

**THE URGENCY OF EXTERNAL SUPERVISION
ON CONSTITUTIONAL COURT'S JUSTICES IN INDONESIA**

UNDERGRADUATE THESIS



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ABSTRACT

The purpose of this research is to convince the urgency of external supervision on Constitutional Court's Justices in Indonesia. The research focuses the study on the importance of external supervision on Constitutional Justices in Indonesia. The research is a normative legal research which uses Constitutional approach, statute approach, and comparative approach. The result of research shows that there is urgency of external supervision on Constitutional Court's Justices in Indonesia. Urgency of external supervision on Constitutional Justices is due to some reasons. First, supervision system against the behaviour of Constitutional Justices is not maximum yet and not ideal. Second, when it compares between system supervision of judicial institution in other countries, author arrived at the conclusion that other countries gave authority to the Judicial Commission in supervising the judiciary. Third, the position of the supervisory institution of Constitutional Justice is still internal and not a maximum of control and does not guarantee the performance of the Court because the cases of Constitutional Justice is still going on. Responding the unclear authority of the Judicial Commission in Supervision the Constitutional Court Justices, the People's Consultative Assembly (MPR) needs to amend Article 24B of the 1945 Constitution which asserts the authority of the Judicial Commission in supervising the Constitutional Court Justices.

Keywords: *supervision of Constitutional Justice, system of internal supervision, system of external supervision, Judicial Commission.*

A. INTRODUCTION

1. Background

On Wednesday night, October 2nd in Jakarta, the Corruption Eradication Commission (KPK) set the Chairman of the Constitutional Court, Akil Mochtar, as a suspect in the receiving of bribery for two cases of election dispute. Akil was accused as a suspect regarding the local election dispute in Gunung Mas regency, Central Kalimantan, and Lebak.¹

The arrest of the Chairman Justice of Constitutional Court by the Corruption Eradication Commission (KPK) seems to justify the distribution and divergence of crime in every organ of state power at all levels.² This case confirm the need to consider the involvement of external institution in supervising the behavior of justices.³

The next case is the case of Arief Hidayat. Jimly Asshiddiqie responds about ethics sanction imposed to the Chairman of the Constitutional Court is the first ethics sanction on Constitutional Justices. The sanction of ethics is a form of oral admonition by the Ethics Board of the Constitutional Court.

¹News Republika, 2013, "Kronologis Penangkapan Akil Mochtar", available at <http://www.republika.co.id/berita/nasional/hukum/13/10/03/mu3hdy-kronologis-penangkapan-akil-mochtar>, accessed on Tuesday, May 30th 2017, at 9.25 pm.

² Malik, *Perppu Pengawasan Hakim MK versus Putusan Final MK*, the Journal of the Constitution, Volume 10, Number 4. December, (Jakarta: Registrar and the Secretariat General of the Constitutional Court 2013), page 580.

³ Constitutional Court of the Republic of Indonesia, *the blueprint the Constitutional Court of the Republic of Indonesia*, Jakarta: Secretary General of the Constitutional Court of the Republic of Indonesia, 2004, page 15.

The sanctions were applied because Arief Hidayat allegedly gave the memo to the Deputy Attorney General specifically Widyo Pramono case.⁴

The bribery case which involved the Chairman of Justice of the Constitutional Court has become a reason to revise the Law on the Judicial Commission. The House of Representatives (DPR) shall immediately prepare about the need of the existence of an institution as the external supervision.

The Constitutional Court argue that the supervision of the Judicial Commission is not constitutional based on two legal reasoning, namely the problem of the interpretation of the framer constitution (original intent) and its systematic.⁵ Both of the legal reasoning, according to the Court, contain inconsistencies between Article 24B paragraph (1), the 1945 Constitution with the Law Number 22 of 2004 on Judicial Commission⁶ and the Law Number 4 of 2004 on Judicial authority.⁷ The supervision of the Judicial Commission to Constitutional Justices is arguably not in line with the 1945 Constitution. But on the contrary, Supreme Court Justices and judges at the lower courts become the object of supervision of the Judicial Commission.⁸

⁴ Tempo.co, 2016, “Ketua MK Terbukti Melanggar Etik, Jimly: Tak Perlu Mundur”, available at <https://m.tempo.co/read/news/2016/04/30/078767290/ketua-mk-terbukti-melanggar-etik-jimly-tak-perlu-mundur>, accessed on Tuesday, May 30th 2017, at 9.43.pm.

⁵ See the Decision of Constitutional Court Number 005 Number/PUU-IV/2006, page 173-176.

⁶ State Gazette of the Republic Indonesia (LNRI) 2004 Number 89, Supplement State Gazette of the Republic of Indonesia (TLNRI) Number 4415.

⁷ State Gazette of the Republic Indonesia (LNRI) 2004 Number 8, Supplement State Gazette of the Republic of Indonesia (TLNRI) Number 4397.

⁸ *Ibid.*, page 173-176.

In avoiding the legal vacuum and strengthening supervision of behaviour of the Constitutional Justices, it has been accordingly established a permanent supervision namely Honorary Council of Constitutional Court (MKMK) or in Indonesia called as *Majelis Kehormatan Hakim Konstitusi*. The MKMK as a form of permanent supervision based on Article 27A Law Number 8 of 2011 about the changes of the Law Number 23 Year 2004 about The Constitutional Court.⁹ The MKMK consists of five members.¹⁰ Then the MKMK declared illegal by the Decision of the Constitutional Court Number 49/PUU-IX/2011¹¹ because the existence of the elements of the House of Representative (DPR), elements of the government and the supreme justices which have potential to cause a conflict of interest. There will be conflict of interest because of the House of Representative (DPR), the Government, Supreme Court and the Judicial Commission may be the parties involved in the Constitutional Court cases.¹² The Constitutional Court also argued that the membership of the Honorary Council of Constitutional Justices (MKMK) does not give any guarantees of independence and impartiality.

⁹ State Gazette of the Republic Indonesia (LNRI) 2011 Number 70, Supplement State Gazette of the Republic of Indonesia (TLNRI) Number 5226.

¹⁰ Article 27A paragraph (2) of Law Number 8 of 2011, Honor Assembly Constitutional of Justices consist of 5 (five), each one of the justices, commissioner Judicial Commission, elements of Parliament, elements of the government of the law and the Supreme Judge.

¹¹ Decision Number 49/PUU-IX/2011 about the testing of Law Number 8 of 2011 about the changes to the Law Number 23 of 2004 about The Constitutional Court against the 1945 Constitution 14 October 2012.

¹² *Ibid.*, page 72.

In the absence of the supervision of the behaviour of Constitutional Justices, the Constitutional Court internally formed Honorary Council of Constitutional Court (MKMK). Through the Constitutional Court Regulation (PMK) Number 1 Year 2013 formed the Honorary Council of Constitutional Court which consist of five members. The members of MKMK consists of elements of the Constitutional Justices, the commissioner of the Judicial Commission, the former of chairman of the state institutions, the former member of the Constitutional Justices / Supreme Court Justices and the professor of law science.¹³ This means that the members of MKMK are free from the House of Representative (DPR), government and also Supreme Court Justices that was mentioned in Article 27A paragraph (2) of Law Number 8 Year 2011 on the Constitutional Court: *“To uphold the Ethics Board and Code of Conduct Justices as mentioned in paragraph (1), formed Honorary Council of the Constitutional Court that its membership consists of:*

- 1. one the justices;*
- 2. one member of the Judicial Commission;*
- 3. one of the element of the DPR;*
- 4. one of the elements of the government; and*
- 5. one the Supreme Judges”*

¹³ See in article 3 Chapter II Regulation of Constitutional Court No. 1 Year 2013.

Internal supervision of the Constitutional Court is not effective in the judiciary and it also shows the weakness of the internal control system. The arrest of Patrialis Akbar¹⁴ by the Corruption Eradication Commission (KPK) is an indication of the ineffectiveness of the internal control system of the Constitutional Court.

The arrest of two justices of the Constitutional Court proved the crisis of condition that was mentioned in Article 22 paragraph (1) the 1945 Constitution. Through the Government Regulation in Lieu of Law (Perppu) Number 1 of 2013 on the Second Amendment of Law Number 24 of 2003 about the Constitutional Court,¹⁵ The President has taken action to save the Constitutional Court.

The Constitutional Court expressly rejected the involvement of the Judicial Commission in the establishment of Honorary Council of Constitutional Court (MKHK). Then the Constitutional Court established the Ethics Board of Constitutional Court through the Constitutional Court Regulation (PMK) Number 2 of 2013 about the Ethics Board of Constitutional Court which consist of three members. The members of Ethics Board consist of the former of the Constitutional Justices, academicians and public figures with the

¹⁴ Nasional Kompas, 2017, "*Kronologi Penangkapan Patrialis Akbar oleh KPK di Grand Indonesia*", available at <http://nasional.kompas.com/read/2017/01/26/20012881/kronologi.penangkapan.patrialis.akbar.oleh.kpk.di.grand.indonesia>, accessed on Sunday, December 18th 2017, at 12.21 am.

¹⁵ State Gazette of the Republic Indonesia (LNRI) 2013 Number 167, Supplement State Gazette of the Republic of Indonesia (TLNRI) Number 5456.

duration of reign for 3 (three) years.¹⁶ The Ethics Board has the right to recommend the formation of Honorary Council of Constitutional Justices to trial the Constitutional Justices which violate code of ethics of Justices.¹⁷

According to the former Chairman of the House of Representatives (DPR) Marzuki Alie¹⁸, the House of Representatives (DPR) was preparing a revision of the rules for the performance of the Constitutional Court. The rule is Law No. 22 of 2004 on Judicial Commission. Refer to the case of Akil Mochtar, the revision of the Act was so required and urgent.

Marzuki Alie also said that the House of Representatives (DPR) has submitted two times judicial review of the Judicial Commission although both were rejected by the Constitutional Court. As a result, the Constitutional Court is like A God that it is immune to supervision.¹⁹

Amendment of the 1945 Constitution and the Law on Judicial Commission are important to supervise the performance and power of the Constitutional Court. The supervision of Judicial Commission is needed to ensure the honor, dignity and behavior of the Justices.

The judges, as the main actors or central figure in the judiciary process, are always required to hone the sensitivity of conscience,

¹⁶ Muhtadi, “*Politik Pemngawasan Hakim Konstitusi*”, *Fiat Justicia Law Journal*, Volume 9 Number 3, 2015.

¹⁷ *Ibid.*

¹⁸ Merdeka, 2013, “*Ketua DPR Nilai Revisi UU KY Mendesak Buat Awasi Hakim MK*”, available at <https://www.merdeka.com/peristiwa/ketua-dpr-nilai-revisi-uu-ky-mendesak-buat-awasi-hakim-mk.html>, accessed on Friday, December 29th 2017, at 8.33 pm.

¹⁹ *Ibid.*

maintain integrity, apply moral intelligence and improve professionalism in upholding the law and justice for many people.²⁰ Referring to some cases, the Constitutional Court seems to need to have maximum external supervision to maintain the integrity, and improve the professionalism in upholding the law and justice for a lot of people.

Basically, the external supervision of the Constitutional Justices has been regulated in Article 24B of the 1945 Constitution which states that:²¹ “The Judicial Commission shall be independent in nature and have the competence to make proposals for the appointment of supreme justices as well as other competences within the framework of safeguarding and upholding the honor, the high status and the behaviour of judges”

According to Professor Ni'matul Huda, the terminology of the “judges” in the article 24B of the 1945 Constitution refers to the Supreme Court Justices and judges at the lower court of the Supreme Court and Constitutional Court Justices. This supervision authority is an external control on the conduct of the judges which is carried out independently and objectively.

Decision of Constitutional Court Number 005/PUU/2006 about judicial review of Judicial Commission and Judicial Authority makes the inhibition of supervision to uphold the respect and dignity

²⁰Jimly Asshidiqie, 2016, *Peradilan Etik dan Etika Konstitusi: Perspektif Baru Tentang Rule of Law of Ethics & Constitutional Law and Constitutional Ethics*, Jakarta, Sinar Grafika, page 159

²¹Article 24B UUD 1945 Pasca-Amendemen

and keep the behaviour of Justices under the authority of the Judicial Commission. Supervision of judges becomes hampered because of the decision stating that all the words of the Constitutional Court does not have a binding legal force.

Some previous cases had been invalid as prove that there is a problem that must be solved. So, based on these cases of the Constitutional Court, it is interesting to investigate the issues of research writing method under the title: "**Urgency of External Supervision on Constitutional Court's Justices in Indonesia.**"

The importance of the research is that there are cases where some of the constitutional justices have notwithstanding the rule. The importance of external supervision on the Constitutional Court's Justice in Indonesia is to strengthen oversight of the judiciary. External supervision also assesses that it is far from the interests and corruption. In reality, internal supervision does not influence maximally and do not create satisfaction to the community.

Through this research, the author will try to make comparisons of the judiciary system in some other countries. The function is to contribute knowledge and contribute to Indonesia information related to the external supervision of constitutional justice in some countries. There are several countries that were selected as a comparison, namely Italy and France. The judicial system in the Italian state is different from the French, both geographically and forms of state. The thesis hopes that the results

of this research can find a solution from the comparison of the judicial system in the other country to Indonesia.

2. Research Problem

Based on the description above, a research problem can be formulated: How is the Urgency of External Supervision on the Constitutional Court's Justices in Indonesia?

3. Objectives of Research

There are some objectives of the research as follow:

- a. To emphasize the urgency of external supervision on the Constitutional Court's justice in Indonesia;
- b. To analyze the urgency of external supervision on the Constitutional Court's justice in Indonesia;
- c. To propose suggestions regarding the mechanism of external supervision on the Constitutional Court's justice in Indonesia.

4. Benefit of Research

The benefits of this research are:

a. Practical Benefit

This research will provide scholars, the government, and other supporting instruments an understanding on external supervision of the constitutional judges. Besides, this research will also open the view of the proper urgency of external supervision on Constitutional Court's Justices in Indonesia.

b. The theoretical Benefits

That is to be a conceptual contribution to science, especially in the field of supervision the urgency of external supervision on Constitutional Court's Justices in Indonesia.

B. RESEARCH METHOD

1. Type of Research

The type of this research is a normative legal research with using case approach, statute approach, and comparative approach, especially that are related to the urgency of external supervision on constitutional court's justices in Indonesia.²²

a. Case Approach

This approach is done to research on the cases related to the issue of the law. The cases are cases that have obtained the decision of the court. The cases may also be used as argumentation to solve the issue of the law.

b. Statute Approach

This approach is done to research on the all regulations related to the issue. Statute Approach is done to learn the consistently between 1945 Constitution and the Law or the Law to the other Law.

c. Comparative Approach

This approach is conducted by comparing external supervision of Constitutional Justices in France and Italy. This comparative

²² Johnny Ibrahim, 2006, *Teori dan Metode Penelitian Hukum Normatif*, Malang: Bayu Media, p. 302.

approach is needed to enrich the analysis of the urgency of external supervision on the Constitutional Justices.

2. Type of Data

In this type of research normative law only required research materials in the form of legal materials and non legal materials. Legal materials include primary legal materials, secondary legal materials, and tertiary legal materials. The details will be explained as follows:

a. Primary legal material are legal materials that have binding strengths such as:

- 1) The Constitution: The 1945 Constitution, The Constitution of the Italian Republic, France's Constitution of 1958.
- 2) Court decisions: Decision of Constitutional Court No. 005/PUU-IV/2006.
- 3) Other regulations: Constitutional Court Act, Judicial Commission Act and Judicial Authority Act.
- 4) Law No. 8 of 2011 on Changes of the Law No. 24 of 2003 on Constitutional Court;
- 5) Law No. 22 of 2004 on Judicial Commission; and
- 6) Law No. 4 of 2004 on Judicial Authority.

b. Secondary legal material consists of several documents that related to the primary legal materials as follows:

- 1) Books;
- 2) Scientific Journals;
- 3) Other legal document related the issue;

- 4) Trusted sites internet; and
- c. Tertiary legal material, as follows:
 - 1) English dictionary; and
 - 2) Indonesia dictionary.

d. Data Collection

The methods of collecting data in this research will be done through library research by literature learning. This method collects data from reading, analyzing, and trying to make conclusions from related documents namely laws books, legal journals, and others which are related the main problem as the object of this research.

e. Analysis

The data is analyzed systematically through descriptive qualitative. It means that the research will be analyzed based on related regulation, especially relating to the urgency of external supervision on constitutional court's justices in Indonesia. The fact would be connected with the principle of law, conventions, and other related regulations.

C. FINDING AND ANALYSIS

1. Comparative Analysis of Judicial Commission in Italy and France with the Judicial Commission in Indonesia

The position of the Judicial Commission in Indonesia emphasized in Article 24B paragraph (1) of the 1945 Constitution of the Republic of Indonesia is:²³ “There shall be an independent Judicial Commission which

²³ See the 1945 Constitution article 24B paragraph (1)

shall possess the authority to propose candidates for appointment as Justices of the Supreme Court and shall possess further authority to maintain and ensure the honour, dignity and behaviour of judges.”

There is phrase "in order to maintain and upholding the honour, dignity, and behaviour of judges. When looking at the Article 24B paragraph (1), there are 2 (two) very significant:

- a. The position of the Judicial Commission.

The position is a consequence of the authority given by the constitution.

- b. The authority of the Judicial Commission.

The position of the Judicial Commission as the institution explains the authority of the free from the intervention of (intervention) institutions or other power.

There are 3 (three) aspects that are compared in this section, namely the existence of the setting of the formation of the Judicial Commission, layout of the setting of the Judicial Commission in the constitution, and independent nature of the Judicial Commission.

The Judicial Commission in Indonesia is a state institution formed based on the constitution, which is exactly on the chapter IX Constitution.

The Chapter consists of 4 (four) article, among others:

- a. Article 24 paragraph (1) and (2);
- b. Article 24A paragraph (1), (2), (3), (4) and (5);
- c. Article 24B paragraph (1), (2), (3), and (4); and
- d. Article 2 paragraph (1), (2), (3), (4), (5), and (6).

Layout on settings in the constitution is similar in some countries which are the object of the comparison in this research, namely Italy and France.

Table 2.
Analysis of Judicial Commission in Italy and France with the Judicial Commission in Indonesia

No	THE HIGHLIGHT	STATE		
		INDONESIA	ITALY	FRENCH
1	Name	<i>Komisi Yudisial</i>	<i>Consiglio Superiore della Magistratura</i>	<i>Conseil Supérieur De La Magistrature</i>
2	Constitutional Basis	Article 24B of the 1945 Constitution	Article 104 of the Constitution of the Italian Republic	Article 64 and 65 of the France's Constitution of 1958
3	Authority	<ol style="list-style-type: none"> 1. Propose appointment of the Supreme Justices and ad hoc justices in the Supreme Court for the House of Representative to get approval; 2. Maintain and uphold the honor, dignity, and behavior of the judges; 3. Define the Code of Ethics and/or Code of Conduct of Judges (KEPPH) with the Supreme Court; and 4. Maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct of Judges (KEPPH). 	Impose sanction related to the various forms of violation of Justice, different even though the violation were not mentioned definitely.	Related to the giving of consideration in the appointment of judges and disciplinary judges and supervision.
4	The Member	7 Members	33 Members	15 Members

5	<p>The Elements of membership</p>	<ul style="list-style-type: none"> • Two former judges • Two from Academician (University) • Two legal Practitioners • One from the element of Society. 	<p>The High Council of the Judiciary is presided over by the President of the Republic. The first president and the general prosecutor of the Court of Cassation are members by right. Two thirds of the members are elected by all the ordinary judges belonging to the various categories, and one third are elected by Parliament in joint session from among university professors of law and lawyers with fifteen years of practice. The Council elects a vice-president from among those members designated by Parliament.</p>	<ul style="list-style-type: none"> • Ex-officio President as head; • Ex-officio Minister of Justice as Vice Chairman of; • One person appointed by the Senate; • One person appointed by the Assemblée Nationale; • One of the environment Conseil d'état; • One of the environment Cour de Comptes; • Six people were taken by the magistrate sitting with system representatives; • Six people were taken by members of the office of the attorney general through the system of representation
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Source: Analysis of the author

Based on the table above, it can be highlighted some similarity and differences between Indonesia Judicial Commission and Italy and France, namely:

- a. The first similarity is form of the Judicial Commission in the Constitution of each country. The form of the Judicial Commission in the constitution actually ensure more warranty independence of the judiciary in the enforcement of laws. Thus the existence of the form of the Judicial Commission in the 1945 Constitution, has a strong position as an institution. This also shows that the Judicial Commission in Indonesia is the state institutions that have equal position to other state institutions in Indonesia, even ceremonially Judicial Commission expressed in the 1945 Constitution for a nomenclature, which means it also provides a clarity of tasks and authority as a state institutions.
- b. Based on the table above, it can be formed categories as follows:
 - 1) 7 members (small category);
 - 2) 15 members (average category); and
 - 3) 33 members (big categories).

Number of Commissioners will influence the performance of the Judicial Commission. More members will affect maximum performance. On contrary, less members will reduce the function. Article 24B of the 1945 Constitution does not to mention the number of commissioners of the Judicial Commission definitive. But it is regulated Law Number 18 of 2011 on Judicial Commission. Article 6 paragraph (1) of Law Number 18 of 2011 states that “Judicial Commission has 7 (seven) members”. There are

considered as state officials as regulated in Article 6 paragraph (2) with states that “the members of the Judicial Commission is the state officials.”

- c. There is also other difference between the independence of Judicial Commission of each country. The Judicial Commission in Indonesia is an independent state institution. It is different from Italy and France that the Judicial Commission is under the President. Although under the President, the Judicial Commission have aims to ensure more warranty the independency and independence of the judiciary in the enforcement of laws.

2. Reasons behind the Need of External Supervision of Constitutional Justices

Clearly on the background of this research is a problem faced by our state related to the Constitutional Court in Indonesia. In some cases justices happen to create a lack of trust from the community to the performance of the Constitutional Court. There is a need for a solution to deal with the problem. One of which become the solution is fully optimized supervision.

Regardless of the nature of the decision of Constitutional Court is that final and binding supervision is still needed to prevent abuse of power. Supervision is of course not done against the decision and the authority of the justices that hold trials, but against the behaviour of Justices, and upholding the dignity and honour and citizenship are always maintained.

The most appropriate constitutional institution to supervision is of course the Judicial Commission. Indeed there is decision of the Constitutional Court Decision Number 005/PUU-IV/2006 which stated that the Constitutional Justices does not include the sense of “judges” which becomes the object of the

monitoring of the Judicial Commission. But the decision was based on the 3 (three) main opinions, namely: ²⁴

- a. The interpretation of the systematic with the original intent for the formulation of the Amendment of the 1945 Constitution did not enter the Constitutional Justices as one that should be monitored by the Judicial Commission.
- b. Constitutional Justice is not the judges, but judges because of the position that is selected by the House of Representative (DPR), President, and Supreme Court, and did not involve the Judicial Commission.
- c. If the justices entered in the monitoring of the Judicial Commission, it will interfere with the authority of the Constitutional Court to settling dispute over state institutions.

The argument is less powerful and convincing. **First** argument, the interpretation used is the interpretation of the systematic. But if that is used then a wider interpretation within the framework to enforce the judgments which is trusted of course is needed supervision of the conduct of the Constitutional Justices, especially is the nature of citizenship Constitutional Justices are still maintained. While the interpretation of the original intent, supervision of the Judicial Commission is also intended to apply for the Constitutional Justices.

Second, the status of the Constitutional Justices as judges because of the position is selected for a period of 5 (five) years of course should not become the base s powerful enough to remove it from the sense of “judges” which will

²⁴ub.ac.id, 2014, *Mahkamah Konstitusi dalam Sistem Checks and Balances*, taken from <http://safaat.lecture.ub.ac.id/files/2014/03/MAHKAMAH-KONSTITUSI-DALAM-SISTEM-CHECKS-AND-BALANCES.pdf>, downloaded on Friday, November 10th 2017, at 1.53 pm.

be monitored by the Constitutional Court. Against the Supreme Justice non career any of the Judicial Commission can perform supervision. Filling the judge of course should be less significant for the basis of the differentiation supervision.

Third, at the time of the Judicial Commission has the authority for supervision for the conduct of the Constitutional Justices, not placing the Judicial Commission is at the high of the Court. Matter supervision is also outside of the case and the judicial authority is run by the Constitutional Court. Therefore when the Judicial Commission supervise of the behaviour of Constitutional Justices, Constitutional Court does not need to the independence and impartiality of the judge and settling dispute which involves the Constitutional Court as one of the parties.

On April 2004 a Working Group sponsored by the United States aid fund - (IFES) issued a release report on the results of them comparative research against the institution of the Judicial Commission in several countries at the beginning of the IFES report says:²⁵

“In order to build an independent and accountable judiciary, many countries have chosen to create new institutions, such as judicial council. While judicial Councils can play an important role in strengthening judicial independence and in creating accountability mechanisms for the judiciary, they are only one of the components of a broad judicial reform strategy, which should cover a wide range of issues, including access to justice, the enforcement of judgements and anticorruption.”

²⁵Autheman, Violaine and Elena Sandra. 2004. *Global Best Practices: Judicial Council. Lessons Learned From Europe and Latin America*. IFES Rule of Law White Paper Series.

In the IFES report also mentions the background of the establishment of similar institutions as follows,²⁶

“The underlying rationale for Judicial Commission creation in countries like France, Italy, Portugal, and Spain was the need to insulate the judiciary from the executive. Judicial Councils were granted extensive powers in judicial career, including the selection, promotion, and discipline of judges, in an attempt to limit executive interference.”

There are some of views of experts on the supervision of Constitutional justices, namely:

1. The observers of constitutional law, Refly Harun assess the role of the Ethics Board of Constitutional Court is not a maximum in guarding the Constitutional Justices. The reason for this is because the establishment and operational funding the Ethics Board still facilitated by the Constitutional Court.²⁷
2. The Constitutional Court researcher, Abdul Ghoffar Husnan assess the form of Ethics Board still not a maximum in the organization and support in running the task.²⁸
3. The Chairman of the Judicial Commission talk about supervision of Constitutional Justices, Aidul Fitriada said that the requested

²⁶*Ibid.*

²⁷ nasional.kompas, 2017, “Kinerja Dewan Etik Dinilai Belum Maksima, MK perlu Lembaga Penjaga”, available at <http://nasional.kompas.com/read/2017/02/01/19502361/kinerja.dewan.etik.dinilai.belum.maksimal.mk.perlu.lembaga.penjaga>, accessed on Sunday, January 28th 2018, at 8.15 am.

²⁸ Pressreader, 2018, “Ketua Tanpa Marwah”, available at <https://www.pressreader.com/indonesia/kompas/20180125/281663960433951>, accessed on Sunday, January 28th 2018, at 8.30 am.

supervised by the Judicial Commission is the Constitutional Justices, not the Constitutional Court as institution.²⁹

In line with the comments of the experts, it may emphasize the reason behind the need of external supervision of Constitutional Justices is because the current internal control system has not been able to guarantee the trust of supervision since there are still cases that emerged. There is a needs for having an external supervision as institutions that can maximally supervise the Constitutional Court Justices.

Judicial Commission is an independent body and was formed by the command of the 1945 Constitution. The Judicial Commission is also an institution that has a long experience to perform as supervision. Thus, it is rational that the function of external supervision is handed by the Judicial Commission.

D. CONCLUSION AND RECOMMENDATION

1. Conclusion

Based on the previous discussion in chapter IV, it arrives at conclusion that there is urgency of external supervision on Constitutional Court's Justices in Indonesia. Urgency of external supervision on Constitutional Justices is due to some reasons. **First**, supervision system against the behaviour of Constitutional Justices is not maximum yet and not ideal based on the previous discussion in point A chapter IV. The system of supervision is still

²⁹ news.okezone, 2017, "*Ketua KY Angkat Bicara soal Pengawasan Hakim Konstitusi*", available at <https://news.okezone.com/read/2017/02/03/337/1608791/ketua-ky-angkat-bicara-soal-pengawasan-hakim-konstitusi>, accessed on Sunday, January 28th 2018, at 9.10 am.

internal conducted by the Honorary Council of Constitutional Court. Even though the membership of the Honorary Council of Constitutional Court consist of 2 (two) members namely 1 (one) of The Constitutional Court and 1 (one) of the Judicial Commission, but according to the author is still a lot of things that have to be arranged from both numbers and supervised mechanism so that supervision is ideal and maximum. **Second**, when it compares between system supervision of judicial institution in other countries namely Italy and French, author arrived at the conclusion that the authority of Judicial Commission in other countries are supervising the judiciary include Constitutional Court. Very expected that Indonesia can apply the system and can be the formation of the judicial institutions which free, independent, clean and authoritative. **Third**, the position of the supervisory institution of Constitutional Justice still internal and not a maximum yet of controlling and does not guarantee the trust of the Constitutional Court. So, these are the reason behind the need of external supervision of Constitutional Justices.

2. Recommendation

Responding the unclear authority of the Judicial Commission in Supervision the Constitutional Court Justices, the People's Consultative Assembly (MPR) needs to amend Article 24B of the 1945 Constitution which asserts the authority of the Judicial Commission in supervising the Constitutional Court Justices.

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