

Comparison Study of Indonesia and France Judicial Commission Model



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ABSTRACT: The study aimed to examine the comparative study of the Indonesian State Judicial Commission and the French State Judicial Commission. In the analysis, the normative analysis method is used by observing inferior information because it emphasizes more on research from various legal books, journals and previous research literature. The results of this study are the Judicial Commission even though its position is supporting to the judicial authority body. The authority of the Judicial Commission in court is not as one who decides on a case but as an enforcement agency for ethical norms. In the field of judges, the Judicial Commission is not involved in terms of organization, personnel, administration and finance. Related to this, the Judicial Commission is different from those in European countries, for example France. The Judicial Commission in France (Conseil Supérieur de la Magistrature or CSM) has authority in specific areas based on technical policies and policy-making on the judicial aspect. The French Judicial Commission as well as in Europe usually has authority regarding agency management, calculation and administration of justice including in carrying out advertisements, transfers, recruitment and distributing rewards to judges. The authority of the Supreme Court is an institution that carries out the functions of the judiciary and its duties are related to adjudicating and not dealing with matters related to the administration and organization of justice.

KEYWORDS: Judicial Commission, Indonesia, France

I. INTRODUCTION

Unfinished work on the judiciary to build a system that is conducive to the creation of a clean, competent, and effective court that is free and impartial to anybody is the problem, which is caused by weaknesses in law enforcement. A number of initiatives have also been made to enhance Indonesia's judicial system, one of which being the creation of the "Judicial Commission." Through the Third Amendment The 1945 Constitution of the Republic of Indonesia (Article 24B) dan Ratification of Law Number 22 of 2004 concerning the Judicial Commission jo. Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commissions (Assiddiqie, 2016).

The Judicial Commission is a logical consequence of the judicial power which is under the Supreme Court, which prior to the establishment of the Judicial Commission (Ahmad, 2021; Ardhanariswari, et al., 2021). The judicial power had the potential to end up being monopolized by the large number of bribery cases that occurred in a judge. The inability of the Supreme Court to deal with administrative, membership, financial, and organizational challenges in the court system is also another logical consequence that gave birth to the Judicial Commission (Mancini, 2018).

Of course, in order to be able to keep an eye on judges acting within the purview of the Supreme Court, there must be a body independent from the Supreme Court. The Judicial Commission is a separate governmental agency in Indonesia that is governed by the 1945 Constitution because it is thought to be extremely significant in attempts to safeguard the honor, nobility, and demeanor of judges. It is a restriction on the establishment and development of a democratic system that will be created in accordance with the constitutional system that is currently in place in this country, specifically based on the 1945 Constitution, that the rule of law can actually be implemented as it should be. Contrarily, democracy will never be able to survive, grow, and flourish if the rule of law is not founded on enforcement with a number of elements, such as aspects of honor, authority, and reliability (Krygier, 2016; Scheppele, et al., 2021; Weingast, 2013).

Therefore, a distinct, independent body is necessary to successfully carry out the judge's supervisory process due to the significance of efforts to defend and protect the judge's honor, dignity, and behavior (Heumann, 2020). The effectiveness of the internal control system, including the honorary panel of judges, in performing oversight has not yet been demonstrated (Roussy &

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Brivot, 2016. Consequently, the Judicial Commission was constituted as a separate organization within the context of amending the 1945 Constitution.

In order to create a Judicial Commission with the goal of creating a more effective justice system, there are a number of principles and reasons that underlie the development of a Judicial Commission institution in many different countries. Among other things, the Judicial Commission holds a significant position (Nugent & Rhinard, 2016; Nugent & Rhinard, 2019). First, to ensure the judiciary's independence. Second, to choose qualified candidates for the position of judge, to offer judges top-notch education, to carry out additional duties including improving jury discipline, jury selection, expert judge training, assessing judge competency, and to begin disseminating the rules of the judge's code of ethics. Third, the Judicial Commission assumes executive responsibility for the management (supervision) of the judiciary. That is what is done in Southern European countries, one of which is France.

Based on the three strong reasons above, the aims of this research to examine the comparative study of the Indonesian State Judicial Commission and the French State Judicial Commission. The orientation of the discussion and the approach used in the discussion will be formulated to answer questions regarding the authority of the Indonesian state judicial commission and the French state and the comparison of the authority of the Indonesian state judicial commission and the French state judicial commission

II. METHODS

Normative legal research with an Act approach; futuristic and comparison. The primary legal material used is the 1945 Constitution of the Republic of Indonesia, the French Constitution. Secondary Legal Materials, are legal materials that provide clarity on primary raw materials, secondary legal materials include books or literature, electronic books or e-books, journals, papers, articles from websites that can be trusted from the internet, and other related scientific works. by writing this scientific work.

III. RESULT AND DISCUSSION

Judicial Commission in Indonesian

The Judicial Commission's position is very important. They share an equal structural standing with the Supreme Court and the Constitutional Court. Though structurally equivalent to the Supreme Court and the Constitutional Court, it should be recognized that their job is auxiliary to the institution that wields the judicial power. The Judicial Commission does not exercise judicial power, despite the fact that this is one of its functions. The Judicial Commission is an organization that upholds ethical standards rather than upholding the law (code of law).

Because the judiciary and judicial institutions as a whole are outside the purview of this committee, which solely deals with concerns of honor, dignity, and judge behavior. It genuinely exists because of the judge's own internal environment, namely because of how the honorary panel of judges was conceived in the legal community and at the Supreme Court. That was the role of the ethical auditor in the past. It is within However, to further guarantee the effectiveness of its work in the context of overseeing the behavior of judges, its function is drawn out to become an external auditor whose position is made equal to that of the supervisor.

Although structurally its position is equal to the Supreme Court and also with Constitutional Court, but because of the nature of its special and auxiliary function. Position the protocol does not need to be treated the same as the Supreme Court and the Constitutional Court as well as the People's Representative Council of Indonesia, People's Consultative Assembly, Regional Representative Council of Indonesia and The Audit Board of the Republic of Indonesia. Because the Judicial Commission itself is not a state institution that carries out the functions of state power directly. Commission Judicial is not a judicial, executive, let alone legislative body. This commission only functions to support the upholding of honor, nobility and dignity the behavior of judges as law enforcement officials and institutions that carry out the functions of judicial power (Asshiddiqie, 2009)

The Judicial Commission solely has concerns about the integrity, dignity, and conduct of judges. The existence of this commission institution can be attributed to the judges' own internal environment, which is the result of the creation of an honorary panel of judges within the context of the Supreme Court and the judicial profession. Those who are a part of their functions are pulled out to become external auditors whose position is made equivalent to that of their supervisors in order to better ensure the efficacy of their job in the context of supervising the behavior of judges.

The State of Indonesia, which is the State of Indonesia, however, in its journey there are still many deviant acts committed by the public and law enforcement officials, including those committed by judges by accepting bribes from litigants so that the case is won. The outbreak of bribery cases against judges has increasingly given a negative image to the judicial institution. Article 24A paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the candidate for chief justice shall be proposed by

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the Judicial Commission to the House of Representatives for approval and then appointed as supreme justice by the President. Article 24B of the 1945 Constitution of the Republic of Indonesia stipulates that.

- 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 protecting and upholding honor. The nobility of the dignity and behavior of judges.
- 2) Members of the judicial commission must have knowledge and experience in the field of law and have integrity and personality that is beyond reproach.
- 3) Members of the judicial commission are appointed and dismissed by the president with the approval of the People's Representative Council of Indonesia.
- 4) The composition, position and membership of the judicial commission shall be regulated by law.

Of the two duties and authorities, the Judicial Commission clearly supports the implementation of the duties of judicial power, which at its peak is held by the Supreme Court. The first task concerns the recruitment of judges great, and the second with regard to the formation of judges. In an effort to maintain and uphold honor, nobility, and the conduct of judges. Honor, nobility and conduct judges are very important to be maintained and enforced so that the judicial system of judicial power as a whole can be trusted. Democracy will not grow and develop without balance and controlled by the rule of law which is based on a system of judicial power that can be trusted (Diamond, 2015; Kmezić, 2021). To maintain and build trust or confidence building, an institution is needed who carry out this sublime endeavor.

The Judicial Commission institution was not formed to fight the judiciary or the judiciary, but the Judicial Commission was built with the aim of eradicating the judicial mafia, a kind of perpetrators of mistakes and law violations that must be eradicated by law enforcers. The Judicial Commission is not a law enforcement agency, but rather an ethical code enforcement agency and attitudes that are not in accordance with the legal norms of judges from ethical code standards before what is violated grows into a violation of the law.

Starting from the way of checking and supervising which has been tried to be very meaningful so that the judges can become advocates so they can justify themselves and avoid bad attitudes that can lead to the formation of violations of the law. If an attitude is found that causes a violation of the law, the Judicial Commission can pass it on to law enforcement officers so that it can be tried according to the following legal procedures. The Judicial Commission, which is outside the form of the Supreme Council, is considered very important so that each method of supervision can be truly balanced for the needs of developing a clean, efficient and efficient justice system. Whatever form of supervision and implementation the Judicial Commission attempts, it certainly cannot violate the independence of the judiciary. Therefore, the Judicial Commission's supervisory authority is limited to non-judicial situations.

The Judicial Commission is likened to "like a flower that wilts before it blooms", because on August 16, 2006, the authority of this institution 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 cancellation of some articles relating to the supervisory authority of judges, supreme justices and constitutional judges contained in Law no. 22 of 2004 concerning the Judicial Commission. This means that the Judicial Commission does not have the authority to supervise the constitutional court judges. After the decision of the Constitutional Court was issued which aborted the Judicial Commission's authority regarding supervision of Constitutional Court judges, the Judicial Commission experienced quite a complicated problem. The existence of the Judicial Commission can be likened to a complement to sufferers for other high state institutions (Sutiyoso, 2011).

The Judicial Commission's existence is predicated on the notion that judges play a crucial role in the fight for justice and the rule of law. Consequently, it is deemed necessary to establish an outside institution from The Supreme Court has a responsibility to exercise independent judge supervision. A highly critical issue to help attempts to keep a fair judiciary is the nobility as well as the conduct of all judges. denying the importance of judges' oversight and dismissing it Judges step back in creating the top of the judiciary as an institution with clean principles administration and good governance. External institutions like the Judicial Commission, which theoretically have responsibility over this topic, are under the supervision of judges. Supervision of the behavior of judges is absolute and is a fixed price that cannot be negotiated (Kusuma, et al., 2020)

Other authorities of the judicial commission are regulated in Article 13 of Law Number 18 of 2011 concerning amendments to Law Number 22 of 2004 concerning Judicial Commission which reads that the judicial commission has the authority to:

- 1) Propose the appointment of chief justices and ad hoc judges at the supreme court to the House of Representatives for approval;
- 2) Maintain and uphold the honor, nobility and behavior of judges;
- 3) Establish a code of ethics and/or code of conduct for judges together with the Supreme Court;
- 4) Maintain and enforce the implementation of the code of ethics and or code of conduct of judges.

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In carrying out its obligations and authorities, the Judicial Commission also performs similar duties side by side with the Supreme Court and the Constitutional Court, not with the authorities or the People's Representative Body such as the People's Representative Body. The Judicial Commission in carrying out its obligations and powers should be closer to the Supreme Court and the Constitutional Council, not to the rulers or parliament. In the provisions of Article 2 of Law No. 22 of 2004 concerning the Judicial Commission which is a state agency that has an independent character and is free from interference in the exercise of its authority or due to other authorities or sovereignty.

Judicial Commission in France

In France, only offenses (punishable by imprisonment for five years or more) that can be tried in the Courts of Assize are required to undergo an examination by the examining magistrate, known as the judge instruction. These only make up a tiny portion of criminal cases. The prosecutor has the ability to order a judicial examination for delits, which are punishable by jail for two months to five years and are tried in the Correctional Court, but he rarely does. Only 14.5% of all crimes and misdemeanors were referred to a judge's instruction in 1971. The prosecutor's hesitation to request court examination of delits, however, only partially explains this result. Even in criminal cases, there might not be a court hearing; the prosecutor might dismiss any aggravating factors and classify the offense as a "lesser included" crime. A felony like theft committed at night (or in a home or with a weapon) may be reduced to the offense of simple theft by this process, known as "correctionalization."

When the American prosecution decides to reduce the number or severity of offenses accused, he typically offers a variety of justifications. The French prosecutor does the same. Even though "correctionalization," which goes beyond the prosecutorial discretion allowed by the "expediency" concept, is frequently described as extralegal and is tolerated by authorities at all levels, it happens frequently. Furthermore, the goal of "correctionalization" is to avoid the judicial review, regardless of the motivation. The prosecutor typically decides that there is no need for the judge to participate and brings the matter directly to trial, though "correctionalized" cases may occasionally still entail a judicial examination (Berger, 2014; Huber, 2017).

The French general judiciary is made up of a sizable number of judicial institutions. The administration of universal justice is governed by the Code Organization Judiciary. The Tribunal d'Instance (comparable to a cantonal or county court), which considers small claims, has the power to administer justice in civil proceedings at first instance. Other civil cases can be heard in the Tribunal de Grande Instance, which is comparable to a district court. You can appeal civil cases to the Court d'Appel (equivalent to the Court of Appeals). Paris-based Court de Cassation, which performs the duties of the court of cassation (equivalent to the Supreme Court) (Grant, 2022; Bjorge, E. (2014).

There are numerous divisions and levels that are connected to the issue with the administration of justice. Despite having different names, the administration of criminal courts is, in theory, the same as that of civil courts. The Tribunal de Police has the authority to review offenses in courts of first instance, whereas the Tribunal Correctionnel has the authority to review all offences. There is a specific court process at the first level for Cour d'assises that is used for investigations of serious offenses (crimes) (Assises Court). The Chambres d'Apple Correctionnelles handle appeals in criminal proceedings (criminal courts of appeal). The Paris Cour de Cassation serves as a court of cassation for criminal proceedings as well (Biland & Steinmetz, 2017)

The Judicial Commission on the legal system in France is called *Conseil Supérieur de la Magistrature*. *Conseil Siperieur de la Magistrature* (CSM) (Garapon & Epineuse, 2012; Vauchez, 2018). The primary role of CSM is to act as a check on the President's authority to select judges and the Minister of Justice's authority to appoint magistrates and oversee the judiciary (Coman, 2014). Certain appointments fall under the purview of the French President, while others are made with the consent of the government after consideration by the Minister of Justice.

CSM has the power to carefully review the selection and sentencing of judges. It is this installation of a relatively strict framework for governing the independence of judges and courts that makes the French system unique. Judges in France do not enjoy the same standing as the majority of their counterparts who work for governments outside France. There are many levels and strict disciplinary rules (Doyle, 2018). Courts are not given much power. In terms of responsibilities, organizational ties and management of individual courts, this highly centralized system was disadvantageous.

Comparison of the Authority of the Judicial Commission in Indonesia and France

The different configurations of judicial commissions can be influenced by a variety of factors, including historical, sociological, and cultural factors. The nomenclature or names of constitutional institutions in France are governed by the French Constitution, and arrangements regarding French judicial commissions are under the jurisdiction of the Judiciary. The constitution actually provides additional protection for the independence of the judiciary and the independence of law enforcement and administration of justice.

The 1945 Constitution establishes the Judicial Commission as an entity tasked with overseeing the behavior of judges towards judges at all levels, including judges at the District Court, High Court and Supreme Court. In the past, before the Constitutional

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Court ruled that the Judicial Commission in Indonesia could supervise the behavior of judges up to the judges of the Constitutional Court. However, after the Constitutional Court's decision abolished the Judicial Commission's authority to supervise the behavior of Constitutional Court judges. The judges recognize that Indonesia is a country with a strong commitment to the rule of law, they play an important role in supporting law enforcement initiatives. When law begins to move from *das sein* to *das sollen*, judges function as living interpreters. He does not only interpret rules that are only written but is also expected to be able to explore the laws that apply in society.

A very striking difference between the position of the two Judicial Commission institutions in Indonesia and France is the position of the institution. The Judicial Commission in Indonesia is an independent institution, while the Judicial Commission in France is under the judiciary. According to the author, the location of the Judicial Commission which is under the judiciary can result in decisions made by the institution being different from the institution which is located as an independent and independent institution so that the supervisory function carried out by the Judicial Commission will not be bound by the institution that oversees it.

IV. CONCLUSIONS

Functionally, the Indonesian Judicial Commission has steadfastly backed the execution of the judicial power's obligations, which were formerly carried out and managed by the Supreme Court. The public can have confidence in the judicial system of judicial power as a whole if the first task—hiring Supreme Court justices—is completed and the second—developing judges—is done with the intention of safeguarding the honor, dignity, and conduct of judges. A different organization, namely the creation of a Judicial Commission, is required to carry out these measures in order to preserve and restore that trust.

This institution does not affect institutions associated to the judiciary or judicial power on an institutional level; rather, it only governs matters relating to the honor, dignity, and conduct of judges. Of course, this is not the same as the French Judicial Commission (Conseil Supérieur de la Magistrature/CSM). In comparison to Indonesia, the Judicial Commission in southern Europe, which is represented by France, has more power. In France, the Judicial Commission has power over judge career decisions, recruitment, permanent education, periodic training, rotation, transfer, and promotion, as well as punishment enforcement (code of ethics).

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