that no one dares to change the provisions therein; anyone who dares to oppose it will be considered as a traitor.

The presence of the Judicial Commission in the Indonesian constitutional system after the amendment of the Constitution of the Republic of Indonesia from 1945 brings a new direction in the nation's journey, especially in the field of Judiciary (Manan 1995, 56). It presents to protect and enforce the code of ethics and behavior and also the dignity of Indonesian judges. The idea of forming the Judicial Commission had actually existed since 1968, starting from an idea of a Judicial Research Consideration Council, hereinafter abbreviated as JRCC, which serves to provide consideration in making final decisions regarding suggestions or proposals relating to the appointment, promotion, moving house, dismissal and actions/ penalty for the judges. However, these ideas were failed to be included in the Law of Judicial Power.

Talking about the Judicial Commission, it cannot be separated from the existence of the Supreme Court as the last bastion for justice seekers. The Supreme Court included elements of the judges as subjects of law enforcement and justice perpetrators, while the Judicial Commission represents as a counterweight; in this case the Judicial Commission had the tasks given by the Constitution to maintain and uphold the honor, dignity and behavior of Indonesian judges (Syahuri 2011, 28).

This judicial power is very strong in the context of law enforcement and justice as in the provisions of the Law relating to the process of carrying out law and justice.

Furthermore, Judicial Commission is an independent institution that has the authority to propose the appointment of Supreme Court judges and has other power in order to maintain and uphold the honor, dignity and behavior of the judges. It was formed to uphold the dignity and the behavior of judges. In this case, the Judicial Commission acts as a supervisor. In relation to the function of the Judicial Commission, it is necessary to carry out innovations that are oriented towards the clean and commanding judiciary to ensure the society and that justice seekers are treated fairly in the process of obtaining justice in accordance with the prevailing laws and regulations.

This type of research is a normative legal research that is also called a doctrinal research. A normative law research puts law as a norm building system. The norm system includes principles, norms, rules of law and regulations, court decisions, agreements and doctrines (teachings) (Fajar and Achmad 2013, 34). Marzuki stated that a normative legal research is a process to find a rule of law, legal principles, as well as legal doctrines that answer legal problems. Normative legal research was conducted to produce new arguments, theories or concepts as prescriptions in solving the faced problems (Marzuki 2005, 35). The approaches used in the study were legislation, philosophical and historical approaches.

ANALYSIS AND DISCUSSION

After the Constitution of the Republic of Indonesia from 1945 has been amended the judicial authorities, in this case the Supreme Court and other judicial bodies, were no longer the only judicial power perpetrators, however there were other judicial powers that stood alone outside the Supreme Court but were equal in their position, which is the Constitutional Court (Abdullah 2008, 23).

The Constitution of the Republic of Indonesia from 1945 has changed four times and it implicates on the Indonesian constitutional system. One of these changes regarding the state institutional system, such as the Judicial Commission. The result from the third amendment Article 24B on the Constitution of the Republic of Indonesia from 1945 affirms the idea of establishing the Judicial Commission as a new constitutional institution in the Indonesian constitutional system, which is similar in position to other state institutions.

In the annual session of the People's Consultative Assembly, Republic of Indonesia Year 2001, it discussed the third amendment to the Constitution from 1945 of the Republic of Indonesia thereby addressing the demands of judicial reforms, which finally agreed on several changes and discussion of articles relating to judicial power, including a Judicial Commission that has the authority to propose the appointment of supreme justices and has other authorities in order to maintain and uphold the honor,

dignity and behavior of the judges (Ashiddiqie 2005, 67-78). The Article 24 of the Constitution of the Republic of Indonesia from 1945 stated that: "Judicial power is an independent power to hold a judiciary in order to enforce law and justice". This article explains that the power of the judiciary is a very independent power from various interests of other powers, free from intervention, and putting the law as commander (Ashiddiqie 2006, 34-36).

The functions of Judicial Commission are to propose, maintain, and observe the spirit and integrity of judges whose powers are given through the Law on Judicial Commission, while the Constitutional Court adjudicates disputes as in Law Number 24 from Year 2003 concerning the Constitutional Court.

The amendment to the Constitution of the Republic of Indonesia from 1945 brought changes to the Indonesian constitutional system, especially in judicial powers, which include the existence of new institutions such as the Constitutional Court and the Judicial Commission. The establishment of the Judicial Commission is one of the concrete manifestation needs for a balance among the state institutions, especially in the area of judicial power between the Supreme Court and the Judicial Commission (Rani 2002, 13).

In an effort to strengthen the free and independent judicial power in accordance with the reform demands in the field of law, various attempts have been made to change Law Number 14 from Year 1970 concerning the Principles of Judicial Power. Furthermore, on January 15, 2004, the Law Number 48 Year 2009 concerning Judicial Power was born. The presence of this new law marks the historical tool for laying judicial powers, especially to judicial policies, both concerning one-roof system under the authority of the Supreme Court of the Republic of Indonesia.

The way to strengthen a right judicial power system is the existence of other Supreme Court institution level that has the same position as in the Indonesian constitutional system, namely the Judicial Commission. The presence of the Judicial Commission is necessary in the context of monitoring the administrators of judicial power. The history of the Judicial Commission's birth is evidenced by the check and balance, so that in a particular institution there must be supervision other than internal supervision, which is external supervision.

The history of the Indonesian constitution noted a new history with the issuance of the Constitutional Court decision on August 16, 2006, Number 005 / PUU-IV / 2006, regarding the authority to uphold honor and dignity and maintain the behavior of the judges, no longer owned by the Judicial Commission (Sumitro 1983, 24). The Judicial Commission no longer have the authority over the behavior of the judges, submitting proposals for imposing doubt on judges, proposing awards for judges for their achievements and services, especially for constitutional justices. All of them were returned to their respective institutions to oversee the behavior of the judges, who had not been operating properly.

The Judicial Commission is an independent institution regulated with the third amendment of the Constitution of the Republic of Indonesia from 1945 included in Chapter IX concerning the Judicial Power. Nevertheless, even though the Judicial Commission was inserted in the chapter that arranged judicial power, it is not an executor of judicial power, yet it functions relating to judicial power as stated in Article Number 24B paragraph (1) of the Constitution of the Republic of Indonesia from 1945. The Judicial Commission has the authority to propose an appointment of a Supreme Court Judge and other power in order to maintain and uphold the honor, dignity, and behavior of the judges.

The place of the Judicial Commission in the Indonesian constitution falls into high institutions that are as high as the presidential level and are not special government institutions or auxiliary state institutions. Thus, the Judicial Commission's status is not the same as, for example, the Commission of General Elections, the Commission of National Human Rights, the Women's National Commission, the Commission on State Wealth, the Commission on Business Competition Supervisory, the National Law Commission, the Truth and Reconciliation Commission, the Corruption Eradication Commission, the Commission of National Police, the Constitutional Commission, the Indonesian Broadcasting Commission, and the Child Protection Commission, since there are some reasons as follows:

- The Judicial Commission's authority was granted directly by the Constitution of the Republic of Indonesia from 1945 through the Article Number 24B;
- Obviously and without any doubt, the Judicial Commission is part of judicature powers according to the arrangement in chapter IX of the Judicial Power contained in the Constitution of the Republic of Indonesia from 1945.

From the above discussions, it is clear that the position of the Judicial Commission serves as a state institution where its authority is determined by the Constitution of the Republic of Indonesia from 1945. In the Article 24B paragraph (1) and (2), the Judicial Commission has similar relations with other state institutions such as the Constitutional Court, the Supreme Court, the President, the People's Consultative Assembly, and the House of Representatives. As a state institution whose authority is determined by the Constitution, the Judicial Commission has the right to strengthen its position in the constitutional system of the Republic of Indonesia, so that this position can build a professional institution without intervention by others.

The relationship that exists between these institutions is a pattern of functional and non-structural relations, which distinguishes the pattern of functional and structural relations no instrumental relations but running based on the functions of each institution where the constitutional conception now represents the construction of check and balance, which means there is a function of control and balancing in the state institutions (Widiarto 2006, 19).

After the amendment of the Constitution of the Republic of Indonesia from 1945, the existence of the Judicial Commission is constitutionally very legitimate since it is located in one house with the judicial institution in warranty of the Article Number 24B of the Constitution of the Republic of Indonesia from 1945.

CONCLUSION

In the Indonesian Constitutional system, the Judicial Commission is on the same level as other high institutions such as the President, the People's Consultative Assembly, the House of Representatives, the Regional Representative Board, the Supreme Audit Agency, the Supreme Court, and the Constitutional Court. Its existence in the judicial power system serves as a supporting body that supports the implementation of an independent judicial power to enforce law and justice carried out by the Judicial Commission and the Supreme Court. Therefore, the Judicial Commission is not an institution that runs judicial power, yet a state institution that assists the implementation of judicial power by the Supreme Court and the Constitutional Court.

The People's Consultative Assembly of the Republic of Indonesia should then make changes to the provisions regarding the Judicial Commission in the Constitution of the Republic of Indonesia from 1945. Provisions regarding the Judicial Commission in Article Number 24B of the Constitution Law of the Republic of Indonesia from 1945 in the Chapter of Judicial Power are modified in a separate chapter entitled Judicial Commission. This can strengthen the Judicial Commission's authority to organize the judiciary and maintain the professionalism of the judges in Indonesia. 

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