Resolution of Judge's Ethical Violations by the Judicial Honorary Council in the Perspective of the Joint Regulation of the Judicial Commission and the Supreme Court

M. Martindo Merta[1], Febrian[2], Iza Rumestan[3*]

[1)] muhammadmartindomerta@gmail.com, [2)] febrian_zen@yahoo.com.sg, [3)] izarumesten@gmail.com

[1-3]Faculty of Law, Sriwijaya University, Indonesia

Article Info

Received: 2024-12-21
Revised: 2025-03-15
Accepted:2025-03-30

Keywords:
Judicial Honorary Council; Judicial Commission; Judicial Ethics; Supervision; Indonesia; Code of Ethics

Abstract

This paper examines the role of the Judicial Honorary Council (MKH) in supervising judges' ethics in Indonesia, within the framework of the joint regulation between the Judicial Commission and the Supreme Court. The establishment of the Judicial Commission in 1999 marked a crucial step in addressing the need for independent external supervision of the judiciary, aimed at ensuring a transparent, fair, and professional judicial system. The paper highlights the significant role of the Judicial Commission in monitoring judges' behavior, proposing the appointment of judges, and enforcing the Code of Ethics and Judicial Conduct Guidelines. However, despite its mandate, the Judicial Commission's recommendations often face non-compliance from the Supreme Court, particularly regarding technical judicial violations. The Judicial Honorary Council, as part of the Supreme Court's internal supervisory mechanism, plays a pivotal role in processing violations committed by judges. This research identifies the challenges faced by MKH in enforcing the code of ethics, such as indecisiveness, potential conflicts of interest, and inadequate follow-up on recommendations. These challenges undermine the effectiveness of the supervision system, highlighting the need for improved coordination and clearer delineation of authority between the Judicial Commission and the Supreme Court. The paper also emphasizes the importance of strengthening the collaboration between these two institutions to ensure a consistent and effective judicial supervision system. Through an in-depth legal analysis, the study concludes that enhancing transparency, accountability, and objectivity in the supervision process is essential for fostering public trust in the Indonesian judicial system.

1. Introduction

In 1968, the idea of establishing the Judge's Research Advisory Council (MPPH) emerged, aiming to provide advice on decisions related to the appointment, promotion, transfer, and dismissal of judges. However, this idea could not be accommodated in the legislative discussions on the Judicial Power Law at that time. It was not until several decades later, in 1998, that the idea resurfaced as an increasingly urgent discourse, alongside the need for independent external supervision, particularly to ensure a fair, clean, transparent, and professional judiciary (Sekretariat Jenderal Komisi Yudisial Republik indonesia, 2010).

The creation of the Judicial Commission in 1999 marked a significant development in meeting this requirement. The Judicial Commission was formed as an autonomous external oversight body in accordance with Law No. 35 of 1999, which modified the Judicial Power Law. The existence of the Judicial Commission played a vital role in creating a mechanism for oversight and balance in the judicial system, especially considering the Supreme Court's predominant influence over judicial affairs in Indonesia. The establishment of this entity aimed to prevent the Supreme Court from gaining too much power and to guarantee impartial monitoring of judges (Sutiyoso, 2011).

The modification of Indonesia's 1945 Constitution between 1999 to 2002 had an impact on the country's judiciary by creating the Constitutional Court and the Judicial Commission as autonomous entities of the state. According to Article 24B of the 1945 Constitution, the Judicial Commission has a crucial responsibility in protecting and preserving the reputation and respect of judges. Its role is to uphold the honesty, trustworthiness, and autonomy of judges in order to guarantee that the legal system functions justly and openly (Suparto, 2018). The Judiciary Commission is tasked with suggesting judges for appointment, overseeing their actions, and creating and implementing ethical standards and conduct guidelines with the cooperation of the Supreme Court (Mulkan et al., 2023).

The Judicial Commission, as an independent institution, is regulated by Law No. 18 of 2011, which emphasizes that this body operates free from any external interference in the exercise of its authority. Independence, in this context, means that the Judicial Commission operates independently, without external influence from other powers. The existence of the Judicial Commission is expected to provide more effective supervision over judges, preventing abuse of power or unjust judicial practices that might occur if supervision were solely internal within the Supreme Court (Siahaan et al., 2024).

The Judicial Commission plays a crucial part in overseeing the conduct of judges, collecting complaints about breaches of ethical standards, and conducting thorough investigations into these complaints. Despite having the ability to suggest penalties for judges found guilty of ethical violations, the Judicial Commission's influence is restricted to making recommendations and does not extend to directly enforcing sanctions. Nevertheless, the recommendations put forth by the Judicial Commission are frequently disregarded by the Supreme Court, especially in instances where the violations pertain to technicalities in judicial procedures (Illiyina, 2016).

The significance of the role of the Judicial Commission is evident in its power to uphold the esteem, respect, and conduct of judges. According to Article 13 of Law No. 18 of 2011, the Judicial Commission is authorised to carry out external oversight of judges, which includes suggesting the selection of judges, observing their conduct, and setting ethical guidelines. Even though the Supreme Court also internally supervises judges' behaviour, the existence of the Judicial Commission is essential in ensuring a transparent and impartial oversight process, free from any possibility of abuse of power.

The creation of the Judicial Honorary Council (also known as MKH) serves as a means of overseeing the conduct of judges, forming part of the oversight efforts carried out by the Supreme Court in cooperation with the Judicial Commission. The MKH is crucial in upholding the autonomy of judges and preventing biased application of ethical standards. It is responsible for addressing misconduct by judges, including those serving in the Supreme Court, senior judges, and temporary judges, who are believed to have breached ethical rules or relevant laws.

The supervision mechanism conducted by the Supreme Court through the Judicial Honorary Council utilizes a monitoring system that is both preventive and repressive. This supervision is carried out continuously to ensure that judges' duties comply with applicable laws and regulations. The system includes direct supervision, such as periodic inspections, and indirect supervision, which involves assessing reports and information from both internal and external sources (Permana, 2014).

Nevertheless, the oversight conducted by the Judicial Commission and the Supreme Court frequently faces challenges when it comes to penalizing judges who breach ethical standards. Many recommendations are not followed up by the Supreme Court, especially those related to judicial technical violations. This situation leads to debates over the authority between the Judicial Commission and the Supreme Court, ultimately hindering efforts to enforce the code of ethics

consistently.

Furthermore, differing views on the object of supervision, such as technical judicial violations being deemed outside the jurisdiction of the Judicial Commission, also pose an obstacle. Despite these challenges, the Judicial Commission continues to fulfill its duties by providing recommendations regarding ethical violations and judges' behavior, although the outcomes are often disappointing. Therefore, further studies are needed on the existence of the Judicial Honorary Council in the perspective of the joint regulation between the Judicial Commission and the Supreme Court to ensure that the supervision of judges' behavior is carried out effectively and sustainably.

Despite the complementary roles of the Judicial Commission and the Supreme Court in supervising judges, significant barriers remain in the implementation of this supervision. One of the main challenges is the lack of commitment in following up on recommendations issued by the Judicial Commission, leading to the ineffectiveness of imposing sanctions on judges who violate the code of ethics. In this context, the role of the Judicial Honorary Council as an internal forum of the Supreme Court can also be questioned, given the potential for conflicts of interest in decision-making. This further complicates the implementation of an objective and transparent supervision system, which is crucial for establishing a fair judicial system that is trusted by the public. Therefore, a comprehensive evaluation of the existing supervision mechanism is required, along with efforts to strengthen collaboration between the Judicial Commission and the Supreme Court to ensure the continuity and effectiveness of supervision over judges' behavior in Indonesia.

2. Research Method

The approach taken in this research is a normative juridical, as outlined by Muhammad (2004). This approach focuses on examining legal norms within different laws and regulations, specifically the Joint Regulation of the Judicial Commission and the Supreme Court regarding dealing with ethical breaches by judges. The data collection process involves conducting library research to study primary legal materials like laws, joint regulations, and decisions made by the Judicial Honorary Council. Additionally, secondary legal materials such as books, academic journals, and related literature are also reviewed. The analytical method employed in this study is descriptive qualitative analysis (Ibrahim, 2006), by interpreting the data systematically to explain the resolution of ethical violations by the Judicial Honorary Council from the perspective of the joint regulations. This study also conducts a comparative analysis of the practices and challenges faced in the implementation of external supervision by the Judicial Commission and internal supervision by the Supreme Court to provide effective recommendations

for improving the judicial supervision system in Indonesia.

3. Results and Discussion

The Role of the Judicial Honorary Council in Supervising Judges

The Judicial Commission acts as an autonomous external oversight body, aiming to protect the reputation, respect, and honesty of judges. It is crucial for ensuring a system of checks and balances in the judiciary to prevent the Supreme Court from becoming too powerful. According to Article 24B of the 1945 Constitution and Law No. 18 of 2011, the Judicial Commission is responsible for monitoring judges' conduct, which includes receiving complaints of ethical misconduct, carrying out assessments, investigations, and suggesting penalties. However, in practice, the recommendations from the Judicial Commission are often not followed up by the Supreme Court, particularly in cases categorized as technical judicial violations. This issue highlights the importance of better coordination and clearer definition of roles between the Judicial Commission and the Supreme Court to guarantee that the monitoring of judges is efficient and impartial (Permana, 2014).

The Judicial Commission operates independently, without interference from external parties, as stipulated in Law No. 18 of 2011. As an independent institution, the Judicial Commission is tasked with supervising judges' behavior, receiving reports of ethical violations, and verifying and investigating these reports. The Judicial Commission holds the power to suggest penalties for judges who breach ethical standards. Nevertheless, the Supreme Court frequently fails to act on the recommendations put forward by the Judicial Commission, particularly in cases of minor judicial infractions (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2016).

Besides the Judicial Commission, the Supreme Court holds the power to oversee judges' conduct. This oversight is carried out by the Judicial Honorary Council (MKH), which handles cases of judges who are believed to have breached the code of ethics or relevant regulations. The Judicial Honorary Council plays a crucial part in upholding judges' autonomy and deterring selective application of the code of ethics. By using this system, the Supreme Court guarantees that judges fulfil their responsibilities in line with the relevant regulations (Kalalo, 2014).

The Judicial Honorary Council uses a monitoring mechanism that is both preventive and repressive. Preventive supervision is carried out through periodic inspections, while repressive supervision involves evaluating reports of violations from both internal and external sources. However, this supervision often faces challenges, particularly regarding the lack of decisiveness in enforcing sanctions

against judges who violate the code of ethics.

Challenges Faced by the Judicial Honorary Council in Supervising Judges' Ethics

The Judicial Honorary Council (MKH) serves to process judges suspected of violating the code of ethics, using both preventive approaches through periodic inspections and repressive approaches through handling violations reported from both internal and external sources. However, the implementation of MKH supervision often faces serious obstacles, such as indecisiveness and the potential for conflicts of interest in decision-making. These issues complicate efforts to enforce the code of ethics transparently and independently. Therefore, improvements in the operational mechanisms of MKH are necessary, including strengthening transparency and accountability, and ensuring that decisions made have clear and effective legal force. Additionally, strengthening the collaboration between the Judicial Commission and the Supreme Court should continue to ensure that the process of resolving judges' ethical violations through MKH can proceed consistently, decisively, and fairly (Ishak, 2016).

Although supervision over judges' behavior is carried out by both the Judicial Commission and the Supreme Court, there are obstacles in the enforcement of sanctions. One of the main barriers is the indecisiveness in following up on recommendations issued by the Judicial Commission. This leads to the ineffectiveness of enforcing sanctions against judges who violate the code of ethics, ultimately affecting the overall effectiveness of the supervision system (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2016).

Differences in views between the Judicial Commission and the Supreme Court regarding the object of supervision are also an obstacle. The Judicial Commission often considers that technical judicial violations should be within the Supreme Court's authority, while the Supreme Court tends to view such violations as internal matters that do not need to be handled by the Judicial Commission. This difference complicates efforts to maintain consistency in enforcing the judges' code of ethics in Indonesia.

The Judicial Honorary Council plays a crucial role in this process as it is the internal forum tasked with processing violations committed by judges. However, the potential for conflicts of interest in decision-making may affect the objectivity and transparency of the process. This adds challenges in creating supervision that is genuinely independent and free from political or power influence.

To enhance the effectiveness of supervision over judges, it is important for the Judicial Commission and the Supreme Court to strengthen their collaboration. Both institutions must work together more coordinately in executing their supervisory

duties so that Indonesia's judicial system operates better and is trusted by the public. One step that can be taken is strengthening transparency in the supervision process and the enforcement of the code of ethics.

Additionally, further studies are needed on the effectiveness of the Judicial Honorary Council in performing its duties, particularly in handling ethical violations by judges. A comprehensive evaluation of the existing supervision mechanisms can provide a better understanding of how these two institutions can complement each other and ensure that supervision over judges' behavior is carried out more effectively and sustainably.

One step that should be considered is reducing the potential for conflicts of interest in the supervision process. This can be achieved by introducing more transparent and accountable supervision mechanisms, ensuring that the decisions made by the Judicial Honorary Council are not influenced by external or internal interests that could undermine objectivity.

The Judicial Commission and the Supreme Court must also pay attention to the importance of strengthening human resources in supervision. Training and education for supervisory personnel in both the Judicial Commission and the Supreme Court can improve competence and the effectiveness of supervision over judges. This would help minimize ethical violations by judges, making Indonesia's judicial system fairer and more trustworthy.

Supervision conducted by the Judicial Commission and the Supreme Court should focus more on preventive efforts, where judges are given clear understanding of the code of ethics and the consequences of potential violations. Furthermore, there should be an increased awareness of the importance of integrity in carrying out judicial duties to maintain public trust in the judicial system. With better collaboration between the Judicial Commission and the Supreme Court, as well as strengthened supervision mechanisms, Indonesia's judicial system is expected to continue progressing toward being more transparent, just, and credible. This will strengthen public trust in the judicial system and make Indonesia a country with a reliable legal system (Suparto, 2018).

As part of efforts to improve supervision over judges, the resolution of ethical violations by judges through the Judicial Honorary Council (MKH) in the perspective of the joint regulation of the Judicial Commission and the Supreme Court is highly relevant. In this regard, the MKH has the authority to process violations committed by judges, whether related to the violation of the code of ethics or other applicable regulations. However, the biggest challenge lies in the implementation of decisions and enforcement of sanctions, which often do not align with the recommendations issued by the Judicial Commission (Siahaan et al., 2024). This highlights gaps in coordination and integration of roles between these

two institutions, which should support each other to ensure that ethical violations by judges are resolved effectively. With clearer joint regulations and closer cooperation between the Judicial Commission and the Supreme Court, the process of resolving ethical violations by judges can become more structured and consistent (Ishak, 2016).

Resolving ethical violations by the Judicial Honorary Council also requires reform in the supervision and sanction enforcement mechanisms. The joint regulations between the Judicial Commission and the Supreme Court must ensure that decisions made by the MKH have stronger legal force and provide legal certainty for judges found to have violated the code of ethics. In this context, the Supreme Court's commitment to following up on the Judicial Commission's recommendations is crucial to ensure that ethical violations by judges do not go unpunished. Furthermore, improvements in transparency and accountability in the supervision process are essential to ensure that Indonesia's judicial system remains trustworthy and delivers the fairest justice.

4. Conclusion

Resolving ethical breaches by judges through the Judicial Honorary Council (MKH) within the framework of collaboration between the Judicial Commission and the Supreme Court is crucial for upholding the integrity, independence, and trustworthiness of judges in Indonesia. However, in reality, this process encounters challenges, particularly relating to the implementation of recommendations from the Judicial Commission by the Supreme Court. Disagreements over the scope of oversight, particularly concerning technical judicial transgressions, further complicate the consistent imposition of penalties. Therefore, enhancing the joint regulations between the Judicial Commission and the Supreme Court is necessary to establish better alignment and clear authority for the Judicial Honorary Council to operate effectively. Additionally, an open, cohesive, and coordinated partnership between the Judicial Commission and the Supreme Court is crucial for addressing judges' ethical violations in a more systematic and fair manner, ensuring legal certainty for both judges and the public seeking justice.

References

Ibrahim, J. (2006). *Teori dan Metode Penelitian Hukum Normatif*. Bayumedia.

Illiyina, U. (2016). Pasang Surut Komisi Yudisial: Kreasi, resistensi dan restorasi. *Jurnal Konstitusi*, *8*(3), 391. https://doi.org/10.31078/jk837

Ishak, V. S. (2016). Kewenangan Majelis Kehormatan Hakim Dalam Pengawasan Perilaku Hakim. *Lex et Societatis*, *IV*(7), 171–179.

Kalalo, D. M. (2014). Eksistensi Komisi Yudisial Terhadap Pelaksanaan Kode Etik Profesi Hakim. *Jurnal Lex Crimen*, *3*(1).

Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. Citra Aditya Bakti.

Mulkan, H., Okprianti, R., Aprita, S., & Pratama, F. R. (2023). Violation of Ethics by Public Officials in Relation to Corruption Cases. *Policy Law Notary and Regulatory Issues (POLRI)*, *3*(1), 28–36. https://doi.org/10.55047/polri.v3i1.896

Permana, T. C. I. (2014). Eksistensi Dan Peran Komisi Yudisial : Pengkajian Konteks Filosofi, Sejarah Dan Tujuan Pembentukannya Dalam Dinamika Ketatanegaraan Indonesia. *Jurnal Hukum Dan Peradilan*, *3*(1), 85–100.

Sekretariat Jenderal Komisi Yudisial Republik indonesia. (2010). *Cetak Biru Pembaruan Komisi Yudisial 2010-2025*. Sekretariat Jenderal Komisi Yudisial Republik Indonesia.

Sekretariat Jenderal Komisi Yudisial Republik Indonesia. (2016). *Optimalisasi Wewenang Komisi Yudisial dalam Mewujudkan Hakim Berintegritas*. Sekretariat Jenderal Komisi Yudisial Republik Indonesia.

Siahaan, R. L. A., Monas, Aeprilya, S., & Hasanah, D. U. (2024). Fungsi Pemeriksaan Dan Pengawasan Praktik Pmkh Pada HakimMelalui Majelis Kehormatan Hakim Dan Komisi Yudisial. *Kultura Jurnal Ilmu Hukum, Sosial, Dan Humaniora*, *2*(10), 271–281.

Suparto, S. (2018). Kedudukan Dan Kewenangan Komisi Yudisial Republik Indonesia Dan Perbandingannya Dengan Komisi Yudisial Di Beberapa Negara Eropa. *Jurnal Hukum & Pembangunan*, *47*(4), 497. https://doi.org/10.21143/.vol47.no4.1585

Sutiyoso, B. (2011). Penguatan Peran Komisi Yudisial Dalam Penegakan Hukum Di Indonesia. *Jurnal Hukum Ius Quia Iustum*, *18*(2), 266–284. https://doi.org/10.20885/iustum.vol18.iss2.art7