



Limitation of Misconduct of Judges: Increasing The Synergy of Supervision of Judges by The Judicial Commission and The Supreme Court

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Abstract

The supervision of judges in judicial power in Indonesia is carried out by two state institutions: the Judicial Commission and the Supreme Court. Internal supervision of judges is carried out by the Supreme Court on the judicial technicalities of judges and externally by the Judicial Commission on the ethical aspects of judge behavior. However, in its implementation, there is still no explicit limit to the scope of judges' supervision between the two institutions. This research aims to provide a different perspective and new breakthrough in judge supervision, namely, setting a boundary between judicial technical violations and ethical violations in examining alleged ethical violations by judges as a form of judicial supervision. The type of research used was reform-oriented research using a statutory and conceptual approach. The results showed that the mechanism for supervising judges was regulated through the Joint Regulations of the Supreme Court and Judicial Commission on the Code of Ethics and Code of Conduct for Judges (KEPPH), KEPPH Enforcement Guidelines, and Joint Examination Procedures. However, in its implementation, there is still a problem of unclear scope and limitations in the supervision of judges. Therefore, there must be improvements in related regulations by limiting technical judicial violations and ethical behavior.

Keywords: Supervision of Judges; Supreme Court; Judicial Commission; Limitations; Violations of Judge Ethics.

Introduction

Indonesia, as a state of law, which has been affirmed in Article 1, paragraph (3) of the Constitution of the Republic of Indonesia Year 1945, must automatically implement and uphold the principle of the rule of law. A fundamental element of

the rule of law is the free and impartial judiciary.¹ This legal principle of freedom and impartiality is independent and impartial. The judiciary in Indonesia, namely the Supreme Court and its subordinate courts, and the Constitutional Court running the judiciary must be based on this principle. However, the principles of independence and impartiality must be balanced with good supervision based on the principle of checks and balances to prevent the arbitrariness of judicial independence and freedom.²

Initially, the Supreme Court carried out the internal supervision of the judiciary. However, over time, there has been an urge to reinforce the implementation of independent and impartial judicial power accompanied by checks and balances. This is because conflicts of interest are possible with this internal control mechanism. The idea arose to form an independent institution capable of supervising the implementation of judicial power to realize independent and impartial judicial power.³ The idea arose to form an independent institution capable of supervising the implementation of judicial power to realize independent and impartial judicial power. This idea was realized by establishing a new institution in the judicial power family of the Judicial Commission.⁴

The Judicial Commission, based on Article 24 B of the 1945 Constitution of the Republic of Indonesia, is an independent state institution with the authority to propose the appointment of Supreme Court Justices to the House of Representatives (DPR) and other authorities related to the enforcement of honor, dignity, and the conduct of judges. The Judicial Commission is also regulated by Law Number 22 of 2004 concerning the Judicial Commission, which was last amended by Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004

¹ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Raja Grafindo Persada 2006). [316].

² Walter E Murphy, *Element of Judicial Strategy* (Lee Epstein and Jack Knight eds, 2nd edn, Quid Pro Books 2016).

³ Komisi Yudisial Republik Indonesia, *Risalah Komisi Yudisial Republik Indonesia Cikal Bakal, Pelembagaan, Dan Dinamika Wewenang* (Pusat Analisis dan Layanan Informasi Komisi Yudisial Republik Indonesia 2013).[125].

⁴ Mahkamah Agung Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang Komisi Yudisial* (Mahkamah Agung Republik Indonesia 2003).

concerning the Judicial Commission (referred to as the Judicial Commission Law). The amendment followed the Constitutional Court Decision Number 005/PUU-IV/2006 concerning the Examination of the Judicial Commission Law and the Law on Judicial Power against the 1945 Constitution of the Republic of Indonesia. In the latest Judicial Commission law, the Judicial Commission is authorized to conduct external supervision of judges in institutions below the Supreme Court.

The Judicial Power Act and Judicial Commission Law regulate the supervision of judges that the Judicial Commission can carry out. The form of supervision examines alleged violations of the Code of Ethics and Code of Conduct for Judges (KEPPH) and provides recommendations for sanctions, if the allegations are proven, to the Supreme Court. In addition, the Judicial Commission can also conduct a joint examination with the Supreme Court on alleged violations of KEPPH by judges, provided that there have previously been examination results from each of these institutions; however, they produced different results. However, when looking at KEPPH normatively, there is no definite limit on ethical violations, often juxtaposed with technical and judicial violations. This is because, under the supervision of judges, there are also examinations of alleged judicial technical violations that the Supreme Court can carry out.

The absence of definite limits in determining ethical violations by judges is a problem in implementing judge supervision. Thus, in implementing judicial supervision, especially in examining alleged violations of ethics by judges, the absence of restrictions on technical judicial violations and ethical violations will cause uncertainty, and potential views differ in determining whether a violation by a judge constitutes an ethical violation. Furthermore, it also has the potential to cause disharmony between the Supreme Court and the Judicial Commission in supervising judges.

Since 1987, the discourse on supervisory institutions for the independence of judges has begun. Nosedá states that restrictions on judicial power, in terms

of accountability and independence, are necessary.⁵ However, he still needs to comprehensively discuss how these limits should be applied to external agencies that perform checks and balances on judicial power. Discourse on balancing the exercise of judicial power is growing. Cotilla and Veal stated that there must be ethical limitations to implementing judicial supervision.⁶ Similarly, Thornburg said that ethical limitations are needed so that the supervision of judge behavior is not biased by the concept of the independence and impartiality of judges.⁷

In Indonesian judicial power, some researchers have shown phenomena related to the absence of restrictions on ethical violations and technical judicial violations in implementing the supervision of judge behavior by the Judicial Commission and Supreme Court. Marzuki stated in his paper that many judges tend to violate the code of ethics and code of conduct of judges; it is just that they still cannot be perfectly proven violations.⁸ Furthermore, Rumadan comprehensively stated that the lack of full implementation of supervision of judge behavior in Indonesia is due to the absence of limitations between the two types of violations of judge behavior, which makes the supervision of judge behavior not optimal and even biased.⁹

As described above, several studies that discuss the discourse on implementing supervision of judge behavior still need to show concrete solutions to the limits of judicial ethical and technical violations. Complementing previous studies, this paper provides a different point of view and a breakthrough in judge supervision, namely, setting boundaries between judicial technical and ethical violations in examining allegations of violations of KEPPH. In this paper, we provide an understanding of this point of view, as well as a breakthrough. The first study was about the

⁵ James D Nosedo, 'Limiting Off-Bench Expression: Striking a Balance between Accountability and Independence' (1986) 36 DePaul Law Review.

⁶ Stephanie Cotilla and Amanda Suzanne Veal, 'Judicial Balancing Act: The Appearance of Impartiality and the First Amendment' (2001) 15 Georgetown Journal of Legal Ethics.

⁷ Elizabeth G Thornburg, 'The Curious Appellate Judge: Ethical Limits on Independent Research' (2008) 28 Review of Litigation.[131].

⁸ Suparman Marzuki, 'Pengadilan Yang Fair: Kecenderungan Pelanggaran Kode Etik Dan Pedoman Perilaku Oleh Hakim' (2015) 22 Jurnal Hukum Ius Quia Iustum.[394].

⁹ Ismail Rumadan, 'Membangun Hubungan Harmonis Dalam Pelaksanaan Fungsi Pengawasan Hakim Oleh Mahkamah Agung Dan Komisi Yudisial Dalam Rangka Menegakkan Kehormatan, Keluhuran, Dan Martabat Hakim' (2016) 5 Jurnal Hukum dan Peradilan.[209].

implementation of examinations of alleged violations of KEPPH by judges carried out by the Supreme Court and Judicial Commission. The second study concerns the importance of limiting technical, judicial, and ethical violations to harmonize the examination of alleged KEPPH violations by judges of the Supreme Court and Judicial Commission.

Legal research was carried out using a reform-oriented research method to support this study. The research method is a type of legal research that evaluates the adequacy of existing rules and proposes changes to them with standards or parameters such as legal principles/principles or legal doctrines/teachings.¹⁰ This method uses a way to first examines the norms and rules in applicable laws and regulations (positive law), which are related to the supervision of judges. Therefore, a statute and conceptual approach were used to support the research method.¹¹

Implementation of Judge Supervision by the Supreme Court and the Judicial Commission

The birth of the Judicial Commission in the Indonesian constitutional system is a legal reform aimed at advancing the judiciary in Indonesia. This is because with the birth of the Judicial Commission, the supervision of judges is no longer carried out alone by the Supreme Court as a state institution exercising judicial power, which can cause arbitrariness and conflict of interest. The Law of the Judicial Commission and Law Number 48 of 2009 concerning Judicial Power (the Law on Judicial Power) expressly states that the Judicial Commission has the authority to conduct external supervision.

The Judicial Commission must supervise the conduct of judges under KEPPH. The KEPPH itself is jointly made and agreed upon by the Supreme Court and the Judicial Commission. KEPPH is stated in the Joint Decree of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia

¹⁰ Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) *Erasmus Law Review* 130.[132].

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (13th edn, Kencana 2017).

Number 047/KMA/SKB/IV/2009 and 02/SKB/P. KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges, which contains ten principles, as well as the Joint Regulation of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number 02/ PB/MA/IX/2012 and Number 02/PB/P. KY/09/2012 concerning the Guidelines for Enforcement of the Code of Ethics and Code of Conduct for Judges.

The Judicial Commission, in carrying out the supervisory function of judges based on the Judicial Commission Law, has several duties:

- a. Monitoring and supervising the behaviour of Judges;
- b. Receiving reports from the public regarding violations of the Code of Ethics and/or the Code of Conduct for Judges;
- c. Verify, clarify, and investigate reports of alleged violations of the Code of Ethics and/or the Code of Conduct for Judges behind closed doors;
- d. Decide whether reports of alleged violations of the Code of Ethics and/or the Code of Conduct of Judges are accurate;
- e. Take legal and/or other steps against individuals, groups of people, or legal entities that degrade the honor and dignity of the judge.

Such behavior can be in the form of presiding over the trial, taking sides in presiding over the trial, lying in formulating legal opinions, or deliberately ignoring evidence or trial facts. The above behaviors are when in court. In addition, the Judicial Commission supervises extrajudicial judges' behaviors, such as gambling, drunkenness, meeting litigants, and committing reprehensible or immoral acts.¹² These behaviors include degrading judges' honor, dignity, and behavior. Acts that degrade judges' honor, dignity, and behavior can be said to violate ethical behavior. Thus, the Supreme Court can sanction judges who commit such violations based on the recommendations of the Judicial Commission.¹³

The scope of judges' behavior as the object of supervision of the Judicial Commission includes aspects of attitude and behavior in carrying out technical-

¹² Taufiqurrohman Syahuri, 'Reformasi Kekuasaan Kehakiman Dalam Perspektif Konstitusi', *Problematika Hukum dan Peradilan di Indonesia* (Pusat Analisis dan Layanan Informasi Komisi Yudisial Republik Indonesia 2014).[232].

¹³ Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commission (Indonesian State Gazette Year 2011 Number 106, Additional of Indonesian State Gazette Number 5250).

judicial capabilities, such as the ability to handle and decide cases; aspects of work; and administration of cases, such as efficiency in carrying out duties, administrative order, and case finance, as well as aspects of judge behavior both inside and outside the court. It is said to fall into the realm of technical-judicial aspects when the basis for determining the presence or absence of violations is documents made by judges carrying out their duties, including court decisions. Meanwhile, it is said to be included in the realm of behavior when determining the presence/absence of violations: the testimony of witnesses, court hearings, statements of judges in the mass media, and documents made outside the judicial function.¹⁴

In exercising its authority, the Judicial Commission developed a concept of supervision with a preventive and repressive approach.¹⁵ The Judicial Commission's preventive judge supervision system can be interpreted as an effort to reduce the behavior of judges who do not follow the KEPPH.¹⁶ Upaya preventif meliputi investigasi penelusuran rekam jejak calon hakim agung (CHA), calon hakim ad hoc di Mahkamah Agung, dan calon hakim ad hoc tindak pidana korupsi. Preventive efforts include investigating the track records of candidates for Supreme Court Justices, candidates for ad hoc judges in the Supreme Court, and candidates for ad hoc judges for corruption crimes. Information can be obtained from submitted data and opinions.¹⁷ Meanwhile, repressive supervision is an effort to determine whether judges' use of authority or behavior in carrying out their duties is appropriate.¹⁸ Repressive efforts in the form of searches by the Investigation Bureau for reports or information to obtain information (data/supporting evidence, witnesses, etc.) needed to prove alleged violations of KEPPH.¹⁹

¹⁴ Bertin, 'Fungsi Pengawasan Komisi Yudisial Terhadap Perilaku Hakim Dihubungkan Dengan Independensi Hakim Sebagai Pelaku Kekuasaan Kehakiman' (2013) 1 Jurnal Ilmu Hukum Legal Opinion.[5–6].

¹⁵ Jaja Ahmad Jayus, 'Pelaksanaan Pengawasan Komisi Yudisial Antara Etika Dan Teknis Yudisial', *Optimalisasi Wewenang Komisi Yudisial dalam Mewujudkan Hakim Berintegritas* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia 2016).[65].

¹⁶ *ibid.*[66].

¹⁷ *ibid.*[69].

¹⁸ *ibid.*[66].

¹⁹ *ibid.*[70].

With both approaches, the implementation of judges' supervisory duties is carried out in two ways. First, carry out preventive services, public complaints, and the receipt and processing of reports of judicial bodies related to the behavior of judges, carried out by the Prevention, Complaints and Reporting Section. Second, we carry out case handling services related to judge behavior, which the Case Handling Section carries out.²⁰ In addition, to monitor and supervise the behavior of judges, several things can be done by the Judicial Commission, namely verifying reports, examining suspected violations, summons, and requesting information from judges who allegedly violate the guidelines of honor, dignity, and behavior of judges for examination; making summons and asking for testimony from witnesses; and concluding the results of the examination.²¹ The above examination only covers suspected violations of KEPPH. Judges that can be reported to the Judicial Commission regarding alleged violations of the KEPPH are all judges, including ad hoc judges of the Supreme Court and judicial bodies in all judicial environments under the Supreme Court who are suspected of violating judges' honor, dignity, and conduct.²²

The practice of the Judicial Commission in Indonesia is not as simple as previously described. The authority of the Judicial Commission in the context of supervising judges is exercised through a mechanism or process that is regulated in Articles 22A to 22G of the Judicial Commission Law. The supervisory function of judges within the framework of repressive supervision is to handle reports submitted to the Judicial Commission. Incoming reports from both civil and non-civil countries were checked in advance to ensure the completeness of the requirements. If completed, the report can be registered. Conversely, if incomplete, the reporter is notified to complete the report before it can be registered.

²⁰ *ibid.*[68].

²¹ Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commission (Indonesian State Gazette Year 2011 Number 106, Additional of Indonesian State Gazette Number 5250).

²² Komisi Yudisial Republik Indonesia, *Mengenal Lebih Dekat Komisi Yudisial* (Pusat Analisis dan Layanan Informasi Komisi Yudisial Republik Indonesia 2012).[45].

Once registered, the report will be discussed and analyzed in a closed and confidential panel consisting of two or three members of the Judicial Commission. This hearing is conducted to decide whether a report or finding can be followed. The examination process of the whistleblower, witnesses, and reporters follows the actionable report. Conversely, reports that cannot be followed up will not be examined or notified of the reported person. After examining statements from whistleblowers, witnesses, and reporters, the examination results are discussed in a Plenary Session attended by at least five members of the Judicial Commission. This hearing was conducted to determine whether the person violated the code of ethics.

The results of the examination stating that the reported person (judge) was found guilty of violating the honor and nobility of the dignity and behavior of the judge, the Judicial Commission will impose sanctions on the reported person to the Supreme Court, with copies to the President and the DPR. However, suppose the reported person is not proven to violate the honor and nobility of the dignity and behavior of the judge. In this case, the Judicial Commission will restore the person's good name by writing to the reported person who was penetrated by his superiors and the whistleblower.

Recommendations for sanctions imposed by the Judicial Commission can be in the form of light, moderate, and severe sanctions. Light sanctions consist of verbal reprimands, written reprimands, and statements of dissatisfaction. Moderate sanctions consist of a delay in periodic salary increases of at most one year, a salary reduction of one periodic salary increase of at most one year, a delay in promotion of not more than one year, or a non-government judge of at most six months. Severe sanctions consist of exemptions from structural positions, non-gavel judges for more than six months to two years, temporary suspension, permanent dismissal with pension rights, and permanent dishonorable dismissal. Specifically, to impose sanctions in the form of permanent dismissal with respect or disrespect, the Judicial Commission must propose a session of the Honourary Panel of Judges to decide

sanctions against the judge concerned with the Supreme Court.²³

If there is no disagreement between the Supreme Court and the Judicial Commission regarding the imposition of sanctions, the sanctions automatically apply and must be implemented. However, if there is a difference in opinion, a joint examination will be carried out by the Supreme Court and the Judicial Commission. This joint implementation procedure is regulated through the Joint Regulation of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia (Number 03/PB/MA/IX/2012 and Number 03/PB/P. KY/09/2012 on the Procedures for Joint Examination.

This joint examination can also be carried out when the same report is submitted or transcribed to the Supreme Court and the Judicial Commission; it is known that there is a similar matter that is still being examined by the Supreme Court or the Judicial Commission, or when there are information and/or reports that attract public attention. Each institution considered it necessary to conduct a joint examination,²⁴ which was closed, and the results were confidential.²⁵

After the Joint Examination, it will produce a conclusion in the form of sanctions imposed on the judge concerned. The conclusions were drawn based on consensus deliberation.²⁶ If no consensus is reached, the majority vote (voting) makes conclusions and sanctions recommendations.²⁷ Finally, if it cannot be taken by a majority vote, the reporter makes the most favorable decision to conclude and recommend sanctions.²⁸ Judges who will be sanctioned with permanent dismissal and the right to retire or permanent dishonorable dismissal are allowed to defend themselves before the Honourary Panel of Judges (MKH).

²³ Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commission (Indonesian State Gazette Year 2011 Number 106, Additional of Indonesian State Gazette Number 5250).

²⁴ Joint Regulation of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number 03/PB/MA/IX/2012 and Number 03/PB/P. KY/09/2012 concerning Procedures for Joint Examination.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*

The Supreme Court shall implement the MKH Decision within 30 days of pronouncing it. If the MKH decides that the alleged violation against the judge concerned is not proven, it must declare that the alleged violation is not proven and restore the good name of the judge concerned.²⁹ To exercise its authority to maintain and uphold the honor, dignity, and conduct of judges, the Judicial Commission may request assistance from law enforcement officials to wiretap and record conversations in the event of an alleged violation of KEPPH by a judge. The law enforcement officer must follow up on request.³⁰

The Urgency of Setting a Boundary Between Judicial Technical Violations and Ethical Violations in the Implementation of Judge Supervision

The implementation of judicial supervision in the Indonesian constitutional system is different from the constitutional systems of other countries. This is because the implementation of judicial supervision in Indonesia is carried out jointly by two state institutions in one cluster of judicial powers, namely the Supreme Court and the Judicial Commission. Although it has different responsibilities in the supervision of judges, namely, internal supervision by the Supreme Court and external supervision by the Judicial Commission, this supervision is still carried out regularly. Together. This is because external supervision by the Judicial Commission still involves the Supreme Court in terms of the joint examination of decision-making on sanctions against judges' ethical violators.

The supervision model of judges carried out by these two institutions requires a strong bond between them. If there is a difference of view in the supervision of judges, especially in determining ethical violations by judges, the supervision of these judges will not be clear. Unfortunately, such disagreements occur when judges are supervised by the Supreme Court and the Judicial Commission. There is

²⁹ Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commission (Indonesian State Gazette Year 2011 Number 106, Additional of Indonesian State Gazette Number 5250).

³⁰ *ibid.*

still debate over the scope of judge supervision between the Supreme Court and the Judicial Commission. The Judicial Commission is normatively clear that it cannot supervise the behavior of judges regarding judicial technicalities because it will affect and even reduce the independence of judges.³¹ Meanwhile, there is no clear boundary between ethical behavior violations and judicial technicalities violations as a foothold in implementing judicial supervision, so the enforcement of judicial independence has not been carried out optimally.

The absence of clear restrictions on the object of judges' supervision is also supported by two principles in KEPPH that are declared invalid. Applying the principles of high discipline and professional attitudes was declared inapplicable.³² Even so, these two principles can still be applied because only the points of application are declared not to be binding.³³ This situation creates a gap and unclear limits in the supervision of judges that must be obeyed by the Supreme Court and the Judicial Commission, especially concerning the principle of high discipline and professional attitude, the extent to which the principle must be enforced because the points of application cannot be used as a reference. Meanwhile, these two principles are closely related to judges' independence, which is a limitation for the Judicial Commission in externally conducting judge supervision.

The lack of a definite boundary between technical, judicial, and ethical violations by judges sparked an ongoing debate between the Supreme Court and the Judicial Commission. Over time, many ethical violations have been veiled in the judge's decision, both in substance and in consideration.³⁴ It is also contained in the report of the Judicial Commission on the practice of supervising judges in the Supreme Court concerning the independence of judicial power.³⁵ Meanwhile, in the

³¹ Fairuz Zahirah Zihni Hamdan, 'Hubungan Komisi Yudisial Dan Mahkamah Agung Dalam Pelaksanaan Pengawasan Hakim' (Universitas Airlangga 2019).[118].

³² Achmad Musyahid Idrus and others, 'Constructive Ethics of Judges in Indonesia; Problems and Strategic Strengthening' (2022) 6 Untag Law Review.

³³ *ibid.*

³⁴ Mahkamah Agung Republik Indonesia, 'Pelaksanaan Fungsi Pengawasan Terhadap Hakim Yang Dihubungkan Dengan Independensi Kekuasaan Kehakiman' (2019).[67-93].

³⁵ *ibid.*

Joint Regulation of the Supreme Court and the Judicial Commission on Guidelines for Enforcement of KEPPH, it is clear that ethical aspects related to substance and consideration in judges' decisions become the object of the Supreme Court's supervision. This undoubtedly triggered an ongoing debate between the Supreme Court and the Judicial Commission regarding the scope of judges' supervision.

The examination of ethical violations disguised in the judge's decision, both in substance and in consideration of the judge's decision, causes differences in the interpretation of ethical violations and recommendations for different sanctions for ethical violations between the Supreme Court and the Judicial Commission. This difference in interpretation is also supported by the absence of standards that can clarify the differences between technical judicial violations and ethical behavior. So far, the standard for separating technical judicial violations and ethical behavior is the technical understanding of the judiciary itself.³⁶ If the offence committed by the judge violates judicial technicality, it can be said to be a judicial technical violation. However, if the violation committed is a violation of ethical behavior, it can be said to be a violation of ethical behavior. There are no other standards or limitations separating technical and ethical conduct violations.

According to the Judicial Commission, judges sometimes covertly commit ethical violations, namely being unprofessional in deciding cases. This violates the principles of the existing KEPPH. As for the Supreme Court, the offence referred to by the Judicial Commission is not an ethical violation, but a violation of judicial technicalities. The Judicial Commission has not been able to prove any ethical violations based on its examination. It has not been able to prove the right or wrong juridical considerations or substance in the judge's decision. The Judicial Commission is considered to have exceeded the independence of judges when deciding on cases.

With many cases claimed by the Supreme Court as technical judicial violations, many judges take refuge behind the excuse of their independence so as not to be

³⁶ Fairuz Zahirah Zihni Hamdan (n 26) .

examined by the Judicial Commission.³⁷ Allegations of violations committed coincided with judicial technicalities, such as not being careful in implementing applicable laws and regulations, setting aside new laws, choosing old ones, and others. However, this is what is used as a shield by judges to avoid the examination and supervision of the Judicial Commission.

Reflecting on the problems described above, the boundary between technical judicial violations and violations of judicial ethics has a significant role in the implementation and supervision of judges.³⁸ In the supervision of judges with judicial power in Indonesia, there is no determination or enforcement of the boundary between this technical judicial violation and ethical violations. Therefore, it is necessary to create and set limits in the implementation of judge supervision to avoid violating the independence of judges.

In an international symposium organized by the Indonesian Judicial Commission with the theme “The Line Between Legal Error and Misconduct of Judges,” the Judicial Commissions of several countries such as Australia from the State of New South Wales, the United States from the States of Arkansas and Alaska, and France said that they had established definite boundaries between judicial technicalities and ethical conduct that are the object of scrutiny of the Judicial Commission.³⁹ This symposium concluded that although each country’s legal system is different, it must still adhere to the principle of independence of judges in exercising its judicial power. Applying this principle must undoubtedly be supervised by an institution other than the Supreme Court as the implementing institution of judicial duties, namely, the Judicial Commission. The implementation of judicial supervision between these two institutions should not overlap, so a definite boundary is needed regarding the object of supervision of each institution, namely between judicial technicalities and ethical behavior.

³⁷ Mahkamah Agung Republik Indonesia (n 34).

³⁸ Thornburg (n 7).

³⁹ Komisi Yudisial Republik Indonesia, ‘Proceeding Symposium: The Line Between Legal Error and Misconduct of Judges’, *The Line Between Legal Error and Misconduct of Judges* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia 2017).[75].

The limitations that can be applied in the implementation of judge supervision between judicial technicalities and ethical behavior are in the form of three things: the intention of bad behavior, the pattern of violations committed by judges (repeated violations), and the existence of fatal mistakes committed by judges.⁴⁰ If a mistake is committed by the judge in which there are three things, then the error can be categorized as a violation of ethical behavior. Conversely, if there are no three things in an offense committed by a judge, the violation is a technical judicial violation.

Conclusion

Supervision of the behavior of judges in the Indonesian constitutional system is carried out by two state institutions, namely the Supreme Court and the Judicial Commission. The Supreme Court conducts internal supervision of the judicial technicalities of judges, while the Judicial Commission conducts external supervision of judges' conduct during and outside trials. However, there is often friction between the determination of judicial technical violations and ethical violations when implementing judge supervision. This is because there is no definite boundary between technical judicial violations and ethical violations. Therefore, it is essential to establish a boundary between judicial, technical, and ethical violations that can serve as guidelines for the Supreme Court and the Judicial Commission in carrying out judge supervision while enforcing the implementation of KEPPH. These limitations are in the form of bad behavior intentions (bad faith in handling decisions), patterns of repeated violations by judges, and fatal mistakes made by judges.

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⁴⁰ *ibid.*

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Joint Regulation of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia Number 03/PB/MA/IX/2012 and Number 03/PB/P.KY/09/2012 concerning Procedures for Joint Examination.

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