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The Evaluation Of Independent Norm Text And Impartial Judge On The Constitutional Court Of Indonesia

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Abstract

In this paper, the Judge of the Constitutional Court is the authority of judicial power to enforce law and justice as a guardian and interpreter of the constitution. The method used in this research is legal research. The result of this research is that the evaluation of the independent and impartial texts of Indonesian constitutional court judges can be measured from procedural independent, legal formal-empirical independent, and empirically independent either according to national legal instruments or international instruments. Meanwhile, the supervision of the Constitutional Court judges is divided into two supervisory models. These are that it is supervised by the Ethics Council of the Constitutional Court and by the Honorary Council of Constitutional Justices. For the external supervision, the court is supervised by the Constitutional Court with the Judicial Commission philosophically forming the Ethics Council to perform the (control function) to the judges of the Constitutional Court in order to avoid deviation of legal norms by the judges of the Constitutional Court Indonesia.

Keywords: Constitutional Court Indonesia; Evaluation; Independent; Impartial; Norm Text

I. INTRODUCTION

Generally, the profession of judges and especially, the judges of the Constitutional Court is a noble profession and as a representative of God in the world because of his responsibilities of determining who is wrong and who is right in exercising judicial organs of judgment must possess an impeccable personality and integrity. As a noble profession, the judges cannot be separated from the code of conduct of the Constitutional Court as the legal norms and morality for the members of the judge profession made by consensus to control the behaviour in doing their responsibilities. In our legal system, judicial impartiality is a fundamental component of justice. We expect judges to be, above all else, to be impartial arbiters so that legal disputes are decided according to the law freedom from the influence of bias or prejudice. The principle of judicial impartiality is dictated by statutory and common law, is required by the code of judicial conduct, and is essential to due process of law (Shaman, 1996).

To control the behaviour of the judge, Jimly Ashhiddiqie states, the system of rules or norms that guide and control the human ideal behaviour (including the behaviour of judges, cursive writers) in together life can be religious norms, ethical norms, and legal norms. The three systems of norms or rules arise naturally in the reality of human life universally. At first, they are complementary to each other and synergistically to one another, but with the time and development of the complexities of life in society arises the clash between the three systems of that norm in practice (Asshiddiqie, 2014).

In previous research by Adonara, it was found that the implementation of the principle of free judgment was free from the interference from extra-judicial forces, both executive and legislative forces and other extra-judicial powers in the community, such as the press. The right is the right to the freedom to choose the ways to renew and to try freedom to assess to determine the freedom of the judiciary. The

logical consequence of having to be interpreted for certain cases, court leaders can provide advice or guidance, who provide advice or guidance, but this is not the meaning of judge freedom (Adonara, 2015).

Evaluation of independent norm texts and impartiality on the independence of the constitutional court as the institutional judicial authorities and the judges of the constitution personally in examining and deciding cases and the judge as a constitution in resolving the dispute over the constitutional law contains problems that almost equally distanced from the truth and justice of ethical violations. On the one hand, due to the influence of strong outside power, the Constitutional Court (MK-RI) as a judicial institution is almost helpless in realizing the truth and substantive justice lately (Constitutional Court Decision Number 005/PUU-IV/2006).

The judge of the Constitutional Court as the authority of the judicial authority and as a characteristic of the organs of the law state in enforcing the law and justice requires the implementation of the control function. This is done in order not to allow the control function to be biased and wild in carrying out their duties and functions in making decision a case. The decision made is regarding the judicial review of the Law for the Constitution to decide upon disputes on the authority of state institutions, to decide upon the dissolution of political parties, and to decide upon the disputes on election results.

The weakness of the implementation of the control function of the Constitutional Court justice has caused the judge's behaviour out of its axis that should be passed, thus slipping the institutional and personal slump of the judge of the Constitutional Court. In principle, national and international legal instruments have clearly defined the independence and impartial constitution of the judiciary in judging cases.

The purpose of this research particularly is to improve the integrity of the judges of the Constitutional Court in judging cases through the evaluation of the meaning of independent and impartial texts with the empirical reality of the settlement of cases in the Constitutional Court as one of the judicial authorities in Indonesia. This study focused on the evaluation of independent and impartial norm texts in the perspective of constitutional justice as an alternative to build an independent and impartial judge of the Constitutional Court.

II. METHOD

This research is a normative research. It was done with purpose to find out principle or doctrine of applicable law of law. This type of research is commonly referred to as dogmatic studies or commonly known as doctrinal research (Wignjosoebroto, n.d.). The choice of this research is tailored to the legal issues under study, namely the law drafted in the form of legislation established, constructed and enacted by the competent agency for it, in addition to the unwritten legal norms that have always evolved the development of human civilization in accordance with the principles of law that have universal values.

The approach used is theoretic approach, the statute approach, the conceptual approach, the historical approach, the comparative approach, the philosophy approach. The types data primary, secondary, and tertiary legal materials. The legal materials were collected by identifying and/or tracing the related legislation. The data were then analyzed by using theoretical instruments and the results are presented in the form of analytic descriptive or analytic prescriptive.

III. DISCUSSION

The Evaluation Model of Independent Norm Texts and Impartial Judge against Independence of Judges of the Constitutional Court in Indonesia

International Principles as Independent Measures and Impartial Judges of the Constitutional Court

The existence of the Constitutional Court in Indonesia is a necessity for the complexity of the problems of state administration that is happening and cannot be handled by other institutions other than the Constitutional Court. Besides, the demands of Indonesian law State cannot be ruled out to require the establishment of judicial institutions as a justice seeker for the seekers of justice and the legal system adopted in Indonesia, the civil law system requires the existence of constitutional justice institutions outside the judiciary in general. For such purposes, special organs may be established such as special

courts called the (constitutional court), or the supervision of the constitutionality of the law (judicial review) may also be conducted by a court of law such as the Supreme Court (Mahkamah Agung Indonesia) (Nadir, 2013).

Jimly Ashhiddiqie exemplifies the model of the United States as one example of a state that in guarding and interpreting its constitution is inherent to be part of the Supreme Court function with the status of the guardian or the protector of the constitution (Asshiddiqie, 2006).

The Constitutional Court (MK-RI) as one of the judicial authorities to enforce the law and the constitution established Indonesia with its own model and perspectives. It has carried out many duties and authorities. The duties or authorities include such as the judicial review of the Basic Law, deciding the dispute over the authority of state institutions whose authority is granted by the Constitution, deciding upon the dissolution of political parties, deciding on the disputes over the results of the general election, and deciding the opinion of the People's Legislative Assembly from 2003.

The Constitutional Court is one of the judicial authorities, in addition to the Supreme Court as referred to in Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia. This means that the Constitutional Court is bound by the general principle of administering judicial powers independent, free from the influence of other institutions' powers in enforcing law and justice.

A free and impartial judge has become a universal stipulation, and characterizes a State of law. The Universal Declaration of Human Rights, Article 10 asserts the following (Hamzah, 2001):

"Everyone is entitled in full determination of his rights and obligations and of any criminal charge against him" (setiap orang berhak dalam persamaan sepenuhnya didengarkan suaranya di muka umum dan secara adil oleh pengadilan yang merdeka dan tak memihak, dalam hal menetapkan hak-hak dan kewajiban-kewajibannya dan dalam setiap tuntutan pidana yang ditujukan kepadanya)

Related with this, Article 8 of The Universal Declaration of Human Rights also asserts the following :

"Everyone has the right to an effective judicial by virtue of every constitution or by law (setiap orang berhak atas pengadilan yang efektif oleh hakim-hakim nasional yang kuasa terhadap tindakan perkosaan hak-hak dasar, yang diberikan kepadanya oleh undang-undang dasar Negara atau undang-undang)

The Constitution of the State of the Republic of Indonesia 1945 has guaranteed a judicial power free from the influence of governmental power. and It is guaranteed in Law Number 48 of 2009 concerning Judicial Power, independent of a Supreme Court and a judicial body subordinate to the general judiciary, the religious court environment, the military court environment, the administrative court of the state, and by a Constitutional Court, to hold the justice in enforcing law and justice. This contrasts with Law Number 19 of 1964 concerning Judicial Power in which the Freedom and independence of the judiciary is still influenced by the government because the President can still intervene in the judiciary so that the result of the decision is independent.

In regarding to the independence of the judicial power to administer the judiciary, Paul E. Lotulung points out whether it is true that the judiciary's powers are independent or independent in the sense of freedom. The independence of the Judicial Authority or judicial bodies is one of the foundations for the implementation of a democratic government under the rule of law as well as the thought of a modern State of Law that had been sparked at a conference by the International Commission of Jurists in Bangkok in 1965 (Lotulung, 2003).

In a conference meeting, according to Paul E. Lotulung emphasizes the understanding of what is called "the dynamic aspects of the rule of law in the modern age". It is said that there are 6 basic requirements for the implementation of democratic government under the rule of law, namely (Lotulung, 2003):

- 1) .Constitutional Protection
- 2) Free judicial institution and impartial
- 3) Free elections
- 4) Freedom of expression

- 5. Freedom of association/organization and opposition
- 6. Civic education

Based on these requirements, the independence of the judiciary power is one of the main pillars, which if the component does not exist, we cannot talk more about the rule of law, so that the importance of the independence of judicial institution and judicial power is accepted universally and emphasized in various instruments of international law.

In addition, Paul E. Lotulung argued that the judicial powers that are said to be independence or independent are essentially bound and limited by certain signs (especially the rules of the law itself), so that in the *International Commission of Jurists* conference it is said that (Lotulung, 2003):

"Independence does not mean that the judge is entitled to act in an arbitrary manner".

Then it must be realized that freedom and independence are also tied to the both accountabilities because both independence and accountability are basically the two sides of the coins attached for each other. There is no absolute freedom without responsibility. Therefore, in the context of freedom of judge (*independency of judiciary*) it must be balanced with the partner, namely judicial accountability. In the current of globalisation era, it is imperative for all citizens in the government and law enforcement sectors, both theorists/academics and practitioners to examine seriously and deeply the meaning of "judicial accountability" as a pair of "independency of judiciary".

Next see the following table:

Table. 1
The Justice Independence in Internasional Perspective

No	International Instrument	Article	The cleared contents
1	Universal Declaration of Human Rights of 1948	Article 8	Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law
		Article 10	Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
2	International Covenant on Civil and Political Rights in 1966	Article 8	All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
		Article 14	1. That every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and 2. That the judiciary is independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature
3	The Syracuse Principles on the Independence of the Judiciary of 1981	Art. 2	1. That every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and 2. That the judiciary is independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature
4	Tokyo Principles in 1982	-	-
5	International Bar Association Code of Minimum Standards of Judicial Independence of 1982 di New Delhi	Judges and the Executive	a. Individual judges should enjoy personal independence and substantive independence.
			b. Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control. c. Substantive independence means that in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience. d. Participation in judicial appointments and promotions by the executive or legislature is not inconsistent with judicial independence provided that appointments and promotions of judges are vested in a judicial body in which members of judiciary and the legal profession form a majority.

		The Press, the Judiciary and the Courts	It should be recognised that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges
		Standards of Conduct	Judges may take collective action to protect their judicial independence and to uphold their position
		The Internal Independence of the Judiciary	In the decision-making process, a judge must be independent vis-a-vis his judicial colleagues and supporters
6	<i>Universal Declaration on the Independence in 1983 Montreal, Canada</i>	International Judges Independence	<ol style="list-style-type: none"> 1. The international status of judges shall require and assure their individual and collective independence and their impartial and conscientious exercise of their functions in the common interest Accordingly; States shall respect the international character of the responsibilities of judges and shall not seek to influence them in the discharge of these responsibilities 2. Judges and courts shall be free in the performance of their duties to ensure that the Rule of Law is observed, and shall not admit influence from any government or any other authority external to their statutes and the interests of international justice. 3. Judges shall enjoy freedom of thought and, in the exercise of their duties, shall avoid being influenced by any considerations other than those of international justice. 4. The principles of judicial independence embodied in the Universal Declaration of Human Rights and other international instruments for the protection of human rights shall apply to judges. 5. Judges individually shall be free, and it shall be their duty, to decide matters before them impartially, in accordance with their assessment of the facts and their understanding of the law without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. 6. In the decision-making process, judges shall be independent vis-a-vis their judicial colleagues and superiors. Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of the judge to pronounce his judgment freely. 7. The judiciary shall be independent of the Executive and Legislative.
7	<i>United Nations Basic Principles on The Independence of Judiciary in 1985</i>	Independence of the judiciary	<p>The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary</p> <p>Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice</p>
8	<i>Vienna Declaration and Programme for Action in 1993</i>	SECTION I Paragraph 27	<p>1. Principles of the Independence of the Judiciary</p> <p>2. Independence of the Judiciary requires that; (a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source</p> <p>3. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law</p>
9	<i>Beijing Statement of Principles of the Independence of the Judiciary in the Law Asia Region in 1995</i>	Independence of the Judiciary	<p>1. Principles of the Independence of the Judiciary</p> <p>2. Independence of the Judiciary requires that; (a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source</p> <p>3. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law</p>

			Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them
10	<i>The Universal Charter of the Judge in 1999</i>	Art. 1 - Independence	Judicial independence must be ensured by law creating and protecting judicial office that is genuinely and effectively independent from other state powers. The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary
11	<i>The Universal Charter of the Judge in 1999</i>	Art. 2 - Status	The independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence Principle:
		Value.1 Independence	Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects
12	<i>The Bangalore Principle of judicial Conduct in 2002</i>	Value. 2 Impartiality	Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made
		Value. 3 Integrity	Principle: Integrity is essential to the proper discharge of the judicial office

Source: Made from some international instruments

Evaluation of Independence Norm Text and Impartiality of Judges of the Constitutional Court in Indonesia

The amendment to the Constitution is common and normal in many countries in the world in order to improve the government system that is considered incompatible with the development of the state administration or because there is a revolution or reform that wants a major change in a country that must finally change the Constitution because the Constitution as the constitution of the state is the pillars of government as the first element and the main source of the Constitutional Law and the general source of law underlying the state administration of a State. In addition, the Constitution as a constitution can be applied comprehensively as the rule of the game and the rule of the moral in solving social and political conflicts in the life of nation and state (Nadir, 2012).

Results of the first amendment of the 1945 Constitution Article 24 paragraph (2) affirms:

"Judicial power is exercised by a Supreme Court and the lower courts within the general judiciary, the jurisdiction of the judiciary, the military court environment, the administrative court of the state, and by a Constitutional Court" (The first amendment was made by Law Number 8 Year 2011).

According to the theory of judicial independence, the judicial power is used to measure to what extend the judicial institution is really independent and impartial in the meaning of the Constitutional Court (MK-RI), particularly in examining the cases related to the authority. The competence to enforce the law and justice in which the Constitution of the State of Indonesia is affirmed as judicial power independence in the constitutional court.

In order the judiciary is completely independent and free from the influence of the interference of the power of the State, the separation of power or distribution of power related with this shows the classical idea of the separation of power of the state, as proposed by Charles Scodnat Baron de Labrede et de Montesquieu. The teaching was popularized by Immanuel Kant, which by experts in Indonesia called

the theory of tria politica of wants separation of state power in three principal areas that each could stand apart from other powers. The separation is the legislative power has the function to formulate the law, the executive power has the function to enforce the law; and the judiciary power exercises judicial functions. This classical thinking of Montesquieu was born in the seventeenth, and eighteenth centuries in France when an absolute kingdom government developed. In reaction to this absolutism, Montesquieu initiated the idea known as "trias politica" that means the State's powers must be divided into three parts: the executive, the legislature and the judiciary.

Related to the thought of the division and the separation of the powers of the State Hans Kelsen gave the view, the principle of separation of state power which is understood literally or interpreted as the principle of the division of state power is basically not a democratic principle. Conversely, the idea of democracy is the view that all power should be centered on the people, and if it is not possible direct democracy but merely indirect democracy, that all power must be exercised by a lonely organ whose members are elected by the people and legally accountable to the publics (Kelsen, 1973)

The supervision of executive and judicial organs by the legislative organs is concerned with the natural relationships that exist between these functions. Therefore, democracy requires that the legislative organs should be given the oversight power over the executive and judicial organs. If the organs applying the law from the function of the application of the law or from a control of the legislative organs do the separation of the legislative function, this can only be explained by historical reasons, justified as distinctive elements of democracy.

Even in the illustration of Kotan Y Stefanus, E.Utrecht criticizes Montesquieu's thoughts and expresses his objections to practice entirely in the modern state (Utrecht, 1986): First, the absolute separation as suggested by Montesquieu results in the existence of a state body which cannot be placed under the supervision of a state body other. No supervision means the possibility for a state body to exceed its limits of power and therefore the cooperation between each state body is complicated. Therefore, each state body given different functions within the state needs to be given the opportunity to supervise each other. Secondly, in the state of the modern law (welfare state) the field of government duty is increasingly widespread to realize the wishes of society, in such cases cannot be accepted the firm principle that the three functions each should only be submitted to a state agency assigned more than one function (possibly for coordinate some functions).

The concept of the separation of trias politica Montesquieu's powers modified as seen in the 1945 Constitution, namely "the power of state government (executive)", "House of Representatives (legislative power)", judicial power "(judiciary). In addition, there are other power arrangements such as the People's Consultative Assembly, the Regional Representative Council. This arrangement implies the content of meaning and the scope of the material (content) of each for these powers (Stafanus, 1998).

Along with the demands of the separation or the division of powers of the State, especially the independence power of judicial institutions as the authorities of judicial power, the independent, clean and authoritative judiciary in the meaning of the judges of the Constitutional Court (MK-RI) judge, Lord Acton mentions, "power tends to corrupt and absolute power corrupts absolutely". Lord Acton is above view, if translated freely, means that a person who has power tends to commit corruption, and the one who has absolute power will undoubtedly commit a corrupt crime. It is already happened in the level of history has many rulers of the State who has a lot of power abused his power for corruption until the ruler of the State in the modern age today. However, since the rulers of the State who created the law, then the will of the State's rulers to enact a law, which in the science of constitutional law is called legal politics.

Judicial Power is the power of an independent state to administer the judiciary to uphold law and justice based on Pancasila and the Constitution of the State of the Republic of Indonesia 1945, for the implementation of the State of the Republic of Indonesia. In conducting the judiciary to enforce the law and justice of a judicial institution (the Supreme Court and its subordinate courts, and the Constitutional Court) there is a necessity to be truly independent/liberally, either normatively independent or constitutionally and empirically independent. It is for whether its independence is manifested in the product of its decision or beyond the verdict, so the judgment of a judicial constitution if it shows its independence, then the purpose of law or legal ideas will be realized like justice, certainty and beneficiary.

Next see the following table:

Table 2
Judicial Independence

No.	Judicial Independence	Explanation
1	Procedural Independence	<p>Legal products by the legislature are independent because they meet the procedural rules of formation and the reality must be independent</p> <p>Politically procedural the formation of a legal product by the legislature is not independent and the reality is not independent because between the political will and the law can not be separated so that there is a (<i>conflict of interest</i>)</p> <p>Legally formal independent, and empirical reality must be independent between legislation and empirical reality must be equally independent, and this becomes the ideal of a State law in the meaning of rechtstaat, rule of law, state socialist law, state law of Pancasila (Republic of Indonesia). Example of Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia "Judicial power is an independent power to administer justice to uphold law and justice. Article 1 number 1 of Law Number 48 Year 2009 regarding Judicial Power, "Judicial Power is the power of an independent state to administer the judiciary to uphold law and justice pursuant to Pancasila and the Constitution of the Republic of Indonesia Year 1945, for the implementation of the State of the Republic of Indonesia , and Article 3 paragraphs (1) and (2) "in the performance of its duties and functions, the judges and judges of the constitution shall maintain the independence of the judiciary so that any interference in the judicial affairs of other parties outside the judicial authority is prohibited except in matters as referred to in the 1945 Constitution of the State of the Republic of Indonesia.</p>
2	Legal Fomal-Empirical Independence	<p>2. Legally formal independent, but empirical reality is not independent. This can be seen from some cases of corruption that occurred in the judges of the Constitutional Court, then the neutrality and independence as judges and judicial institutions of the Constitutional Court from the influence of others is still mortgaged.</p> <p>1. Empirically independent, and the reality of fact is independent. This can be evidenced by the receipt of all decisions of the Constitutional Court in carrying out its authority both concerning the judicial review of the law against the Constitution, to decide upon the dispute over the authority of state institutions whose authorities are granted by the Constitution, to decide upon the dissolution of political parties and to decide disputes over the election results because the nature of the Constitutional Court decision is final and binding. Its meaning there is no way for the decision of the Constitutional Court to be tested by other institutions.</p>
3	Empirical Independence	<p>1. Empirically independent, and the reality of fact is independent. This can be evidenced by the receipt of all decisions of the Constitutional Court in carrying out its authority both concerning the judicial review of the law against the Constitution, to decide upon the dispute over the authority of state institutions whose authorities are granted by the Constitution, to decide upon the dissolution of political parties and to decide disputes over the election results because the nature of the Constitutional Court decision is final and binding. Its meaning there is no way for the decision of the Constitutional Court to be tested by other institutions.</p>

Source: Creative writers processed from various primary and secondary materials

Considering the description of the three independencies as an evaluation of independent and impartial norm texts to the judges of the Constitutional Court, the legal facts can be found that is of the recapitulation of the Constitutional Court ruling from some of the powers of the Constitutional Court as may be held by the Constitutional Court for 2009 to 2017. Hans Kelsen argues that if the court function is governed by both the substantive law and the procedural law it means that if the procedure or the content of its decisions are determined by general norms already in existence, then in this case the courts

may be bound in varying degrees (Kelsen, 1973).

The courts operate the legislative functions when authorized to overturn unconstitutional laws (laws). The court cancels an unconstitutional law if the court is competent to annul a rule on the grounds that it is contrast with the law (the law) (Kelsen, 1973).

Bagir Manan mentioned that there are several reasons for judicial power to be independent, among others, namely (Manan, 2002):

- 1) An independent judicial power is a joint for the life of democracy and ensures the protection and respect for human rights.
- 2) The independent judicial power is the joint of the state's establishment under the constitution which requires that state power be restricted.
- 3) An independent judicial power is required to ensure neutrality especially if disputes occur between citizens and the state/government.
- 4) The settlement of legal disputes by an independent judiciary is the basis for the functioning of the legal system.

Supervision of the Constitutional Court Judges of the Republic of Indonesia

Supervision of judges of the Constitutional Court must be conducted strictly either by the internal Constitutional Court or by institutions outside the Constitutional Court and even the public. Several years ago the Constitutional Court experienced a deterioration of authority and public trust as an institution that was considered the cleanest of corruption, it turns out among some judges of the Constitutional Court (*MK-RI*) are involved corruption cases.

In general view, corruption is seen as an (extra ordinary crime) can even be regarded as a crime level spirits and neat creatures because by the perpetrators have been set up first so it is not easy to be proven.

The existence of corruption cases conducted by constitutional justices shocked many circles of law and justice observers including academics that viewed the Constitutional Court (*MK-RI*) as the judicial authorities to enforce law and justice and viewed as a dignity judicial institution, dignity and clean of the elements corruption. However, the emergences of corruption cases that drag some judges of the Constitutional Court actually lower the dignity and authority of judges and the Constitutional Court (*MK-RI*) in an institutional manner.

The Judges of the Constitutional Court (*MK-RI*) as the actor of the judicial authority includes a work environment that is also not clean, far from the image of where to find the true truth and justice that once glorified society as a clean institution of Collusion and Nepotism and Corruption.

Independence or judge's independence of the Constitutional Court as an institutional judicial institution judge and constitutional judge personally in examining and deciding cases as well as adjudicating as a constitution in resolving constitutional law disputes contains antagonistic issues that equally distanced from the truth and justice. On the one hand due to the influence of government power, so that the Constitutional Court (*MK-RI*) as a judicial institution is powerless as an independent law enforcement and less able to realize the truth and substantive justice. In this connection Peter H. Russell, and David M. O'Brien gave his view that "a theory of judicial independence is realistic and analytically useful cannot be concerned with every outside influence on judges" (Russell & O'Brien, 1985).

On the other hand, the judges of the Constitutional Court appear to the *abuse of power*, the abuse of authority (*de tournement de pouvoir*) and the freedom by giving wrong and unjust decisions. As a result, every case has a certain sale price, because of it, the victory and defeat of litigation is not determined by the rule of law, but is determined by the ability and ability to buy court decisions.

The establishment of the Constitutional Court (*MK-RI*) since 2003 simultaneously all elements of societies, either upper and lower classes, academics and practitioners, judge that the judges of the Constitutional Court (*MK-RI*) as a truly clean judge of corruption among officials of other countries that are being dragged into corruption cases, thus raising the presumption of judges of the Constitutional Court (*MK-RI*) need not be supervised by other institutions.

Judge of the Constitutional Court as the authority of the judicial authority and as a characteristic of

the organs of the state law functions to enforce the law and justice required in the implementation of the control function. Thus, as not to be biased and wild in carrying out their duties and functions to decide a case both regarding the judicial review of the Law Of the Constitution, to decide upon disputes on the authority of state institutions, to decide upon the dissolution of political parties, and to decide upon disputes on election results.

The weakness of the implementation of the control function of the judges of the Constitutional Court has so far resulted in the behaviour of judges out of their axis that should be traversed, so that the slip of the Constitutional Court is weakened institutionally when there is a corruption case of the Constitutional Court judge.

Law Number 24 of 2003 regarding the Constitutional Court does not recognize the existence of the *control function* of its own institutions. Since the Constitutional Court was established in 2003, the institution is quiet of the control function. Article 23, paragraph (3) recognizes the Honorary Board of the Constitutional Court until the birth of Law Number 8 of 2011 on the Amendment of Law Number 24 of 2003 regarding the Constitutional Court. It is also until the birth of *Perpu* No. 1 of 2013 on the Second Amendment of Law Number 24 of 2003 regarding the Constitutional Court, which is stipulated as Law. The law refers to the Law Number 4 of 2014 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 regarding the Constitutional Court.

This condition has become a legal problem since the Constitutional Court (*MK-RI*) was established. There is no institutions that permanently and effectively perform the control function and maintain the dignity and behaviour of judges of the Constitutional Court until the Constitutional Court Decision Number 005/PUU-IV/2006, resulting in the occurrence of minor or severe violations committed by the Constitutional Court judges to cause chaos within the institution of the Constitutional Court (*MK-RI*) itself.

The Judicial Commission (KY) is considered an authorized institution to oversee the judges of the Constitutional Court (*MK-RI*). However, the Constitutional Court (*MK-RI*) cancelled the Judicial Commission's control function over the constitutional judges through the *judicial review* of Law Number 22 of 2004 regarding Judicial Commission. A 31 Supreme Court justices as applicants for judicial review file the judicial commission. The Constitutional Court Decision Number 005/PUU-IV/2006 stipulates that the Constitutional Court judge (*MK-RI*) does not include the object of Judicial Commission supervision because the judge of the Constitutional Court (*MK-RI*) is not a career judge. The decision of the Constitutional Court (*MK-RI*) judges of the Constitutional Court (*MK-RI*) is prone to abuse of authority (*de tournement de pouvoir*), even tends to go beyond (*exis de pouvoir*) due to the absence of an institution that performs the control function of the judge behaviour of the Constitutional Court (*MK-RI*).

Bagir Manan considers, as an independent body embraced the view that the judicial or judicial bodies are only responsible to God. This kind of responsibility system only provides a spiritual accountability. While in the midst of the all-judicial crisis of judicial power is also required legal, social accountability. For some, including some law enforcers, God "is dead or dead", so that there is no divine light within them to manifest truth and justice, so there needs to be a more real force. It is therefore necessary to have an oversight institution and a place of accountability for the conduct of the judge, but in accordance with the position and nature of his duties, the judge shall be free from political accountability (Manan, 2011).

To restore the dignity of the judges of the Constitutional Court personally and institutionally, the President as head of State and Government of Indonesia promulgates a Government Regulation of Law No. 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 on the Constitutional Court. In the consideration of the Letter (b) of the *Perpu* affirms:

"To save democracy and the rule of law of Indonesia as well as to restore the authority and trust of the public to the Constitutional Court as a state institution that performs the function of enforcing the Constitution, it is necessary to amend Law Number 24 Year 2003 regarding the Constitutional Court as amended by Law Of Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 regarding the Constitutional Court, in particular to the provisions concerning the requirements and

procedures for the selection, selection and submission of candidates for constitutional justices and the establishment of the Honorary Council of Constitutional Justices "

Government Regulation in Law No. 1 of 2013 is considered contradictory to the 1945 Constitution, because the President assessed the Constitutional Court at that time in a state of urgent and worrisome crunch. Therefore, it is deemed necessary to stipulate a *Perpu*, which is then stipulated as Law No. 4 of 2014 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 regarding the Constitutional Court.

Philosophically the formation of the Ethics Council to perform the function of control (*control function*) to the judges of the Constitutional Court in order to avoid deviation of legal norms conducted by judges of the Constitutional Court. In this regard, Irman Putra Sidin affirmed the establishment of the Ethics Council of the Constitutional Court rather than the denial of the Government Regulation in of Law No. 1 of 2013 on the Rescue of the Constitutional Court. In addition, the establishment of the Ethics Council does not conflict with the Constitutional Court Justice Assembly to be established by the Constitutional Court and the Judicial Commission in accordance with the order of the *Perpu*. If the Board of Ethics plays an internal role, the Honorary Council of Constitutional Justices will exercise external oversight. However, the author still assesses the presence of the Council of ethics remains violate legal norms and there will be institutional overlapping, although both are different secretariats.

The implications of philosophy for the establishment of the Ethics Council and the Honorary Council of Constitutional Justices are the function of control on the behaviour of constitutional justices in carrying out their duties in order to establish the independence of the constitutional court to enforce the law and justice and the benefits from constitutional enforcers and interpreters. This is executed in order that that all the behaviour of Constitutional Justices, both in deciding cases and outside of deciding cases are always controlled. However, the control function undertaken by the Ethics Council and the Honorary Council of Constitutional Justices will not be effective if the Ethics Council and the Honorary Council of Constitutional Justices themselves are still one roof with the office of the Constitutional Court (*MK-RI*). In addition, the elements of membership of the two organs are still contaminated by the Constitutional Court (*MK-RI*), hence the value of independence and the neutrality of the decision of the Ethics Council and the Honorary Council in examining the judges reported and allegedly still mortgaged.

Judicial implications arising from the regulation is to restore the public confidence in the image of the Constitutional Court (*MK-RI*) in the institutional and credibility of judges of the Constitutional Court (*MK-RI*) personally. The established the Ethics Council of Constitutional Court Judges by the Constitutional Court (*MK-RI*) through the Constitutional Court Regulation No. 2 of 2013 on the Ethics Council of Constitutional Justices who has the duty to supervise the behaviour of judges of the Constitutional Court (*MK-RI*). After going through the selection process, the selection committee chooses 3 (three) members of the Ethics Council namely: Prof. Abdul Mukhtie Fadjar a former judge of the Constitutional Court as chairman concurrently member; Prof. Muhammad Zaidun an academic, and M. Hatta Mustafa a representative of public figures in which the Ethics Council began effective work from 1st January 2014.

This Council of Ethics that recommends to the Constitutional Court (*MK-RI*) to establish the Honorary Council and to release the reporting judge or the alleged judge as a constitutional judge if the Council of Ethics concludes that the reported judge or the judge has committed a gross violation.

The theoretical implication is the non-functioning aspects of the control function of the judges of the Constitutional Court as the judicial authority seem to have to enforce the law and justice in establishing the independence of the judiciary both personally and institutionally. The action will result in resulting a loss of control function because there is independent institution of the implementation of the control function and control institutions. Whether institutions established in the meaning of constitution or institution are established in the meaning of laws and regulations outside the constitution all of which require the function of control (*control function*) to be unbiased and wild in carrying out their duties and responsibilities.

While its socio-political implication is not the implementation of control function to judge of Constitutional Court causing loss of public trust and contamination of Constitutional Court judge from

political elements so that its decision does not reflect public justice. In addition, political staining appears in it through a set of policies to restore and restore the image and authority of the Constitutional Court judges on an institutional basis that had lapsed into the abyss of public confidence.

However, internally authorized to oversee the judges of the Constitutional Court is the Ethics Council of Constitutional Justices. The duties of the Constitutional Justice Board of Ethics under Article 3 of Regulation MK 2/2013 are:

- 1) Maintain and enforce the honor, dignity and behavior of judges, as well as the Code of Conduct and Conduct of Constitutional Justices so that judges do not commit violations
- 2) Conduct collection, processing, and review of reports and information on judge behavior
- 3) Examining the reported judge or judge allegedly committing an offense
- 4) Deliver reports and information collected, processed and reviewed on the behavior of reported judges or judges alleged to have committed violations
- 5) Deliver report on the execution of duties in writing every month to the Court

IV. CONCLUSION

The independence of judges of the Constitutional Court can be measured from independent procedural, independent legal formal-empirical, and independent empirical either according to national legal instruments and international instruments as an evaluation model of independent and impartial texts on the independence of judges of the Constitutional Court in Indonesia. Judging from the decision of the Constitutional Court of four powers owned, when viewed from the recapitulation of the decision and the quality of decisions from the period 2009 to 2017 show an independent and impartial decision. Judging from personal judges, less independent and less implication proved to be caught in criminal cases from some judges of the Constitutional Court.

The supervision of Constitutional Court judges into two supervisory models on the one hand supervised by the Ethics Council of the Constitutional Court, and on the other hand supervised by the Honorary Council of Constitutional Justices as an external supervision established by the Constitutional Court with the Judicial Commission philosophically forming the Ethics Council to conduct the function of control (control function) against the judges of the Constitutional Court in order to avoid deviation of legal norms conducted by judges of the Constitutional Court.

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