

**THE DYNAMICS OF THE CONSTITUTIONAL COURT'S  
DECISIONS ON THE AUTHORITY OF THE JUDICIAL  
COMMISSION IN PERFORMING SUPERVISION OF THE  
SUPREME JUDGES****Fauzi Iswahyudi****Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia  
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**ABSTRACT**

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*The concept of the principle of checks and balances in the principle of state institutions is essentially carried out by equal state institutions, but the practice is very far from what it should be, even after the Constitutional Court Decision Number 005/PPU-IV/2006 which limits the Judicial Commission's supervision of Supreme Court justices, but until now KY as a temporary commission and institution still supervises the Supreme Court justices, even though the Court through its decision has explicitly stated that KY is not an actor of judicial power and also only as a supporting organ should not interfere with the Supreme Court's judicial authority, but in fact it is the Supreme Court judge who gave the acquittal in 2019 still reported to KY so that the authority contradicts the Constitutional Court Decision Number 005/PPU-IV/2006 which has been limited by the Constitutional Court whose decision is final and binding. The research method used is the normative legal research method. The results of the study show that the Constitutional Court which has interpreted the constitution related to the Judicial Commission has clearly provided legal findings regarding the principle of state institutions that supporting organs such as the Judicial Commission cannot supervise Supreme Court justices.*

**Keywords:** *Supreme Court, Judicial Commission, Oversight.*

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**INTRODUCTION**

The rule of law (Dutch: *rechstaat* ) is a state that aims to maintain legal order, namely an order that is generally based on the law found in the people. The state of law maintains legal order so that it does not interfere and that everything goes according to the law. The state of power (Dutch: *machtsstaat* ) is a state that

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aims to maintain and maintain power solely. Gumplowics, among others, teaches that the state is none other than the " *Eine Organisation der Herrsdifl ciner Minoritar uber eine Majotaritat* " (Organization of the power of a small group over a large group). In his opinion, the law is based on the obedience of the weak to the strong .<sup>1</sup>

Referring to the 1945 Constitution of the Unitary State of the Republic of Indonesia , the position of the Judicial Commission is structurally equivalent to the Supreme Court and the Constitutional Court, however, although structurally it has the same position as the Supreme Court and the Constitutional Court, functionally, its role is supporting (*auxiliary*) to the judiciary. Although the function of the Judicial Commission is strictly related to the judiciary, it does not carry out the function of judicial power. The Judicial Commission is not a *code of law* enforcement agency, but a *code of ethics* enforcement agency .<sup>2</sup>

The functions and powers of the judicial commission before the Constitutional Court Decision No. 005/PUU-IV/2006 is an institution that nominates Supreme Court justices to the DPR and enforces honor and dignity and maintains judges' behavior. The role of the Judicial Commission in maintaining judicial power includes the nomination and appointment of Supreme Court Justices, while the Judicial Commission in its authority relates to upholding the honor and nobility of dignity and the behavior of judges is annulled and declared no longer valid with the Constitutional Court Decision No. 005/PUU-IV/2006 .

The Constitution gives a number of other powers to the Supreme Court and the Judicial Commission which are regulated by law. The law then stipulates that the Supreme Court exercises internal control over the judicial bodies under it; while the Judicial Commission carries out an external oversight function. The supervisory authority of the Supreme Court differs in several respects from the supervisory authority/function of the Judicial Commission. Although they both supervise judges, the Supreme Court can oversee alleged violations of the code of ethics and code of conduct as well as judicial, administrative, and financial technicalities. On the other hand, the Judicial Commission is limited to monitoring alleged violations of the code of ethics and the code of conduct for judges (KEPPH). However, the authority of the two institutions has a slice of authority in the KEPPH aspect. The recommendations of the Judicial Commission resulting from the supervisory function are submitted to the Supreme Court. In practice, the Judicial Commission and the Supreme Court hold a session of the Honorary Council of Judges (MKH)

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<sup>1</sup> Abdul Mukthie Fadjar, *Sejarah, Elemen Dan Tipe Negara Hukum* (Malang: Setara Press, 2016) , p. 5-6 .

<sup>2</sup> Jimly Ashshiddiqie, *Format Kelembagaan Negara Dan Pergeseran Kekuasaan Dalam Undang-Undang Dasar 1945* (Yogyakarta: UII Press, 2004) , p. 153-154 .

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to hear and decide on alleged violations of the Code of Ethics and Code of Conduct for Judges.<sup>3</sup>

The demand for reform in the judicial sector to run well so that the establishment of the Judicial Commission as an independent institution is complained of by the public who feel that the code of ethics oversight agency has not responded.<sup>4</sup>

However, in practice, even though the Judicial Commission is an *auxiliary organ*, it continues to supervise not only as an enforcer of the code of ethics but also as an enforcer of legal norms, whereas on the other hand, the Judicial Commission does not have the function of judicial power. In addition, the nature of state institutions in the "commission" format which is only temporary, there must be limits on authority in carrying out its functions and authorities as external supervisors for judges of the Supreme Court and the judiciary below.

The contradiction between theory and practice, between what should be and the facts on the ground ( *das sollen* and *das sein* ) so that the author is interested in bringing up the title " Das Sein and Das Sollen: Supervision of Judge Behavior by the Judicial Commission after the Constitutional Court Decision Number 005/P Law - I V /2006 ".

## METHOD

The research method used is normative legal research with a normative juridical approach. Normative juridical, namely finding the truth of coherence to examine whether there are legal rules according to legal norms and whether norms in the form of orders or prohibitions are in accordance with legal principles, and whether a person's actions are *in* accordance with legal norms (not only according to legal rules) or legal principles.<sup>5</sup> The data collection tool used in this research is through document study with library *research*. Literature study is the single method used in normative legal research.<sup>6</sup> The source of data that the author uses in this study is secondary data. Secondary data which includes abstracts, indexes, bibliographies, government publications, and other reference materials.<sup>7</sup>

The secondary data used are with the following details : The legal materials used are as follows, Primary legal materials, namely legal materials that are

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<sup>3</sup> Pagar Alam District Court, "Mahkamah Agung, Mahkamah Konstitusi, Dan Komisi Yudisial" <https://Pn-Pagaralam.Go.Id/Index.Php/Tentang-Pengadilan/Sistem-Pengelolaan-Pengadilan/Pengawasan-Kode-Etik-Hakim> .

<sup>4</sup> UII, "Peran Komisi Yudisial Dalam Pengawasan Hakim Dan Pelaksanaan Kode Etik Pedoman Perilaku Hakim," <https://Dspace.Uii.Ac.Id/Handle/123456789/1138> .

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011).

<sup>6</sup> Philips Dillah Suratman, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2015).

<sup>7</sup> Soerjono and Sri Mamudji Soekanto, *Penelitian Hukum Normatif. Suatu Tinjauan Singkat Overview* (Jakarta: Raja Grafindo Persada, 2003).

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authoritative, meaning that they have authority. The <sup>8</sup>primary legal material used is Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission. Law Number 22 of 2004 concerning the Judicial Commission, Decision of the Constitutional Court Number 005/PUU-IV/2006. Secondary legal materials, namely those that provide an explanation of primary legal materials, such as, for example, draft laws, research results, works from legal circles, and so on.<sup>9</sup> Tertiary legal materials, namely materials that provide instructions or explanations of primary legal materials and secondary legal materials in the form of legal dictionaries or encyclopedias or Indonesian language dictionaries to explain the meaning or meaning of terms that are difficult to interpret.

## DISCUSSION

### The Authority of the Judicial Commission from a Constitutional Perspective

*Jean Bodin* argues that the law (*ius*) is good and just without command. Meanwhile, legislation (*leges*) results from the application of the sovereignty of the person who governs. Implicitly he distinguishes law as legislation, with law that comes from morals and justice. In his theory of *legis actio* (legal realization), according to Bodin, legal realization can occur inside or outside the court.<sup>10</sup> One of the problems faced in this field is when what *Gunnar Myrdal* calls *soft development*, where certain laws that are formed and applied turn out to be ineffective.<sup>11</sup>

The power of the state is limited in such a way that not only all powers of the rulers are based on the law, but also that the power of these government instruments is rooted in and rooted in law.<sup>12</sup>

Supervision is one of the basic functions of management which in English is called controlling. In Indonesian, according to Sujamto, the controlling function has two equivalents, namely supervision and control. Supervision in the narrow sense of all efforts or activities to find out and assess the actual reality about the implementation of tasks or work, whether it is in accordance with what it should be or not. The definition of control is more "forceful" than supervision, namely as an effort or activity to guarantee and direct that the implementation of tasks or work goes according to what it should be.<sup>13</sup>

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<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum*.

<sup>9</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2012).

<sup>10</sup> Bernard L. Tanya., *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2013).

<sup>11</sup> Soerjono Soekanto, *Kesadaran Hukum & Kepatuhan Hukum* (Jakarta: Rajawali Press, 1982).

<sup>12</sup> Sudargo Gautama, *Pengertian Tentang Negara Hukum* (Jakarta: Alumni Bandung, 1983).

<sup>13</sup> Sujamto, *Aspek-Aspek Pengawasan Di Indonesia* (Jakarta: Sinar Grafika, 1996).

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The Judicial Commission is an institution mandated by the Constitution to supervise judges at various levels, both District Court judges, High Court judges and Supreme Court judges. Judicial, except for judges of the Constitutional Court whose supervision is only internally through the honorary panel of judges.

The authority of the Judicial Commission in the 1945 Constitution of the Republic of Indonesia concerning Judicial Power states: Article 24B paragraph (1): The Judicial Commission is independent in nature which has the authority to propose the appointment of Supreme Court justices and has other powers in the context of maintaining and upholding honor, nobility and dignity. judge behavior. In Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission it is stated:

Article 13 paragraph (1): a. Propose the appointment of Supreme Court Justices and Ad Hoc Judges at the Supreme Court to the DPR for approval, the authority to propose the appointment of Supreme Court Justices is the authority possessed by the Judicial Commission to select candidates for Supreme Court Justices and then propose them to the House of Representatives (DPR), the Judicial Commission propose 3 (three) candidates for Supreme Court Justices to the DPR for every 1 (one) need for a chief justice. The process of proposing the appointment of a Supreme Judge is carried out within a maximum period of 6 (six) months. b. Maintaining and upholding the honor, dignity, and behavior of judges, the authority to guard which is included in the 1945 Constitution means that the Judicial Commission carries out a series of activities that can keep judges from taking actions that violate the code of ethics and guidelines for judges' behavior, in this case the Judicial Commission carries out the duties assigned to it. called prevention. Meanwhile, the authority to enforce means that the Judicial Commission will take repressive actions against judges who have violated the code of ethics and guidelines for judges' behavior. This action can take the form of sanctions. c. Establish a Code of Ethics and/or Code of Conduct for Judges together with the Supreme Court; and D. Maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges. In exercising the authority as referred to in Article 13 letter a, namely proposing the appointment of Supreme Court justices and ad hoc judges in the Supreme Court to the DPR for approval, then in Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004, the Judicial Commission has the task of : Article 14 paragraph (1) : a. Registering candidates for Supreme Court justices; b. Conducting selection of candidates for Supreme Court justices; c. Determine candidates for Supreme Court justices; and D. Propose candidates for Supreme Court justices to the DPR.

Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission states: Article 20 paragraph (1): In order to maintain and uphold the honor, dignity, and behavior of judges, the Judicial



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Commission has the following duties: a. Monitoring and supervising the behavior of judges; b. Receive reports from the public regarding violations of the Code of Ethics and Code of Conduct for Judges; c. Conducting verification, clarification, and investigation of reports of alleged violations of the Code of Ethics and the Code of Conduct of Judges in a closed manner; d. To decide whether or not reports of alleged violations of the Code of Ethics and Code of Conduct of Judges are true, e. Take legal steps and/or other steps against individuals, groups of people, or legal entities that degrade the honor and dignity of judges. Article 20 paragraph (2): In addition to the duties as referred to in paragraph (1), the Judicial Commission also has the task of seeking to increase the capacity and welfare of judges; Article 20 paragraph (3): In order to maintain and uphold the honor, dignity, and behavior of judges, as referred to in paragraph (1) letter a, the Judicial Commission may request assistance from law enforcement officials to conduct wiretapping and record conversations in the event of allegations of violation of the Code of Ethics and/or Code of Conduct of Judges by Judges.

Article 20 paragraph (4): Law enforcement officers are obliged to follow up on the request of the Judicial Commission as referred to in paragraph (3). Based on other provisions, the Judicial Commission has the authority to analyze decisions that have obtained permanent legal force as the basis for transferring judges in Law no. 48 of 2009 concerning Judicial Power states: Article 42 paragraph (1): In order to maintain and uphold the honor, dignity, and behavior of judges, the Judicial Commission can analyze court decisions that have obtained permanent legal force as the basis for recommendations for transferring judges.

To support the ongoing supervisory function, the Judicial Commission is given the authority to determine actions, some of which are regulated in Law No. 1) : a. Receive reports from the public about the behavior of judges; b. request regular reports to the judiciary regarding the behavior of judges; c. conduct an examination of alleged violations of judges' behavior; d. summon and ask for information from judges who are suspected of violating the code of conduct of judges; and e. make a report on the results of the examination in the form of a recommendation and submit it to the Supreme Court and/or the Constitutional Court, as well as the copy submitted to the President and the DPR. Article 22 paragraph (2): in carrying out the supervision as referred to in paragraph (1), the Judicial Commission is obliged to: a. Comply with norms, laws, and provisions of laws and regulations; and b. Maintain the confidentiality of information which because of its nature is a secret of the Judicial Commission obtained based on his position as a member. What is meant by complying with the norms, laws and statutory provisions in this provision for example not treating judges who are summoned to obtain information or not treating judges as if they were suspects or defendants, this is to safeguard the rights and dignity of the judge concerned. The

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duties of the Judicial Commission may not reduce the freedom of judges in examining and deciding cases (article 22 paragraph 3). This means that judges are still given independence in carrying out their duties.

### **Das Sollen and Das Sein Supervision of Judge Behavior by the Judicial Commission after the Constitutional Court Decision Number 005/PUU-IV/2006**

Article 32 of Law no. 5 of 2004 concerning the Supreme Court which reads as follows: 1. The Supreme Court shall exercise the highest supervision over the administration of justice in all judicial circles in exercising judicial power; 2. The Supreme Court supervises the behavior and actions of judges in all judicial environments in carrying out their duties; The proposal for imposing sanctions against judges according to article 21 in conjunction with article 23 paragraph (3) and paragraph (4) is carried out by the Judicial Commission which is submitted to the Supreme Court and to the judge who will be sentenced to dismissal.

Using the latest law, the highest supervisory authority remains in the hands of the Supreme Court as stated in Article 32 paragraph (1) of the Law of the Republic of Indonesia Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning Supreme Court " The Supreme Court carries out the highest supervision over the administration of justice in all judicial bodies under it in carrying out judicial power " .

Decision of the Constitutional Court Number 005/PPU-IV/2006 Universally, the supervisory authority of the judicial commission does not reach the Supreme Court justices, because the Judicial Commission is a partner of the Supreme Court in supervising judges in the judiciary in all existing judicial environments. under the Supreme Court; Article 32 of Law Number 5 of 2004 concerning the Supreme Court which reads as follows: 1 . The Supreme Court carries out the highest supervision over the administration of justice in all judicial circles in exercising judicial power. 2 . The Supreme Court supervises the behavior and actions of judges in all judicial environments in carrying out their duties; The proposal for imposing sanctions against judges according to Article 21 in conjunction with Article 23 paragraph (3) and paragraph (4) is carried out by the Judicial Commission which is submitted to the Supreme Court and the Judge who will be sentenced to dismissal is given the opportunity to defend himself before the Honorary Council of Judges. In addition, specifically regarding the proposal for dismissal of the Supreme Court Justices, the Chief Justice of the Supreme Court is given the opportunity to defend himself first before the Honorary Council of the Supreme Court as regulated in Article 12 of Law Number 5 of 2004 concerning the Supreme Court.

As for the Constitutional Court Justices, the proposal for dismissal is made by the Chief Justice of the Constitutional Court and to the Constitutional Justices

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who The person concerned is given the opportunity to first defend himself before the Honorary Council of the Constitutional Court. As regulated in Article 23 paragraph (3) and paragraph (4) of Law Number 24 of 2003 concerning the Constitutional Court, without interference from the Judicial Commission. This is different from judges in judicial bodies under the Supreme Court, apart from requiring a proposal for imposing sanctions from the Judicial Commission, the judge concerned is also given the opportunity to defend himself before the Honorary Council of Judges. Problem Formulation To avoid the possibility of misunderstanding in interpreting the meaning contained in the title above and considering the extent of the problems that arise as a result of the decision of the Constitutional Court Number 005/PUU-IV/2006 .

The authority of the Judicial Commission before and after the decision of the Constitutional Court Number 005/PUU-IV/2006 Prior to the decision of the Constitutional Court the Judicial Commission was a mandate from the 1945 Constitution, in article 24B paragraph 1 of the 1945 Constitution "The Judicial Commission is independent which has the authority to propose the appointment of judges. and has other authorities in the context of maintaining and upholding the honor, nobility of dignity, and the behavior of judges. Jo article 13 of Law no. 22 of 2004 concerning the Judicial Commission contains the authority of the Judicial Commission: To propose the appointment of Supreme Court Justices to the DPR; and Upholding honor and dignity and maintaining the behavior of judges.

In exercising the authority as referred to in Article 13 letter a, the Judicial Commission also has the following duties: To register candidates for Supreme Court Justices; selection of candidates for Supreme Court Justices; Determine candidates for Supreme Court Justices; Propose candidates for Supreme Court Justices to the DPR. Article 15 paragraph (2) of Law Number 22 of 2004 clearly stipulates that those who can nominate candidates for Supreme Court Justices to the Judicial Commission include: the Supreme Court, the Government and the Community. From these provisions, we can conclude that candidates for Supreme Court Justices can be classified into two groups: career and non-career. This opens the opportunity that if needed, a person can be nominated as a Supreme Court Justice not based on a career system to the Judicial Commission (article 7 paragraph (2) of Law No. 5 of 2004). And regarding article 13 letter b, the Judicial Commission has the task of supervising the behavior of judges in order to uphold the honor and dignity and maintain the behavior of judges. Further provisions specifically regarding supervision are regulated above in Article 22 of Law Number 22 of 2004. The Judicial Commission confirms that: In carrying out the supervision as referred to in Article 20, the Judicial Commission: Receives public reports on the behavior of judges; Request regular reports to the judiciary regarding the behavior of judges; Conduct examinations of alleged violations of judges' behavior;



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Summons and asks for information from judges who are suspected of violating the code of ethics of judges' behavior; and Make a report on the results of the examination in the form of recommendations and submitted to the Supreme Court and/or the Constitutional Court, as well as the actions submitted to the President and the DPR.

Further provisions regarding the procedure for carrying out the duties as referred to in paragraph (1) shall be regulated by the Judicial Commission. After the decision of the Constitutional Court. Within a period of approximately one year since its inauguration, the Judicial Commission has shown hard work by successfully processing as many as 286 complaints reports. However, on August 16, 2006, the Judicial Commission's authority in the field of supervision was revoked by the Constitutional Court Decision No. 005/PUU-IV/2006. The decision of the Constitutional Court includes the annulment of some of the articles relating to the supervisory authority of Judges, Supreme Court Justices and Constitutional Justices contained in Law no. 22 of 2004 concerning the Judicial Commission, among others: Article 1 number 5 insofar as it relates to the words "Judges of the Constitutional Court"; (Judges are Supreme Court Justices and judges in judicial bodies in all judicial circles under the Supreme Court and judges of the Constitutional Court as referred to in the 1945 Constitution of the Republic of Indonesia).

In state institutions, the principle of *checks and balances is known* to create a balance between state institutions, but it needs to be underlined that there are restrictions that should not be interfered with in carrying out these principles, moreover the constitution needs to contain principles that lead to restrictions so that there are no disputes for state institutions in implementing these principles. exercise their authority. The following describes the correlation between MA and KY in carrying out the principles of state institutions, especially in the field of supervision. In carrying out its role as guardian of judicial power, the Judicial Commission is given several powers, namely: 1) conducting a selection process and screening candidates for Supreme Court justices with quality, potential, legal and professional understanding; Maintain and uphold the integrity of judges and public trust in the judicial system in Indonesia and ensure that judges can maintain their right to decide cases independently. Article 24 b paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the Judicial Commission to be independent, namely the authority to propose the appointment of Supreme Court Justices.

the other hand , other authorities in the context of maintaining and upholding the honor, dignity, and behavior of judges have been annulled by the Constitutional Court Decision dated August 16, 2006 No. 005/PUU-IV/2006. Regarding this article, the Constitutional Court has annulled the words "and/or the Constitutional Court". This means that the Judicial Commission does not have the authority to

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supervise the judges of the Constitutional Court. With the issuance of the Constitutional Court Decision dated August 16, 2006 No. 005/PUU-IV/2006, the authority to uphold honor and dignity and to maintain the behavior of judges, is no longer owned by the Judicial Commission.

Constitutional Court Decision dated August 16, 2006 No. 005/PUU-IV/2006 which contains the cancellation of the authority of the Judicial Commission as many as 12 articles in Law no. 22 of 2004 concerning the Judicial Commission which regulates the authority of the Judicial Commission is declared null and void. To carry out its role in supervising judges, the Judicial Commission can do several things, including (article 22 of Law No. 22, 2004) receiving reports from the public regarding the behavior of judges; requesting regular reports to the judiciary regarding the behavior of judges; conduct examinations of alleged violations of judges' behavior; summon and ask for information from judges who are suspected of violating the code of ethics of judges' behavior; and make the results of the examination in the form of recommendations and submitted to the Supreme Court and/or the Constitutional Court, as well as the actions submitted to the President and the DPR.

Although the Constitutional Court did not cancel article 22 paragraph (1a) which reads "receiving public reports on the behavior of judges", which is closely related to article 20 which reads "In exercising the authority as referred to in article 13 letter b the Judicial Commission has the task of supervising the behavior of judges . in order to uphold the honor and dignity and maintain the behavior of judges", the Constitutional Court actually abolished article 20. With the annulment of the article which is the spirit of the existence of the Judicial Commission, the authority of the Judicial Commission in the field of supervision does not exist at all. The Judicial Commission is like a toothless tiger that doesn't even have claws. As a result, the Judicial Commission no longer accepts complaints from the public regarding the behavior of judges, whether district judges, high judges, supreme judges or constitutional judges.

There are several objects of supervision on the performance of judges, namely: a. Supervision of the technical field of justice or judicial technical which is meant by judicial technicality is everything that is the main task of the judge, namely receiving, examining, adjudicating and resolving cases submitted to him, in this connection including how the decision is implemented. So the purpose of supervision in this context is an increase in the quality of judges' decisions. b. Supervision of the field of judicial administration, what is meant by judicial administration is everything that is the main task of the court clerks, judicial administration here must be separated from general administration which has nothing to do with a case in the court institution, judicial administration is closely related to judicial technicality, a Court decisions will not be perfect if judicial

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administration problems are ignored. c. Supervision of the code of ethics and behavior of judges whose function is to maintain the honor and dignity of judges, both in terms of service or in the case of trial and outside the trial. d. Supervision of the actions of judicial officials, this third model of supervision is a model of supervision of the behavior (work) of court officials and clerks of judges, which reduces the fairness of the judiciary carried out based on findings, irregularities committed by judges and clerks, both presented on the basis of reports on the results of internal control as well as on reports from the mass media community, and other internal controls.

Article 24 Paragraph 1 of the 1945 Constitution affirms that the judicial power is an independent power to administer the judiciary in order to uphold law and justice. The third amendment to the 1945 Constitution has brought changes in the life of the state administration, especially in the exercise of judicial power. The amendments, among others, affirm that: 1. Judicial power is exercised by a Supreme Court and judicial bodies under it in the General Courts, Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court. 2. The Supreme Court has the authority to adjudicate at the level of cassation, examine statutory regulations under the law against the law and have other powers granted by law. 3. The Constitutional Court has the authority to examine laws against the 1945 Constitution of the Republic of Indonesia and decide on disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia. 4. The Judicial Commission has the authority to propose the appointment of Supreme Court Justices and has other authorities in the context of maintaining and upholding the honor, dignity, and behavior of judges.

Regarding the judicial review of the Judicial Commission Law, the Constitutional Court in its judgment explained that the Judicial Commission is an auxiliary organ or supporting state institution. Because the Judicial Commission is not the holder of judicial power, therefore the Judicial Commission cannot be used as an organ that carries out the role of checks and balances. With the Supreme Court and with the Constitutional Court.

The concept of *the principle of checks and balances means* that the Supreme Court should also be able to supervise the Judicial Commission, and vice versa, the Judicial Commission can also supervise the Supreme Court. But in fact, KY as an external supervisor only can supervise MA. In fact, the practice is very far from the Constitutional Court's decision which limits the supervision of the Supreme Court because until now the KY as a temporary commission and institution still supervises the Supreme Court justices.

The supervisory treatment of the Supreme Court is different from the Constitutional Court which does not have an Honorary Council of Constitutional Justices (MKHK), while the Supreme Court has significant differences in terms of

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its supervision, there are internal supervisors (Honorary Council of Judges) and there is also an external supervisor (Judicial Commission) . For the Constitutional Court, until now there is no state institution that has the authority to supervise Constitutional Justices.

In PMK No. 005/PUU-IV/2006 , the Constitutional Court has interpreted the phrase "other authorities in order to maintain and uphold the honor, dignity and behavior of judges" that within certain limits can be interpreted as supervision but the Judicial Commission has no authority to supervise judicial institutions but individual functionaries of judges. Furthermore, the Supreme Court as the perpetrator of judicial and judicial powers under it, along with the Constitutional Court is an independent power (Article 24 of the 1945 Constitution) so that in exercising its justicial authority, the judiciary cannot be supervised by other state institutions.

Contrary to the fact, judges who give decisions in exercising their judicial authority are often interfered with by the Judicial Commission who responds to reports against judges. In fact, the Constitutional Court in its decision has very clearly stated that KY is not an executor of judicial power, but as a *supporting element* or *state auxiliary organ*, assisting and supporting actors of judicial power.

In practice, after the Constitutional Court Decision Number 005/PPU-IV/2006, the Judicial Commission was not authorized to supervise the Supreme Court justices, however, until 2019, according to news from Kompas media, there were 2 (two) Supreme Court justices who were reported to the Judicial Commission against the decision to release judges in the case of the Chief Justice . IBRA Syafruddin Arsyad Temenggung in the BLBI case. So, between theory and practice is very inversely. The constitution which is confirmed by the PMK, it is necessary to amend the constitution so that the principles of state institutions in the constitution become clear and minimize the debate over authority between the Supreme Court and the Judicial Commission, on the other hand, the Supreme Court holds the highest supervisory power but on the other hand, in practice, the Judicial Commission is more dominant in supervising judges.

## CONCLUSION

The gap between *das sollen* and *das sein* is very clear in our state administration practice. In practice, the Judicial Commission uses its supervisory function very closely for judges in the Supreme Court and the judiciary below it. However, supervision in the context of state institutions through the principle of *checks and balances* also has limitations, in the sense of not interfering in as much detail as possible related to the space for an independent and independent judiciary. The nature of the commission, which is a temporary institution, must also obey the law related to the *final and binding decision of the* Constitutional Court in limiting the supervisory authority of the judicial commission. Even though PMK No.

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005/PUU-IV/2006 has clearly stipulated that KY is a *supporting organ*, and is not an agent of judicial power. In *principle, checks and balances* should be carried out by equivalent state institutions. The recommendation that the author recommends is that there is a need for limitation of authority, in particular the affirmation of the principles of state institutions that must exist in the constitution in terms of the principle of *checks and balances* between equal state institutions. In this case, KY, which does not have judicial power, should be a supporting institution ( *supporting organ* ) that does not interfere with the judicial authority of the Supreme Court.

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