

STATUS OF THE JUDICIAL COMMISSION IN THE STATE CONCERNS OF THE REPUBLIC OF INDONESIA REVIEWED FROM THE CONCEPT OF THE TRIAS POLITICAL

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ABSTRACT

This article discusses the position of the Judicial Commission of the Republic of Indonesia in the constitutional system of the Republic of Indonesia in terms of the concept of trias politica. Judging from the concept of trias politica, the Judicial Commission is not included in the scope of the Judiciary authority, but the position of the judicial commission in the constitutional structure of the Republic of Indonesia is as an independent state institution that functions as a supporting institution in one of the dominant institutions in the judicial realm, namely the Supreme Court of the Republic of Indonesia. The existence of the Judicial Commission of the Republic of Indonesia is listed in Article 24 B of the 1945 Constitution of the Republic of Indonesia in the third amendment. This Judicial Commission is a state institution related to Judicial power, but it is not included in the judicial power scope. The Judicial Commission is the agency authorized to propose the appointment of justices and Ad Hoc judges in the Supreme Court to the House of Representatives for approval; maintain and uphold the honor, dignity, and conduct of judges; establish a Code of Ethics and a Code of Conduct for a Judge together with the Supreme Court to maintain and enforce the implementation of a Code of Ethics and a Code of Conduct for a Judge. Related to judicial institutions, their authority is undoubtedly related to the implementation of judicial power.

Keywords:Judicial Commission, State Administration System, Trias Politica.

INTRODUCTION

Indonesia is a state of the law; this stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In carrying out the nation's life and state, the Indonesian state undoubtedly based on applicable legal provisions. Basically, in Indonesia, the country applies Trias Politica in the state administration structure in the State of Indonesia. The concept of trias politica is a concept of the separation of powers in the state structure. Based on the idea of the trias politica, the state divided into three forces, namely executive power, legislative power, and judicial power.

Each state power in the concept of trias politica certainly has a different function but has the same goal: to advance the nation and state. In the constitutional structure of the three forces,

namely executive power, legislative power, and judicial power are specifically related to one another to realize a just and prosperous Indonesian sovereignty, contained in the Preamble of the 1945 Constitution of the Republic of Indonesia. The scope of certain trias politica has their respective duties and functions. However, all forces certainly have a common goal to advance the nation and state.

In Indonesia, there are many state institutions, both state institutions which are in the concept of state power which is divided into three forces as mentioned in the theory of trias politica, as well as other independent state institutions, which of course have specific functions that are independent, free from interference from any party. Related to the judicial authority in Indonesia, there is an institution that is very related to the legal system. The institution is, of course, very closely associated with the supervision of the implementation of the law. However, this institution has a different function from the institution that oversees the implementation of the code in the Republic of Indonesia.

The Judicial Commission Institution has functions and duties that are highly related to the institution of judicial power. However, the institution of the Judicial Commission is an independent state institution. The existence of the Judicial Commission in the State of Indonesia raises several opinions related to whether this judicial commission is an institution that falls within the scope of the judicial power or a separate institution.

This article discusses the position of the judicial commission in the constitutional structure of the Republic of Indonesia, in terms of the concept of trias politica, which separates the three powers in Indonesian state.

METHODOLOGY

This article uses the type of normative research. In normative research, of course, look at the law in terms of positive norms, regarding research approaches using the legal approach. The legal source used is the 1945 Constitution of the Republic of Indonesia as the state constitution, and also the Law of the Republic of Indonesia Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission. The rule of law is used because it is related to the discussion of this article to overcome problems related to the position of the Judicial Commission in the structure of the Indonesian constitution.

LITERATURE REVIEW

The understanding of the State law is rooted in the belief that the power of the state should be run on the basis of good and fair law. Independent judiciary is a universal ideology of the present and future. It is an ideological conception that sparked the revolution that coincided with the flow "*trias politica*". In the modern state system, judicial authority is a branch of organized activities of the state (Umar, 2015).

The concept of Trias Politica is a concept issued by Montesquieu. Montesquieu's Trias Politica distinguishes between three autonomous capabilities. Trias Politica's doctrines more or less influenced the Indonesian constitutional system. But that does not mean that Indonesia uses the Trias Politica doctrine as stated by Montesquieu. The Indonesia Constitution, through several

amendments it can be said that Indonesia is building towards legal doctrine concerning separation of powers (Anthony, 2013).

In the doctrine of separation of powers, an independent judiciary is part of an effort to guarantee freedom and prevent arbitrariness. An independent judicial power is a judicial power that is independent of the influence of governmental powers (executive or legislative), as an effort to guarantee and protect people's freedom from the possibility of arbitrary actions by the government. Thus, the presence of an independent judicial power is no longer determined by the separation of power or distribution of power system, but as a form of a balance in the life of the state namely the realization of the rule of law, guaranteed freedom and control over the course of government. In Indonesia judicial power is regulated in various laws in accordance with the respective judicial environment. With regard to independent judicial power, in Article 1 Paragraph 1 of Law Number 48 of 2009 concerning Judicial Power, provides limits on the scope of independence, namely that judicial power is an independent power to enforce law and justice based on Pancasila and the constitution that the ideals of Indonesia as a rule of law can be realized. Freedom of judicial power is not absolute, because judges in carrying out their duties to uphold law and justice must always rely on Pancasila, the constitution, laws and regulations, as well as the values that live in society, so that the sense of justice of the Indonesian people is always reflected in decisions from the judges (Nasution, 2020).

The separation and balance of the legislative, executive and judicial powers are one of the fundamental doctrines in the theory of the state, legal theory, and the actual functioning of Western societies. Each of these societies has justified and institutionalized its way of following Montesquieu's principles (Mojapelo, 2013).

In Trias Politica theory, emphasis may put on either the separation or on the balance of the three powers. The doctrine of separation of powers means that specific powers, functions, duties, and responsibilities allocated to distinct state institutions with a defined means of competence and jurisdiction (Mojapelo, 2013).

The doctrine of separation of powers means that specific powers, functions, duties, and responsibilities allocated to distinct state institutions with a defined means of competence and jurisdiction (Boella & Torre, 2004). In simple terms, separation of powers calls for the horizontal separation of powers between the legislature, executive, and judiciary for ensuring accountability and transparency in government affairs (Mathebula and Munzhedzi, 2017).

The Judicial Commission is a judicial institution mandated through an amendment to the 1945 Constitution of the State of the Republic of Indonesia to supervise judges. Supervision of judges as bearers of power in the field of justice, is very necessary and important. Which is considering the experience in the pre-reform era, where the executive was very dominant and without adequate supervision. So that past experiences will not be repeated in the environment of the authority in the field of justice. In other words depart from one of the spirit of reform, namely to prevent the existence of executives that are heavily repeated or even transmitted to the heavy judiciary (Nasution, 2020). Judicial commission certainly has a role in the selection of supreme court justices (Million, 2016).

The petitioners requested that the interpretation of the Constitutional Justice is not equated with the definition of a judge who could be supervised by the Judicial Commission because the Constitutional Justice was different from other Judges. The authority of the Judicial

Commission to supervise judges must be declared contrary to the Constitution because the criteria are unclear and excessive. Moreover, in practice the Judicial Commission often examines judges by questioning the contents of decisions, which clearly violate the principles of freedom and independence of judicial power (Mahfud, 2007).

ANALYSIS AND DISCUSSION

In the concept of *trias politica*, there are three separations of power, namely Executive power, Legislative Power, and Judicial Power. This article discusses judicial power. Judicial power is a judicial power. Judicial power is undoubtedly based on the constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads: Judicial power is an independent power to administer justice to enforce law and justice.

Judicial power is undoubtedly related to the element of law in the state, especially about the aspect of justice. The judiciary in the constitutional system is essential to exist, especially in the rule of law, such as the Indonesian state. This judicial institution indeed aims to uphold law and justice in the State of Indonesia.

To support the judiciary in the Indonesian state, an institution called the Judicial Commission formed. This Judicial Commission established with the amendment to the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia on the third amendment.

The existence of Judicial Commission in the Republic of Indonesia regulated in the third amendment to the 1945 Constitution of the Republic of Indonesia, which introduces a new State institution as a supplementary institution which is still within the jurisdiction of the judiciary. The existence of the Judicial Commission regulated in article 24 B 1945 of the Constitution of the Republic of Indonesia. This Judicial Commission is independent that has the authority related to the appointment of Supreme Court Justices and has other jurisdictions in the context of maintaining and upholding the honour, dignity, dignity, and behaviour of judges.

The Judicial Commission is a Commission consisting of a chairman, a deputy chairman who also doubles as a member, and seven members. The membership of the Judicial Commission consists of several elements, namely elements from former judges, from legal practitioners, from academics, and members of the public. The Chair and deputy chair of the Judicial Commission are elected from and by members of the Judicial Commission. The Chair and deputy chairman of the Judicial Commission are appointed and dismissed by the President with the approval of the House of Representatives for a term of 5 years and can re-elect one time. For each vacancy of the membership of the Judicial Commission, three people proposed by the People's Representative Council. The Judicial Commission is a supporting institution or institution that helps in the implementation of judicial power.

The institution of the Judicial Commission is not included in the institutions of power, as mentioned in the concept of *trias politica*, especially in the judiciary. The Judicial Commission is a separate institution that has the duty and function as a support for the judiciary.

Many people interpret that the Judicial Commission of the Republic of Indonesia is an institution that is under Judicial power. The Judicial Commission is not a judicial institution,

because basically this judicial commission is tasked with monitoring a judge's behaviour and also supervising the judge's action, receiving a report relating to violations of the Code of Ethics and the Code of Conduct of Judges from the public, conducting a verification. Conduct a clarification, Investigate a report related to alleged violations of the Code of Ethics and the Code of Conduct in a closed manner. Decided whether or not associated with an alleged description about breaches the Code of Ethics and the Code of Conduct for Judge. It took a legal step or other steps against an individual or group of people, or a legal entity that demeans the honour of the judge and the dignity of the judge.

The power of the judiciary in the country of Indonesia found in the Supreme Court and Constitutional Court. The Judicial Commission not included in the Judicial power in the State of Indonesia. However, this Judicial Commission is a supporting institution in the judiciary. Yet, on the other hand, this Judicial Commission institution certainly has limitations in terms of judicial oversight. The Judicial Commission is only authorized to supervise judges under the Supreme Court.

Regarding the Constitutional Court judges of the Republic of Indonesia, the Judicial Commission does not have the authority to supervise judges under the Constitutional Court. Through the Decision of the Constitutional Court Number: 005/PUU-IV/2006, some jurisdictions in the supervision of judges and judges of the Constitutional Court do not apply.

Under the supervision of the Judicial Commission as an oversight body is within the scope of the Supreme Court judiciary. Judicial institutions under the Supreme Court of the Republic of Indonesia include the General Courts Environment, the Religious Courts Environment, the State Administrative Courts Environment, and the Military Courts Environment. In contrast, the scope of justice in the Constitutional Court is not included in the supervisory authority by the Judicial Commission.

The Judicial Commission is indeed an institution that helps in carrying out the duties of the judiciary, but as a State institution that becomes an "*external supervisor*." The Judicial Commission Institute is indeed devoted to overseeing the bench, but only in the legal environment under the Supreme Court.

The Judicial Commission in Indonesia is an independent state institution that is independent and, in the exercise of its authority, is free from interference or influence of other powers. However, the Judicial Commission's institution is not included in the power structure, as mentioned in the concept of *trias politica*.

This Judicial Commission is an independent institution that is highly related to the institution of power, especially the judiciary. Still, the judicial commission is not an institution in the legal realm. The judicial commission is only a supporting institution of the judicial power institution, namely specifically only in the field of the Supreme Court. But, the Constitutional Court has no attachment-related Judge supervision at the Constitutional Court by the Judicial Commission (Kortmann, 1997).

Based on the provisions of Article 13 of the Law of the Republic of Indonesia Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, the Judicial Commission has the authority to, among other things, propose the appointment of justices and ad hoc judges in the Supreme Court to the House of Representatives to get approval; maintain and uphold the honour, dignity, and conduct of judges; establish a

Code of Ethics and a Code of Conduct for a Judge together with the Supreme Court to maintain and enforce the implementation of a Code of Ethics and a Code of Conduct for a Judge (Leeuwen & Groot, 2003).

From the authority of the Judicial Commission mentioned in Article 13 of the Law of the Republic of Indonesia Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, it appears that the Judicial Commission is not an institution that is under judicial power, because basically, it is within the institution the judicial power of the institution has the authority to decide a case, and also certainly issues legal products relating to law enforcement and justice in the State of Indonesia.

The judiciary has a function as an institution carrying out judicial power where the purpose undoubtedly located in 2 institutions in the realm of Judicial power, namely the Supreme Court and also the Constitutional Court.

Whereas related to the Judicial Commission about judicial power, the Judicial Commission is an independent state institution that is not included in the judicial power, because the Judicial Commission does not have the authority related to the administration of judicial power. Which has the power are the Supreme Court and the Constitutional Court. The Judicial Commission is only as a supporting institution for the legal authority. However, the jurisdiction of the Judicial Commission itself is limited only to the legal environment within the Supreme Court, which includes the General Judicial Environment, the Religious Judicial Environment, the State Administrative Judicial Environment, and the Military Judicial Environment.

CONCLUSIONS

The concept of trias politica is related to the separation of powers. The idea also used in the State of Indonesia, as the rule of law and a democratic state based on popular sovereignty. In the power that is in the concept of trias politica, the judicial authority must indeed maintain in a legal state such as Indonesia. The Judicial Institution is an institution whose job is to oversee the implementation of laws or laws. The Judiciary Institution is an institution that functions to exercise judicial power in the State of Indonesia. Indonesian state institutions that included in the scope of Judicial authorities include the Supreme Court and the Constitutional Court, while the Judicial Commission is not under judicial control. However, the Judicial Commission is only an independent supporting institution of Judicial Power. The Judicial Commission is an independent institution that serves as an external supervisor in the scope of the judiciary. However, the authority related to its duties is limited to the Supreme Court, the Constitutional Court not included in the supervision of the Judicial Commission of the Republic of Indonesia. The conclusion of this article, in terms of the trias politica concept, Judicial Commission is not included in the scope of the Judiciary power. However, the judicial commission's position in the Republic of Indonesia's constitutional structure is an independent state institution that functions as a supporting institution in one of the dominant institutions in the judicial realm, namely the Supreme Court Republic of Indonesia.

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