

DISCOURSE ON THE AUTHORITY OF THE JUDICIAL COMMISSION IN THE HONORARY PANEL OF THE CONSTITUTIONAL COURT IN INDONESIA

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ABSTRACT

The existence and position of the Judicial Commission has added to the list of independent state institutions (state auxiliary institutions) in the Indonesian state structure. The existence of the Judicial Commission in monitoring and enforcing the code of ethics for constitutional judges within the structure of the Honorary Council of the Constitutional Court has undergone a long discussion. For this reason, this research is normative research which aims to determine the legal position of the Judicial Commission in enforcing the judge's code of ethics and the ups and downs of the Judicial Commission's authority in the structure of the Honorary Council of the Constitutional Court. The results of the research show that the efficiency of the Judicial Commission's supervisory function actually strives for judges' compliance with the code of ethics and behavioral guidelines for judges in order to create public trust in judicial institutions in Indonesia, while the presence of the Judicial Commission in the supervision dimension of Constitutional Judges experiences a tug-of-war regarding the norms of Law Number 22 of 2004 concerning Judicial Commissions with material review in Decision 005/PUU-IV/2006, Law No. 8 of 2011 with a material review in the Constitutional Court decision no. 49/PUU-IX/2011, Law no. 4 of 2014 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2013 concerning the Second Amendment to Law No. 24 of 2003 with material review in Decision No. 1-2/PUU-XII/2014 and Law No. 7 of 2020 with a material review in decision No. 56/PUU-XX/2022. Therefore, the institutional structure of the Judicial Commission in the Honorary Council of the Constitutional Court underwent several repositionings until it was finally judged as a form of legal contravention and unconstitutional (contrary to the 1945 Constitution).

A. INTRODUCTION

Indonesia's rule of law system relies on the constitution and the implementation of a government run based on the principles of law (fundamenteel recht or principle of law), equality before the law and

upholding human values (human rights).¹ The state of law is a state whose government consists of a system of serving the needs of the majority of all its people (public service) without distinguishing origin, religion and social strata and also the government is carried out not based on power but authority or accumulation of rights and obligations (rights and liability).²

The Constitutional Court in the Indonesian constitutional system essentially acts as the guardian of the constitution, so that the constitution is always used as a foundation that is carried out consistently by every component of the state and society.³ The Constitutional Court functions to guard and maintain that the constitution is obeyed and implemented consistently, as well as to encourage and direct the process of democratization based on the constitution. In addition, the Constitutional Court acts as the sole and highest interpreter of the Constitution, which is reflected through its decisions (constitutional court). With the existence of the Constitutional Court, the process of ensuring constitutional democracy is expected to be realized through the process of elaborating four constitutionally entrusted powers and one constitutional obligation.⁴

The institution of the Constitutional Court as the organizer of judicial power consciously forms the device of the Honorary Council of the Constitutional Court which is tasked with monitoring, examining and recommending the actions of constitutional judges who are suspected of violating the code of ethics and code of conduct of constitutional judges. Based on the Regulation of the Constitutional Court of the Republic of Indonesia No. 02 / PMK / 2003 concerning the Code of Ethics and Code of Conduct for Constitutional Judges Article 4 paragraph 2 explains the duties of the Honorary Council of the Constitutional Court, namely: a) The Honorary Council is tasked with enforcing the code of ethics and code of conduct for constitutional judges; b) Seeking and collecting information or information from parties related to or interested in alleged violations committed by constitutional judges; and 3) Examining and deciding on actions to be recommended to the Chairman of the Constitutional Court.⁵

The institutional structure of the Honorary Council of the Constitutional Court is confirmed in Article 27A paragraph 2 of Law No. 7 of 2020 concerning the Constitutional Court, whose membership consists of 1 (one) constitutional judge, 1 (one) member of the Judicial Commission and 1 (one) academic with a background in law. Historically, the institution of the Honorary Council of

¹ Backy Krisnayuda., *Pancasila dan Undang-Undang: Relasi dan Transformasi Keduanya dalam Sistem Ketatanegaraan Indonesia*, Cet. 1, Jakarta, Kencana , 2016, page.25.

² Juniarso Ridwan dan Achmad Sodik Sudrajat., *Hukum Administrasi Negara dan Kebijakan Pelayanan Publik*, Bandung, Nuansa Cendekia, 2020, page. 30.

³ Abdul Rasyid., *Wewenang Mahkamah Konstitusi dan Implikasinya dalam Sistem Ketatanegaraan Republik Indonesia*, Bandung, PT Citra Aditya Bakti, 2018, page. 20

⁴ Bagaskara Rahmat Hidayat dan Dona Budi Kharisma., *Menilik Kewenangan Pembubaran Partai Politik Oleh Mahkamah Konstitusi. Sovereignty*, Vol. 1, No. 3, 2022, page.457-466.

⁵ Peraturan Mahkamah Konstitusi Republik Indonesia Nomor 02/PMK/2003 Tentang Kode Etik dan Pedoman Tingkah Laku Hakim Konstitusi, page. 4.

the Constitutional Court has undergone several changes in membership Article 27A paragraph 2 of Law No. 8 of 2011 concerning the Constitutional Court consists of 5 memberships which include elements of constitutional judges, the Judicial Commission, the DPR, government elements that organize government affairs in the field of law and supreme judges. Meanwhile, in Constitutional Court Regulation No. 2 of 2014 concerning the Honorary Council of the Constitutional Court, it also mentions the membership of the Honorary Council of the Constitutional Court which is different from the Law, namely 1 (one) constitutional judge, 1 (one) member of the Judicial Commission, 1 (one) former constitutional judge, 1 (one) Professor of Law, and 1 (one) public figure.

It should be recognized that the Honorary Council of the Constitutional Court continues to seek the ideal institutional structure resulting in a repositioning of membership. However, the composition of the Honorary Council of the Constitutional Court with the current repositioning as stipulated in the Law is still experiencing constitutional authority disputes between the Constitutional Court and the Judicial Commission as fellow state institutions whose authority is equally determined in the 1945 Constitution. The tension between the Constitutional Court and the Judicial Commission is strongly influenced by the interests of efficiency of authority. In fact, the authority of the Constitutional Court is considered with the existence of Law of the Republic of Indonesia No. 7 of 2020 Article 27A paragraph 2 point 2 is an effort to stifle the authority of the Judicial Commission in addition to the Judicial Commission not carrying out the function of judicial power because it is not an institution enforcing legal norms (code of law) but an institution enforcing ethical norms (code of ethics).

The establishment of the Judicial Commission was motivated by the idea that independent judicial power cannot be left without control/supervision. Independence must be accompanied by accountability to avoid abuse of power or judicial tyranny. Both are two sides of a coin that cannot be separated. Therefore, from the very beginning of the 1945 Constitution, there has been a realization that as a counterbalance to independence and to maintain the authority of the judicial power, there needs to be effective external supervision in the field of judicial ethics as in some countries, namely the institution of the Judicial Commission.⁶

The work of the Judicial Commission in history has lasted for 22 years. The Judicial Commission was born as a mandate of reform stated in Article 24B of the 1945 Constitution in Chapter IX on Judicial Power which has 2 (two) authorities namely; "to propose the appointment of supreme judges and to have other powers in order to maintain and uphold the honor, dignity and behavior of judges". Realizing the weight of the mandate carried by the Judicial Commission, this institution must become a catalyst for the processes of change in the world of justice, which currently still has major problems in upholding law and justice. Therefore, one of the biggest challenges of the Judicial Commission is the legal norms that make the Constitutional Court the

⁶ Muhammad Sadi Is dan Kun Budianto., *Hukum Administrasi Negara*, Cet. I; Jakarta, Kencana, 2021, page. 190

object of supervision specified in the Judicial Power Law, especially the position of the Constitutional Court as the only judicial institution that makes final and binding decisions and even becomes the spearhead of the state in guarding the constitution.

Logically, changes in the institutional structure of the Honorary Council of the Constitutional Court raise various questions that require anticipation or problem solving starting from the independence of the Judicial Commission as a state institution legally and constitutionally mandated and responsible for restoring the authority and public trust in the judiciary and judges through the supervisory function must be removed from the membership of the Honorary Council of the Constitutional Court.

B. RESEARCH METHOD

This type of research is normative research that places the law as a system of norms. The system of norms in question is about principles, rules, laws and regulations, court decisions, agreements and doctrines (teachings). The object of this research study is focused on the legal norm system including rules or rules of law related to a building system of legal events. This means that this normative research is intended to provide legal arguments as a basis for determining whether an event is right or wrong and how the event is according to the law. This research is carried out through the search for references to legal norms such as laws and regulations, legal principles, legal doctrines taught by legal experts to find legal constructions and legal relationships.

C. RESULTS AND DISCUSSION

1. Judicial Commission in Enforcing Judges' Code of Ethics in Indonesia

The Judicial Commission is an independent institution that has the authority to propose the appointment of Supreme Court judges and has other powers in order to maintain and uphold the honor, dignity, and behavior of judges. The legal basis for the establishment of the Judicial Commission includes: 1) Article 248 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 2) Law Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 on the Supreme Court; 3) Law No. 48 of 2009 on Judicial Power; 4) Law No. 49 of 2009 on the Second Amendment to Law No. 2 of 1986 on General Courts; 5) Law No. 50 of 2009 on the Second Amendment to Law No. 7 of 1989 on Religious Courts; 6) Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1985 on State Administrative Courts; and 7) Law No. 18 of 2011 on the Amendment to Law No. 22 of 2004 on the Judicial Commission.⁷

The establishment of the Judicial Commission is a logical consequence arising from the unification of the judiciary under the Supreme Court, which could potentially lead to a monopoly of judicial power. In addition, it is feared that the Supreme Court will not be able to

⁷ Dasar Hukum Dibentuknya Komisi Yudisial., lihat di <https://www.Komisiyudisial.go.id/>, Diakses 10 September 2022

carry out the administrative, personnel, financial and organizational authority of the courts that has been carried out by the department. Even a rather pessimistic view states that the Supreme Court is unlikely to be able to carry out the functions assumed in the unification of the roof properly because the Supreme Court alone is unable to take care of itself. For this reason, the strategic role of the Judicial Commission in Indonesia should be recognized in avoiding the strong executive and legislative politics in the recruitment of supreme court judges and systematic and intensive external supervision by an independent institution of the judiciary with the widest possible public participation.

In principle, the provisions of Article 24 B of the 1945 Constitution of the Republic of Indonesia are the legal basis for the culmination of the presence of Law Number 22 of 2004 concerning the Judicial Commission, which has been amended into Law of the Republic of Indonesia Number 18 of 2011, but also a strong legal basis for legal reform by giving authority to the Judicial Commission to realize checks and balances, in the sense that although the Judicial Commission is not the perpetrator of judicial power, its functions are related to judicial power, namely the supervisory function.⁸ So it is clear that the Judicial Commission is a state institution as referred to in the 1945 Constitution of the Republic of Indonesia, one of whose powers is to supervise judges, which includes Supreme Court judges and judges at judicial bodies in all judicial circles under the Supreme Court and Constitutional Court judges.

The existence and position of the Judicial Commission has added to the series of independent state institutions (state auxiliaries institutions) in the Indonesian constitutional structure. This means that the Judicial Commission is positioned at the same level as the Supreme Court and the Constitutional Court, but functionally its role is auxiliary to the institutions of judicial power.⁹ Thus, the Judicial Commission is closely related to the judicial power, but does not perform the functions of the judicial power because it is not a code of law enforcement agency but a code of ethics enforcement agency.

The independence of the Judicial Commission does not mean that it is not required to be accountable by law and in contact with other power holders. As Article 38 of the Judicial Commission Law explains:

- a. The Judicial Commission is accountable to the public through the Parliament;
- b. Accountability to the public as referred to in paragraph (1) shall be carried out by: (2)
 - 1) Publishing an annual report; and
 - 2) Opening access to complete and accurate information;
- c. Thereport as referred to in paragraph (2) letter a shall at least contain the following matters:

⁸ Amran Suadi., *Sistem Pengawasan Badan Peradilan di Indonesia*, Cet. I, Depok, PT Raja Grafindo Persada, 2014, page. 152

⁹ Mohd Yusuf DM, et al., Politik Hukum Kedudukan dan Peranan Komisi Yudisial Sebagai Lembaga Auxiliary Organ. *Jurnal Pendidikan dan Konseling (JPDK)*, Vol. 5, No. 1, 2023, page. 1291-1297.

- 1) Budget utilization report;
- 2) Data related to the supervisory function; and
- 3) Data related to the function of recruitment of Supreme Court Judges.¹⁰

The term authority in Article 24 B indicates the functions to be performed by the Judicial Commission. For this reason, the elaboration of the authority of the Judicial Commission is contained in Article 13 of Law of the Republic of Indonesia Number 18 of 2011 Amending Law Number 22 of 2004, which basically emphasizes that the Judicial Commission has the authority to:

- a. Propose the appointment of Supreme Court judges and ad hoc judges in the Supreme Court to the House of Representatives for approval
- b. Maintain and uphold the honor, dignity and behavior of judges;
- c. Establish a Code of Ethics and/or Code of Conduct for Judges together with the Su.¹¹

The Judicial Commission is basically a state institution that is independent and in the exercise of its authority is free from interference or influence of other powers.¹² The Judicial Commission is a state institution that is legally and constitutionally mandated and has the responsibility to restore the authority and public trust in the judiciary and judges through its supervisory function (external watchdog). Within this framework, all parties who have sincere intentions in upholding law and justice, especially in the context of judicial reform, should support every effort of the Judicial Commission, so that the exercise of its authority can be effective.¹³ In line with that, according to A. Ahsin Thohari, the main rationale (*raison d'être*) for the establishment of the Judicial Commission in a state governed by the rule of law is: 1) The Judicial Commission is established to conduct intensive monitoring of judicial power by involving elements of society across the broadest possible spectrum, rather than relying solely on internal monitoring mechanisms; 2) The Judicial Commission becomes a mediator or liaison between the executive power and the judicial power, the main purpose of which is to ensure the independence of the judicial power from the influence of any power, especially government power; 3) With the Judicial Commission, the level of efficiency and effectiveness of the judicial power will be higher in many respects, both regarding the recruitment and monitoring of supreme

¹⁰ Undang-Undang Republik Indonesia Nomor 18 Tahun 2011 Perubahan Atas Undang Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial

¹¹ Undang-Undang Republik Indonesia Nomor 18 Tahun 2011 Perubahan Atas Undang Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial

¹² Sri Soemantri, *Hukum Tata Negara Indonesia Pemikiran dan Pandangan*, Cet. I; Bandung, PT Remaja Rosdakarya, 2014, page. 305

¹³ Amran Suadi, *Sistem Pengawasan Badan Peradilan Di Indonesia*, Jakarta, Raja Grafindo 2014, page. 153

judges and the financial management of the judicial power; 4) The consistency of judicial decisions will be maintained, as each decision will be assessed and closely monitored by a special institution (Judicial Commission); and 5) With the existence of the Judicial Commission, the independence of judicial power can be maintained, as the litigation over the recruitment of Supreme Court judges can be minimized by the existence of the Judicial Commission, which is not a political institution, so it is assumed that it has no political interests.¹⁴

Normatively, the presence of the Judicial Commission is part of the constitutional reform after the fall of the New Order regime. The existence of the Judicial Commission in the Indonesian legal and constitutional system can provide hope for the improvement of the judicial system. Moreover, in carrying out its functions, duties and authorities, the Judicial Commission has a significant and strategic role to encourage and strengthen judicial reform. The Judicial Commission can be the "faithful guardian" of judicial reform, especially in finding and improving the quality and integrity of judges. That way, the realm of judicial power, which has been one of the heart of the nation's endemic problems in providing a sense of justice for the community, will rotate normally.

2. The Ups and Downs of the Judicial Commission's Authority in the Constitutional Honor Council Structure

The Judicial Commission is a political will expressed in state regulations. In principle, the Judicial Commission is oriented as an instrument capable of building checks and balances on the judicial power system. From a different perspective, the establishment of the Judicial Commission according to the 1945 Constitution was motivated by a reflection of the control or supervision system of the independent judicial power. The emergence of the Judicial Commission for the Indonesian people is a breakthrough that gave birth to a shift in the understanding of ethical norms. Hart said that moral norms (ethics) do not need to be related to legal norms. However, there is now a growing idea of the need for moral norms to be adopted as legal norms in a law. In this case, Law No. 18/20011 Amending Law No. 22/2004 on the Judicial Commission (KY Law) can be used as a concrete example that moral norms can be adopted as legal norms. Therefore, violations of such norms can result in strict sanctions, although not in criminal penalties, because such violations are violations of the code of ethical behavior of judges. For example, a judge who commits misconduct, which from a legal perspective, has not yet reached the qualification of a criminal act, but can still be threatened with sanctions. The sanctions given to judges who are proven to have committed violations of the ethical code of conduct for judges as referred to in Article.

The ideals of the Judicial Commission in terms of maintaining and upholding the honor, dignity and behavior of judges in its development

¹⁴ A. Ahsin Thohari., *Komisi Yudisial dan Reformasi Peradilan*, Jakarta, Lembaga Studi Dan Advokasi Masyarakat (ELSAM), 2004), page. 12.

have experienced various challenges. The emergence of resistance from Supreme Court Judges who considered that the Judicial Commission's supervision efforts violated their freedom and constitutional rights prompted the Constitutional Court to issue Decision No. 005/PUU-IV/2006 which limited the immunity of the Judicial Commission in supervising judges, including to supervise constitutional judges. The Constitutional Court considered the form of supervision conducted by the Judicial Commission on judges' decisions to be a violation of judicial independence, as mandated by the Constitution.¹⁵ 22/2004 on the Judicial Commission, including Article 1 point 5, Article 20, Article 21, Article 22 paragraph (1) letter e, Article 22 paragraph (5), Article 23 paragraph (2), Article 23 paragraph (3), Article 23 paragraph (5), Article 24 paragraph (1), Article 25 paragraph (3), Article 25 paragraph (4) and Article 34 paragraph (3) of Law No. 4/2004 on Judicial Power, which are contrary to the 1945 Constitution.¹⁶ Thus, these articles no longer have binding legal force.

During the formulation of Law No. 8/2011 on the amendment of Law No. 24/2003 on the Constitutional Court, the Judicial Commission was presented as a different position through the Membership of the Honorary Panel of the Constitutional Court (MKMK). The reason is that even though constitutional judges are not included in the object of supervision of the Judicial Commission, the Constitutional Court Decision No. 005 / PUU-IV / 2006 does not abolish the elements of the Judicial Commission in the Honorary Council of the Constitutional Court as explained in Article 27A paragraph (2), namely "To enforce the Code of Ethics and Code of Conduct for Constitutional Judges as referred to in paragraph (1), an Honorary Council of the Constitutional Court is formed whose membership consists of: a) 1 (one) constitutional judge; b) 1 (one) member of the Judicial Commission; c) 1 (one) person from the DPR; d) 1 (one) person from the government who organizes government affairs in the field of law; and e) 1 (one) Supreme Court judge.

Law No. 8/2011 was enacted and took effect on July 20, 2011. The birth of the new law was actually a euphoria of renewal of the source material of the Constitutional Court. However, in reality, it reaped various pros and cons, including the composition of the membership of the Honorary Council of the Constitutional Court. On July 28, 2011, several academics (lecturers) filed an application for judicial review to the Registrar of the Constitutional Court on several Articles of Law No. 8 of 2018 such as: 1) Article 4 paragraph (4f), paragraph (4g), and paragraph (4h); 2) Article 10; 3) Article 15 paragraph (2) letter d; 4) Article 26 paragraph (5); 5) Article 27A paragraph (2) letter c, letter d, and letter e; 6) Article 50A; 7) Article 57 paragraph (2a); 8) Article 59 paragraph (2); and 9) Article 87.

¹⁵ Muhammad Akbal dan Abdul Rauf., *Peran Mahkamah Konstitusi dalam Pembubaran Partai Politik*, Surabaya, Media Sahabat Cendekia 2018, page. 82

¹⁶ Putusan Mahkamah Konstitusi Nomor 005/PUU-IV/2006 Perihal Pengujian UU No. 22 Tahun 2004 Tentang Komisi Yudisial, Tanggal 16 Agustus 2006.

Specifically, the reasons for judicial review on the description of Article 27A paragraph (2) letter c, letter d, and letter e of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court include 1) The elements of the DPR, the Government and the Supreme Court (MA) are clearly contrary to the provisions of Article 1 paragraph (3) and Article 24 paragraph (1) of the 1945 Constitution which regulates the independence of the judicial branch; 2) The elements of the DPR, Government and Supreme Court can threaten and interfere either directly or indirectly; 3) Elements of the DPR, Government, and Supreme Court as part of the assembly that will oversee the Constitutional Court are clearly inappropriate because these institutions have the potential to become parties to litigation in the Constitutional Court; 4) Elements of the DPR and Government if included will lead to a blurring of the concept of constitutional oversight by the Constitutional Court of the formation of legislation by the DPR and the Government; 5) The elements of the Supreme Court in the Honorary Council of Judges of the Constitutional Court clearly contradict the concept of separation of the branches of judicial power stipulated in Article 24 paragraph (2) of the 1945 Constitution; 6) The elements of the DPR, the Government, and the Supreme Court clearly cause the ideas of constitutionalism to become absurd in the implementation of the state administration; 6) the elements of the DPR, the Government, and MA judges in the Honorary Council of the Constitutional Court show a clear contradiction with the concept of power to the Constitutional Court.¹⁷

If examined in the petition for judicial review of case No. 49/PUU-IX/2011. The element of the Judicial Commission in the structure of the Honorary Assembly of the Constitutional Court is not part of the petition. However, the presence of the judicial review forced the Constitutional Court to issue considerations that greatly impacted the existence of the Judicial Commission in the Honorary Council of the Constitutional Court. Therefore, in order to maintain the independence and impartiality of the Court, the Court needs to develop a code of ethics and guidelines for the behavior of constitutional judges, and members of the Honorary Council of the Constitutional Court whose members are not only from the Constitutional Court, but also from other elements that are independent and non-partisan.

The authority of the Judicial Commission again experienced definite dynamics after the emergence of Perpu No. 1 Year 2013 concerning the Second Amendment to Law No. 24 Year 2003 concerning the Constitutional Court. The birth of the Perpu on the Constitutional Court cannot be separated from the government's desire to revise and increase the requirements to become a constitutional judge, clarify the selection and submission mechanism and improve the supervision system of constitutional judges, especially at that time there was a degradation of

¹⁷ Putusan MK No. 49/PUU-IX/2011 Perihal Pengujian UU No. 8 Tahun 2011 Tentang Perubahan Atas UU No. 24 Tahun 2003 Tentang Mahkamah Konstitusi Tanggal 18 Oktober 2011

public confidence in the Constitutional Court due to the political uproar caused by the arrest of Akil Mochtar (AM), the Chairman of the Constitutional Court, in a bribery scandal. The spirit of the Constitutional Court as a pillar of a democratic state of law at that time was in the spotlight and even lost its image in the face of the public. In response to this, the Government then restored public confidence in the existence of the Constitutional Court by forming Perpu No. 1 of 2013 as a subjective right of the president based on compelling and critical circumstances while still fulfilling the principles of the formation of legislation both carefully and proportionally and trying to restore public trust and credibility of constitutional judges due to the deterioration of the integrity and personality of constitutional judges.¹⁸

Perpu on the Constitutional Court establishes the authority of the Judicial Commission to be involved in the formation of expert panels in the recruitment of Constitutional Judges¹⁹, develop and establish the Code of Ethics and Code of Conduct for Judges²⁰, and engage together to form the Honorary Council of Constitutional Judges²¹. The joint coordination of the Constitutional Court and the Judicial Commission in Perpu No. 1 Year 2013 is a new manifestation of the Judicial Commission's supervisory system even though the membership of the Constitutional Court Honorary Council no longer involves elements of the Judicial Commission but consists of 1 (one) former constitutional judge; 1 (one) legal practitioner; 2 (two) academics, one or both of whom have a background in law; and 1 (one) community leader.

Supervision of constitutional judges by the Judicial Commission according to Perpu No. 1 Year 2013 also provides a different interpretation. Mohammad Fajrul Falaaksh as quoted by Adventus Toding revealed that the Perpu does not restore the role of the Judicial Commission, it is just that the Perpu on the Constitutional Court compromises with the misunderstanding of judge supervision.²² Looking at the existence of the Honorary Council of the Constitutional Court in Article 1 point 2 of Perpu No. 1 Year 2013, it is stated that the Honorary Council of Constitutional Judges is a device established by the Constitutional Court and the Judicial Commission to maintain the honor and behavior of constitutional judges.

¹⁸ Ni'matul Huda., Problematika Substantif Perpu Nomor 1 Tahun 2013 Tentang Mahkamah Konstitusi. *Jurnal Konstitusi*, Vol. 10, No. 4, 2013, page. 557-578.

¹⁹ Pasal 18 C Ayat 2 Poin D Berbunyi, 4 (Empat) Orang dipilih Oleh Komisi Yudisial Berdasarkan Usulan Masyarakat yang Terdiri Atas Mantan Hakim Konstitusi, Tokoh Masyarakat, Akademisi di Bidang Hukum, dan Praktisi Hukum

²⁰ Pasal 27 A Ayat 1, Mahkamah Konstitusi Bersama-Sama dengan Komisi Yudisial Menyusun dan Menetapkan Kode Etik dan Pedoman Perilaku Hakim Konstitusi yang Berisi Norma yang harus Dipatuhi oleh Setiap Hakim Konstitusi dalam Menjalankan Tugasnya untuk Menjaga Kehormatan dan Perilaku Hakim Konstitusi

²¹ Pasal 27 A Ayat 4, Untuk Menegakkan Kode Etik dan Pedoman Perilaku Hakim Konstitusi Sebagaimana Dimaksud pada Ayat (1), Mahkamah Konstitusi Bersama-Sama dengan Komisi Yudisial Membentuk Majelis Kehormatan Hakim Konstitusi yang Bersifat Tetap

²² Adventus Toding., Pembelajaran Hukum Melalui Perppu Nomor 1 Tahun 2013. *Jurnal Konstitusi*, Vol. 10, No. 4, 2013, page. 605-626.

The question is then whether the elements of the Judicial Commission, which is only a forming device, can have implications for the supervision of constitutional judges. That is, the absence of elements of the Judicial Commission in the membership of the honorary panel of the Constitutional Court implies that the Judicial Commission is not in a position to supervise. The formation of the Perpu Constitutional Court has been debated and full of controversy, some say Perpu No. 1 of 2013 concerning the Constitutional Court does not qualify in the realm of compelling urgency and tends to be unconstitutional, on the other hand there are those who consider Perpu to have the urgency to restore the name of the Constitutional Court institution as the guardian of the constitution.²³ The polemics over Perpu No. 1 Year 2013, which is materially the same as a law and formally not a law, triggered a tug of interest between the DPR and the Constitutional Court. In the end, Law No. 4/2014 on the Stipulation of Government Regulation in Lieu of Law No. 1/2013 on the Second Amendment to Law No. 24/2003 on the Constitutional Court was passed. However, it was not long before Law No. 4 of 2014 was challenged again because from a material point of view or the substance regulated in Law No. 4 of 2014 was considered to have contradicted the 1945 Constitution which basically concerned three main things, namely: a) The addition of requirements to become a constitutional judge; a) Clarifying the mechanism for the selection and nomination process of constitutional judges; and a) Improving the supervision system of constitutional judges. In line with that, the material of Law No. 4 of 2014 which regulates the supervision system carried out by establishing a permanent Constitutional Judge Honor Council (MKHK), which is jointly formed by the Judicial Commission and the Constitutional Court with a membership of five people consisting of constitutional judges, legal practitioners, academics, one or both of whom have a background in law and community leaders as well as the administrative management of the Constitutional Court Honor Council located at the Judicial Commission is contrary to the 1945 Constitution..²⁴

By implication, the material test of Law No. 4 of 2014 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2013 on the Second Amendment to Law No. 24 of 2003 on the Constitutional Court on Decision No. 1-2/PUU-XII/2014 states the re-enactment of Law No. 8 of 2011 on the Amendment to Law No. 24 of 2003 on the Constitutional Court. Thus, based on this Law, internal supervision of Constitutional Court Judges is carried out by the Honorary Council of the Constitutional Court which is further regulated in Constitutional Court Regulation No. 2 of 2014

²³ Nur Rohim,., Kontroversi Pembentukan Perppu Nomor 1 Tahun 2013 Tentang Mahkamah Konstitusi dalam Ranah Kegentingan Yang Memaksa, *Jurnal Cita Hukum*, Vol. 1, No. 1, 2014, page. 117-132

²⁴ Putusan MK Nomor 1-2/PUU-XII/2014, page.13 Perihal Pengujian UU No. 4 Tahun 2014 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2013 Tentang Perubahan Kedua Atas Undang-Undang No. 24 Tahun 2003 Tentang Mahkamah Konstitusi, Tanggal 11 Februari 2014.

concerning the Honorary Council of the Constitutional Court. Based on Constitutional Court Regulation No. 2 of 2014, the Honorary Council of the Constitutional Court as a tool to maintain and uphold the honor, dignity and code of ethics of constitutional judges has repositioned its membership in accordance with Article 5 which consists of elements: a) 1 (one) Constitutional Judge; b) 1 (one) member of the Judicial Commission; c) 1 (one) former Constitutional Judge; d) 1 (one) Professor in the field of law; and e. 1 (one) public figure. Furthermore, the technical provisions regarding the duties and powers of supervision of Constitutional Judges by the Honorary Council of the Constitutional Court after the enactment of Law No. 8 of 2011 and Constitutional Court Regulation No. 2 of 2014 are: 1) Processing and reviewing reports submitted by the Ethics Council regarding allegations of serious violations committed by the Reported Judge or Suspected Judge, who has received an oral warning 3 (three) times; b) Submitting the decision of the Honorary Council to the Constitutional Court; c) Calling and requesting information from the reporter or witness and examining the Reported Judge or Suspected Judge submitted by the Ethics Council, to provide an explanation and defense; and d) Imposing a decision in the form of sanctions or rehabilitation.²⁵

The spirit of supervision of the Judicial Commission is inevitably affected by various obstructions. Not even a decade ago, the Judicial Commission in the central enforcement of the code of ethics of judges and members of the Honorary Council of the Constitutional Court was again materially tested. The membership of the Judicial Commission in the Honorary Council of the Constitutional Court still provides an interpretation as a supervisor (assessor) for the performance of constitutional judges. In that sense, constitutional judges remain the object of supervision by the Judicial Commission. Therefore, the involvement of the Judicial Commission under Law No. 4 of 2014 is a form of legal circumvention because it clearly contradicts the Constitutional Court Decision No. 005/PUU-IV/2006.

The legal smuggling in question cannot be separated from the essence of the establishment of the Constitutional Court based on the 1945 Constitution in ensuring the best implementation of the 1945 Constitution as well as constitutional relations between state institutions or institutions. the argument again prompted a judicial review effort at the Constitutional Court in its decision No, 56 / PUU-XX / 2022. Based on the consideration of the Constitutional Court judges in the a quo verdict, Article 24 A paragraph (2) letter b of Law No. 7 of 2020 is contrary to the 1945 Constitution and has no binding legal force conditionally with the phrase "1 (one) member of the Judicial Commission" not being interpreted as "1 (person) from the elements of community leaders who have high integrity who understand the law and the constitution and are not members of any political party."²⁶ Thus, the supervision of constitutional judges by the

²⁵ Peraturan Mahkamah Konstitusi No. 2 Tahun 2014 Bab III Pasal 12 dan 13, page. 8

²⁶ Putusan MK Nomor 1-2/PUU-XII/2014, page.13 Perihal Pengujian UU No. 7 Tahun 2020 Tentang Mahkamah Konstitusi, tanggal 8 Juni 2022

Judicial Commission is considered contrary to the 1945 Constitution because the Constitutional Court is unable to realize its nature of independence and impartiality because the authority of the Constitutional Court as an organ that functions to exercise judicial authority cannot be supervised by other institutions.

D. CONCLUSION

The implementation of the supervisory function of judicial power is unavoidable as a state necessity to realize a clean and authoritative judicial system that requires all judicial institutions, especially the Constitutional Court, to have a supervisory system both internally and externally. The Judicial Commission is the central external element in maintaining and upholding the honor, dignity and behavior of judges including constitutional judges through the structure of the Honorary Council of the Constitutional Court. However, in its dynamics, the supervision of constitutional judges by the Judicial Commission experienced a complexity of norms or values that resulted in juridical legal conflicts and even resulted in a tug of norms between the Law and the decision of the Constitutional Court from 2004 to 2022, including Law No. 22 of 2004 concerning the Judicial Commission with a material test in Decision 005/PUU-IV/2006, Law No. 8 of 2011 with a material test in Decision 005/PUU-IV/2006, Law No. 8 of 2011 with a material test in Decision 005/PUU-IV/2006. 8 of 2011 with judicial review in Constitutional Court Decision No. 49/PUU-IX/2011, Law No. 4 of 2014 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2013 on the Second Amendment to Law No. 24 of 2003 with judicial review in Decision No. 1-2/PUU-XII/2014 and Law No. 7 of 2020 with judicial review in Decision No. 56/PUU-XX/2022.

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