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Reinforcement of Judicial Supervision Function by Judicial Commission and Supreme Court as a Form of Shared Responsibility System

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Abstract

The function of judicial power is to enforce law and justice in the framework of protecting society through justice system based on law in a democratic state of law. One of the important principles of state of law is the existing guarantee of judicial power implementation which is independent, free from the influence of other power to implement justice for law and justice enforcement. Accountability of judge's performance and Supreme Court institution which is a control form for justice institution becomes an idea concerning the dilemma of judicial power independence concept. The supervision of judge's behaviour by Judicial Commission can hopefully cover the weakness internal supervision by Supreme Court. The judge supervision which can be realised by Judicial Commission includes judicial technic supervision, performance assessment, and judge's behaviour supervision. This research concerned to the reinforcement of judicial supervision function by judicial commission and Supreme Court as a form of *shared responsibility system*. The research method used in this research is normative law research method with statute approach, conceptual approach and case approach. Sources of legal materials used are legislation and cases. The results of this study are: the supervision on the judge's behavior by the Judicial Commission can hopefully cover the weakness of internal supervision by the Supreme Court. It becomes so appropriate that the supervision on judge is also performed by the Judicial Commission, not only by the Supreme Court. The supervision on judge that can be performed by the Judicial Commission includes the supervision of judicial technique, performance assessment, and supervision on the judge's behavior.

Keywords : Judge; Judicial Commission; Supervision; Supreme Court

I. INTRODUCTION

The text of a statute can be treated as a knowledge base (KB). A very rough formalization is that the statute is a list of norms. The structure is the subject matter in the legal system (Cyras, 2007). The Unitary State of the Republic of Indonesia is a state of law based on *Pancasila* and 1945 Constitution, which aims at realising the life order of nation and state which is orderly, prosperous, and fairly. 1945 Constitution as the state constitution of the Republic of Indonesia has been in force for long time within Indonesian people's struggle, both in its position as constitution and in the implementation of nation and state life¹. This constitution in the third amendment emphasizes that Indonesia is a democratic state of law and also asserts that judicial power is independent dan impartial. Such emphasis signifies some determination development, namely to make the supremacy of law in the life of nation and state, to make the judicial power independently and imparcially as the pillar. The function of judicial power is to enforce law and justice in protecting society through justice mechanism based on law in the democratic state of law. In Article 1 section (3), the 1945 Constitution of the Republic of Indonesia confirms that Indonesia is a state of law.

In another perspective, the confirmation of the democratic state of law in written constitutional norm

1. Margono, *Pendidikan Pancasila: Topik Aktual Kenegaraan dan Kebangsaan*, Malang, Universitas Negeri Malang, 2004, p. 9

or constitution as mentioned above does not only emphasize the determination to realize the supremacy of law, but also signifies the determination to return the independent and impartial characteristics to be the crown of judicial power. It is because the independence and impartiality of judicial power in the history of norm-making has experienced up and down at the same time as the development of social-political dynamics from the Indonesian independence to this time, since when the 1945 Constitution of the Republic of Indonesia was amended. In line with the provision, an important principle of the state of law is the guarantee of judicial power implementation which is independent, free from the influence of another power in justice implementation to enforce law and justice. Article 24 section (1) of Constitution of the Republic of Indonesia confirms that judicial power constitutes the independent power to realize justice system for law and justice enforcement. Article 1 of Law Number 48 Year 2009 states that Judicial Power is the power of independent state to implement justice system for law and justice enforcement based on *Pancasila* and 1945 Constitution of the Republic of Indonesia for the realization of the State of Law of the Republic of Indonesia.

Ever since the seventeenth century, the concept of law of nature has become an essential element of modern scientific knowledge (Kedar & Hon, 2017). "The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards (Pakamanis, 2015).

The court provides us with strong case law in favour of the environment by giving ecology the legal trump card (Kistenkas & Bouwma, 2018). Naturalistic view of the process of cognition, which allows treating the subject of science as objective reality, provides the basis for the legal thinking, where the legal reality is limited by existing legislation, and goals are established based on security of legal practice problems (Rzayev, Agaev, Agamaliyev, & Hasanov, 2016). Most people, at least in the West, agree that the rule of law, which can be defined as the subordination of all citizens and all representatives of the state to well-defined and established laws, is a desirable trait for a country's legal system (Gutmann & Voigt, 2018).

A number of the theoretical provisions which were considered until recently as firm, such as the bases of criminal liability, category of crimes, fault forms, the subject of a crime, the purpose of criminal penalty, are critically reinterpreted taking into account social changes, concrete requirements of law-enforcement activity". The laws governing the public relations, arising at creation, use and operation of objects of the intellectual property, the systems which have laid to the main legislative foundation for protection of objects of intellectual property were consistently adopted (Malikovna, 2015). The shift was palpable and it was indicative of how fast this area continues to develop and evolve (Sullivan, 2018).

The state of law concept forces the people to always obey the valid laws and regulations. Law is a guide or rule which has to be upheld and respected its existence as well as to be implemented in the life of nation and state. No states of law which does not have judicial power institution. Even the quality of a judicial power is made as an indicator to determine how democratic a state of law is. A state is called the democratic state of law if it has judicial power which is not only independent, but also has accountability, so that it can run the court which is clean, trusted by society, and becomes the judicial power which has authority. To realize, ensure, and secure the independent and accountable judicial power, internal and external control mechanism in the judicial power system is required. The internal and external control should become complement for one another, integrated and synergic so that it can realize the duty and function of judicial power. The judicial power reform also includes support to revitalize the Judge's role as the main pillar of judicial power realization. Judge is the important element of judicial power because his/her independence and integrity decides the independence and authority of judicial power. The judicial power reform has to be able to generate the judge that can become one of the law enforcers who can become *the last resort* for the justice seekers (*justiciable*)².

Based on this explanation, the writer is very interested in studying and analyzing this issue. This research concerns on the reinforcement of judicial supervision function by judicial commission and Supreme Court as a form of *shared responsibility system*.

2. Ibid, p.36

II. METHOD

The research method used in this research is normative law research method with statute approach, conceptual approach and case approach. Sources of legal materials used are legislation and case study.

III. DISCUSSION

Judge Supervision by Judicial Commission and Supreme Court

The logical consequence of the state of law selected by Indonesia is based on the belief that the state power has to be realized on the basis of good and fair law. One institution which plays a crucial role that is urgently and absolutely needed in the modern state structure and that accommodates one of the components in the state of law is judicial power which is independent, autonomous, and responsible. As the institution controls the validity of law, the judicial power is absolutely needed for not only its existence, a necessary facility or ability in settling the case, but also its fairness and authority in the framework of realizing the enforcement of law and justice. (Al, 1997, p. 6)

The judicial power executed by Supreme Court and other judiciary bodies is another state institution since before independence, that is Supreme Court of Dutch East Indies Government in Indonesia (*Het Hooggerechtshof voor Indonesia/HGH*) established with *Reglement op de Rechterlijk Organisatie en het Beleid der Justitie* (RO) in 1842. HGH was cassation court (*hof van Cassatie*), and Appeal Court (*Appel*) for verdict *Raad van Justitie (RV)*. (Arto, 2001, p. 81) for inlander or the equalized, HGH was RV, as appeal court and Landraad as first level court. In the era of English occupation, HGH became Supreme Court of Justice with function as appeal court of the verdict of Court of Justice in Semarang and in Surabaya³.

As briefly discussed that judges are the main actors in a court, their position becomes very vital in respect to his/her authority. Through his/her decision, judge can change, move or even revoke the citizen's rights and freedom, and these are executed in the framework law and justice enforcement. It is certainly not realized if it is not performed with high dedication, discipline, and professionalism of the judges to perform their duties well with responsibility.

One of the absolute conditions or *conditio sine qua non* in a constitutional state is autonomous court, neutral (fair), competent, and has authority with capability to enforce law, legal protection, legal certainty and justice. Only the court which has the above criteria can secure the human right fulfilment. As the main actor of court institution, the judge's position and role are very important due to his/her authority. Through his/her decision, the judge can change someone's ownership right, revoke the citizen's freedom, state illegal for the government's arbitrariness to the society, and order to eliminate someone's living rights.

The judge is demanded to always keep and enforce his/her honor, status nobleness, and behaviour in enforcing law, truth, and justice based on the belief in the One God. For this, in Indonesian judicial power the Judicial Commission is established to keep and enforce the judge's honor, status nobleness, and behavior in realizing the truth and justice based on the belief in the One God. The court supervision under the Supreme Court is realized by the Supreme Court as the state high court. In line with Article 32 Law Number 3 Year 2009 about Supreme Court, the Supreme Court conducts the highest supervision for the court realization in all justice bodies under the Supreme Court in realizing the judicial power.

Intervention on the judicative power is one indication of the principle brittleness of judicial power independence. The judicial corruption has weakened the existence of judicial power independence in examining, trying, and deciding a case. The judge in deciding a case can be influenced by the litigants (prosecutor, plaintiff, and defendant) and becomes upset of a bundle of money or other facilities⁴. In this

3. http://72.14.235.104/search?q=cache:MPHopkLosFwJ:www.mari.go.id/Html/Sejarah1_4.htm+Penetapan+Pemerintah+Nomor+9/S.D+Tahun+1946&hl=id&ct=clnk&cd=1&gl=id. lately visited in November 2017, hour. 13.25 WIB (Ahsin, 2010, p. 63)

4. For example, Judge DD (formerly served in the Kupang District Court and Yogyakarta District Court) was not honorably discharged from the position of judge with the Determination of the Honorary Assembly Session No. 03/MKH/XI/2011 on November 22, 2011 because they received airplane ticket facilities and asked the stripper from the defendant whose case was being handled, (see Rahman Saleh, 2008, p. 26–30)

case, the judicial power independence practice by the judge handling, the case seems not independent in deciding a case due to the external influence of the party having interest. The intervention practice of court institution involving the judge becomes a part of legal mafia practice which spreads and hurts the society's feeling of justice.

After four time amendment of 1945 Constitution, the state organization structure established with *separation of power* puts Supreme Court and other state institutions at the same level; no more nomenclature of state high/the highest institution. Radically, the judge at all levels is the state official, with judicial and non-judicial technique of guidance and supervision under Supreme Court⁵, as the one roof system consisting of non-carrier judge in Supreme Court⁶, or in the lower court⁷, as well as Constitutional Court⁸. Besides, to keep the court running conscientiously and properly, the chief of district court and appeal court supervises the judge's duties and behaviors⁹. The judicial power independence cannot be understood absolutely so that it needs external institution as the independence balance and to keep the judicial power authority. It is therefore necessary to realize effectively external power in judicial ethics. However, this thought sometimes becomes a problem due to the thought that the judicial power with independent principle in examining, deciding, and trying the case cannot be realized with intervention although in supervision. The independent principle of judicial power sometimes become a shield and even an alibi for the judge indicated to deviation both in performing his/her judicial duties and in his/her behaviors outside the courtroom (Muhtadi, 2015, p. 188).

The performance accountability of judge and Supreme Court as the control of court institution is the idea of judicial power independence concept dilemma. The principle of check and balance constitutes a big frame to omit the risk of judge's independence which potentially causes the behavioral and ethical deviation. Abdul Rahman Saleh, who is the former Young Chief of Supreme Court in Supervision has an idea of necessarily autonomous institution which externally supervises the judge and the institution. His idea is related to the external supervision institution a part from the internal supervision which supervises and monitors the judge's behaviors related to deciding the case, but not intervening the case materials in order not to be overlapping with the appeal court (Syahur, n.d., p. 2). The idea of institutionalizing the Judicial Commission as the external supervision institution becomes a solution of being effective or ineffective of the external supervision by Supreme Court itself.

In the framework of the judge's duties as mentioned in Law about Judiciary Power, the Judicial Commission supervises the judge's behaviors. Therefore, this Commission becomes an independently external supervising institution whereas Supreme Court supervises the judge internally. In line with the concept of *shared responsibility system*, it can be understood that the Judicial Commission and the Supreme Court can work together in realizing the supervision upon the judge.

The supervision upon the judge's behavior by the Judicial Commission can hopefully cover the weaknesses of the internal supervision by Supreme Court. During this time the supervision by Supreme Court is considered less effective. In the Supreme Court's note there are at least six weaknesses of the internal supervision by the Supreme Court.

The six weaknesses are as follows¹⁰.

- A. Lack of transparency and accountability. It happens because of no mechanism providing the right for the reporter to not know the progress of the report they have to insert.
- B. There is assumption of morale to defend the colleague or the judge's colleague to present the cases happened to his/her members, that indirectly has obscured the bad practices of court.
- C. The supervision method is less complete and the effective supervision method is unimplemented.

5. See Article 31 of the Judicial Power Act

6. See Article 7 (2 and 3) of the Judicial Power Act

7. See Article 2, *jo* Article 27-Article 29 of Law Number 26 of 2000 concerning the Human Rights Court, Article 78 of Law Number 31 of 2004 concerning the Fisheries Court.

8. See Article 16 and Article 18 (1) of the Constitutional Court Law

9. See article 53 (1,2) UUPU

10. MA, *Naskah Akademis dan RUU tentang Komisi Yudisial*, MARI, Jakarta, 2003, p. 52-53

- D. The human resource is weak because the stipulation on someone to be a supervisor is unclear. In Supreme Court all young chiefs and the justices automatically become the supervisors. It happens in the selection of Chief Justice who helps in supervising. On the other hand, most of the supervisors do not work fully attention because the main duty of the Chief Justice is to decide the case.
- E. During this time the supervision does not involve the society's participation. Due to the complicated bureaucracy in reporting/complaining the judge's behavior which is deviated to cover the weakness of supervision by the Supreme Court, Article 22 of Law about Judicial Commission states that supervising the judge's behavior by the Judicial Commission is based on the society's report.
- F. The periodical report by justice body is based on the Judicial Commission's demand. The society's report concerning the assumption of offence by the judge has a vital role because society is the party directly interacting with the judge when they litigate at the court. On the other hand, the Judicial Commission can also obtain the information of the assumption of the offence by the judge from newspapers or other medias.

IV. CONCLUSION

The supervision on the judge's behavior by the Judicial Commission can hopefully cover the weakness of internal supervision by the Supreme Court. It becomes so appropriate that the supervision on judge is also performed by the Judicial Commission, not only by the Supreme Court. The supervision on judge that can be performed by the Judicial Commission, including the supervision of judicial technique, performance assessment, and supervision on the judge's behavior.

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