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Position and Functions of Judges in Enforcing the Supreme of the Law: Case Study of Code of Ethics Violation by Judge

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Abstract

This research is a rational-empirical research that aims; First, examine the existence of Judicial Power in a constitutional state based on the 1945 Constitution of the Republic of Indonesia. Second, examine the position of Supreme Court Justices as law enforcement actors in Judicial Power according to the 1945 Constitution of the Republic of Indonesia. Third, analyze whether the function of judges is Agung as a law enforcer in the Judicial Power as regulated in the 1945 Constitution of the Republic of Indonesia reflects the principles of independence. There are two main functions of judicial power as the main characteristics of the rule of law and the principle of the rule of law: First, judicial power, both in terms of substance and administration, has been determined to be independent and integrated under the guidance of the Supreme Court, but at the same time its role The DPR to control the Supreme Court's powers is enhanced through determining the appointment and dismissal of Supreme Court justices, and by establishing a Judicial Commission to oversee the administrative aspects of judicial

power. Second, taking into account the considerations of the Supreme Court, the President is given the right to grant clemency, abolition and amnesty. The enforcement of the rule of law is a necessity in a state of law and an independent, neutral (impartial) and competent judiciary is one element. The position and function of the Supreme Court judge holds a very important position and role, in enforcing the rule of law.

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Penelitian ini adalah penelitian rasional-empiris yang bertujuan; Pertama*, mengkaji eksistensi Kekuasaan Kehakiman dalam negara Hukum berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.* Kedua*, menelaah kedudukan Hakim Agung sebagai pelaku penegak hukum dalam Kekuasaan Kehakiman menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.* Ketiga*, menganalisis apakah fungsi Hakim Agung sebagai pelaku penegak hukum dalam Kekuasaan Kehakiman sebagaimana diatur dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 mencerminkan prinsip-prinsip independensi. Terdapat dua fungsi utama dari kekuasaan kehakiman sebagai ciri pokok negara hukum dan prinsip negara hukum:* Pertama*, kekuasaan kehakiman, baik dari segi subtansinya maupun administrasinya, telah ditetapkan bersifat mandiri dan terpadu di bawah pembinaan MA, tetapi pada saat yang bersamaan peran DPR untuk mengontrol kekuasaan MA ditingkatkan melalui penentuan pengangkatan dan pemberhentian hakim agung, dan dengan pembentukan KY untuk mengawasi segi-segi administrasi kekuasaan kehakiman.* Kedua*, dengan memperhatikan pertimbangan MA Presiden diberi hak untuk memberikan grasi, abolisi dan amnesti. Penegakkan supremasi hukum merupakan sebuah keniscayaan dalam negara hukum dan peradilan yang mandiri (independen), netral (tidak memihak) dan kompeten merupakan salah satu unsur. Kedudukan dan fungsi hakim agung memegang posisi dan peran yang sangat penting, dalam penegakkan sumpremasi hukum tersebut*.

Keywords: the position and function of the supreme judge, the rule of law

Preliminary

The 1945 Constitution Law of the Republic of Indonesia [hereinafter referred to as the 1945 Constitution] affirms that the Unitary State of the Republic of Indonesia is a constitutional state (Article 1 paragraph (1) and 3 of the 1945 Constitution of the Republic of Indonesia). This rule implies that the law in the state of Indonesia is placed in the highest (*supreme*) and strategic position in the constitutional constellation.

Based on the state law system, according to Moh. Koesnardi and Harmaily Ibrahim, that all regulations or provisions that apply in a legal state must be based on or sourced from higher regulations. This means that lower regulations must not conflict with lower regulations and must not conflict with higher regulations (Moh. Kusnardi and Harmaily Ibrahim, 1988: 226).

In this regard, the characteristics of a democratic legal state, Pancasila, contain the following meanings: (1) Recognition and protection of human rights which contain equality in the political, legal, social, economic and cultural fields; (2) a judiciary that is free from the influence of anything or everything. other and impartial powers; and (3) Legality in the sense of law in all its forms (Moh. Kusnardi and Harmaily Ibrahim, 1988: 227).

Realizing a state of law, not only required legal norms or statutory regulations as legal substance, but also required institutions or agencies that act as a legal structure supported by the legal behavior of all components of society as a legal culture. These three elements, both legal substance, legal structure and legal culture, were described by LM Friedman as the composition of the legal system (Indonesian Attorney General, 2004: 1).

A logical consequence that the Unitary State of the Republic of Indonesia as a state of law is the guarantee of an independent judicial power to administer the judiciary to enforce law and justice based on the 1945 Constitution of the Republic of Indonesia. Because an independent judicial power is one of the important principles for Indonesia as a country. law. This principle requires judicial power that is free from interference from any party and in any form, so that in carrying out its duties and obligations there is a guarantee of impartiality (independence) of judicial power except for law and justice.

Efforts towards the independence of judicial power are carried out by: (1) rearranging the applicable legislation; (2) carry out restructuring of judicial institutions; and (2) improving the qualifications of judges. The restructuring of the legislation as an effort to strengthen the principle of 1970 concerning the Basic Provisions of Judicial Power with Law Number 35 of 1999 concerning Amendment to Law Number 14 of 1970 concerning Basic Provisions on Judicial Power.

Through the amendment to Law Number 14 of 1970, a policy has been laid down, that all matters concerning the judiciary, both those relating to judicial technicalities as well as organizational, administrative, and financial matters are under one roof under the authority of the Supreme Court.[1]

The reforms in the field of law that have occurred since 1998 have finally been institutionalized through the amendments to the 1945 Constitution. The spirit of the amendments to the 1945 Constitution is to encourage the establishment of a more democratic constitutional structure.

[1] With the enactment of Law Number 35 of 1999, the development of the general judiciary, religious courts, military courts and state administrative courts is under the authority of the Supreme Court. However, for the religious judiciary, considering the specific history of its development in the national justice system, the guidance for the religious judiciary is carried out by taking into account the suggestions and opinions of Minister of Religion and the Indonesian Ulema Council [MUI].

The results of the amendments to the 1945 Constitution gave birth to state institutional buildings which are in an equal position by exercising mutual control (*checks and balances*), realizing the rule of law and justice as well as guaranteeing and protecting human rights. Equality and the availability of mutual control are the principles of a democracy and a state of law.

In particular, the results of the amendments to the 1945 Constitution have brought a *wind of change* in the life of the state administration, especially in the exercise of judicial power. Based on these changes, the construction of judicial power is no longer the authority of the Supreme Court [hereinafter referred to as the Supreme Court] and the judicial bodies under it, but also by a Constitutional Court [hereinafter referred to as the Constitutional Court] (Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia).

Seeing this construction, the Supreme Court and the Constitutional Court are the highest guards of the judiciary and are the guardians of the integrity and behavior of the corps. This is a logical consequence, considering that the integrity, independence, impartiality and firmness of judges in upholding morals are real manifestations of the existence of the judiciary in order to gain the trust of the people seeking justice.

However, several cases have become separate records for these law enforcement agencies. Judge case *ad hoc* Syamsul Rakan Chaniago who was found guilty of violating the code of ethics. The sanction is that he is sentenced to non-hammer for 6 months as stipulated in Article 21 letter b of Joint Regulation of the Chairman of the Supreme Court and the Chairman of the Judicial Commission No. 02/PB/MA/IX/2012-02/BP/P-KY/09/2012. Likewise with the case of Ramlan Comel who was suspected of receiving bribes and sexual gratification.

These cases are a separate homework for the Supreme Court, especially the Supreme Court Justices in carrying out their mandate as the highest law enforcers (law supremacy) so that legal certainty

and a sense of community justice as the ultimate goal of law enforcement are truly realized.

Based on the above background, research on the Position and Functions of Supreme Court Justices in the Context of Upholding the Supremacy of the Law: Case Studies of Violations of the Supreme Court Justices' Code of Ethics is very necessary. This examines the issue of violations of the code of ethics committed by the Supreme Court Justices by examining the actual existence, position, and function of the Supreme Court justices themselves.

The central issue in this research is Are the Positions and Functions of Supreme Court Justices in the Context of Upholding the Supremacy of Law in accordance with the initial idea of forming the perpetrators of the Judicial Institution? From these central issues, several legal issues were developed as follows: *First*, how is the Existence of Judicial Power in a state of law based on the 1945 Constitution of the Republic of Indonesia? *Second*, what is the position of the Supreme Court Justices as law enforcement actors in the Judicial Powers according to the 1945 Constitution of the Republic of Indonesia? *Third*, does the function of the Supreme Court Justices as law enforcement actors in the Judicial Powers as regulated in the 1945 Constitution of the Republic of Indonesia reflect the principles of independence?

Reserch Objectives

Based on the existing problems, this study aims to: *First*, examine the existence of judicial power in a legal state based on the 1945 Constitution of the Republic of Indonesia. *Second*, examine the position of the Supreme Court Justices as law enforcement actors in Judicial Power according to the Act. 1945 Constitution of the Republic of Indonesia. *Third*, analyze whether the function of the Supreme Court as law enforcement actors in the Judicial Power as regulated in the 1945 Constitution of the Republic of Indonesia reflects the principles of independence.

Benefits The expected benefits in this research are: *First*, academically it can provide theoretical and conceptual scientific benefits that can be developed in the realm of legal studies. *Second*, it can practically provide benefits in formulating policies for coaching, monitoring, and recruitment mechanisms as a step to ensure the quality of judges and Supreme Court justices in carrying out their duties and functions.

Literatur Review

The Concept of State Law

The concept of State Law rule is actually a concept that has long been the discourse of experts. Plato put forward the concept of *nomoi* which can be considered as the forerunner of thinking about the rule of law. Meanwhile, Aristotle put forward the idea of a rule of law which is related to the meaning of the state which in its formulation is still related to the *policy*. For Aristotle, the ruler of the state is not a human being, but a just mind and morality that determine the merits of a law (Muhammad Tahir Azhary, 1992: 66).

The term *rechtstaat* (state of law) is a new term, both when compared to the term democracy, constitution, and people's sovereignty. Experts have provided an understanding of the rule of law. Supomo gave an understanding of the rule of law as a country that is subject to law, legal regulations also apply to all agencies and state equipment. The state of law will also guarantee legal order in society, which means providing legal protection, between law and power there is a reciprocal relationship (Adi Sulistiyono, 2006: 4).

The conception of the rule of law is an idea that arose to oppose absolutism which had given birth to a state of power. In essence, the power of the ruler must be limited so as not to treat the people arbitrarily. This restriction is carried out by means of the rule of law, namely that all actions of the authorities should not be at will, but must be based on and rooted in the law, according to the provisions of the law and applicable laws and for that there must also be a division

of state power, especially judicial power which is separated. from the ruler.

According to M. Tahir Azhary, in the literature there are five conceptions of the rule of law, namely: (1) Islamic Nomocracy Law which is applied in Islamic countries; (2) The concept of law according to the Continental European concept called *rechtstaat*; (3) State Law in *Rule of Law* in *Anglo Saxon* countries; (4) State law of *Socialist* comunist countries; dan (5) The state of Pancasila law (Muhammad Tahir Azhary, 1992: 66).

The concept of an Islamic Nomocratic State of Law has characteristics that are sourced from the Qur'an, Sunnah and *Ra'yu*. The main elements include: (1) Power as a trust; (2) Deliberation; (3) Justice; (4) Equation; (5) Recognition and protection of human rights; (6) free trial; (7) Peace; (8) Welfare; and (9) people's obedience (Malik, 2007: 30).

The concept *rechtsstaat* comes from the human ratio, individualistic liberalism, anthropocentric humanism, and absolute separation of the state from religions (atheism is possible). The main elements according to FJ Stahl are four elements of a rule of law, namely: The existence of guarantees for human rights; There is a division of power; The government must be based on legal regulations; and the existence of administrative justice (Denny Indrayana, 2004: 106).

Meanwhile, according to Sceltema the elements consist of: (1) legal certainty; (2) Equation; (3) Democracy and; (4) Government that serves the public interest (Muhammad Tahir Azhary, 1992: 67).

The concept *of the Rule of Law* has the same source as the concept of *rechtstaat*. The main elements in AV Dicey's description include: (1) The supremacy of the rule of law. The absence of arbitrary rules in the sense that a person may be punished if he violates the law; (2) Equal status before the law; (3) Guaranteed human rights by law and court decisions (Muhammad Tahir Azhary, 1992: 67).

Starting from the philosophy of Pancasila, Philipus. M. Hadjon formulates the elements or elements of the Pancasila legal state as

follows: (1) Harmony of relations between the government and the people based on the principle of harmony; (2) The proportional functional relationship between state powers; (3) The principle of dispute resolution by deliberation and the judiciary is a last resort; (4) The balance between rights and obligations (Philipus. M. Hadjon, 1987: 21).

Furthermore, *International Commission of Jurist*, which is an organization of international legal experts at its conference in Bangkok in 1965, expanded the concept *Rule of Law* and emphasized what is called: "*The dynamic of the rule of law in the modern age*". It was stated that the basic conditions for the implementation of a democratic government under the *rule of law* are: Constitutional protection, in the sense that the constitution in addition to guaranteeing individual rights must also determine the procedural way to obtain protection of the guaranteed rights; An independent and impartial judiciary; Free elections; Freedom of expression; Freedom of association/organization and opposition as well; 6. Civic education (Firdaus Arifin, 2006).

Jimly Asshiddiqie stated that there are at least eleven main principles contained in a democratic rule of law, namely: (1) There is a guarantee of equality and equality in life together; (2) There is recognition and respect for differences/plurality; (3) There are rules that bind and serve as a common reference source; (4) The existence of a dispute resolution mechanism based on a mutually adhered to regulatory mechanism; (5) There is recognition and respect for human rights; (6) There is a limitation of power through the mechanism of separation and division of power accompanied by a mechanism for resolving constitutional disputes between state institutions, both vertically and horizontally; (7) The existence of an independent and impartial judiciary with the highest decision authority on the basis of justice and truth; (8) The existence of a judicial institution that was specially formed to ensure justice for citizens who have been harmed as a result of government decisions or policies (state administration officials); (9) The existence of a *judicial*

review by the judiciary on the norms of legislative provisions, both those set by the legislative and executive institutions; (10) The making of a constitution and laws and regulations that regulate the guarantee of the implementation of the above principles; and (11) there is recognition of the principle of legality or *due process of law* in the entire system of state administration (Jimly Asshiddiqie, 2003: 6).

What about the concept of a legal state in Indonesia? Following Garry F. Bell's opinion in his book *The New Indonesia Laws Relating to Regional Autonomy Good Intentions, Confusing Laws* as quoted by Denny Indrayana: as, the terminology of the rule of law (*a nation of law*) in the context of Indonesian law is closer to the concept of continental law (*rechtsstaat*) than the concept *of rule of law* in Anglo-Saxon countries (Denny Indrayana, 2004: 101). In contrast to Garry F. Bell, RM Ananda B. Kusuma saw that the Republic of Indonesia adhered to the *Continental Rechtsstaat* principle and *the Rule of law* (RM Ananda B. Kusuma, 2004: 146).

The author does not aim to find differences in these views, because in principle both have similarities, as stated by *NW Barber*: a position not to differentiate too much between the concept of *rechtsstaat* and the concept *rule of law*, partly because of the basic similarities between the two. In this case, Barber reveals:

> Conceptions of Rechtsstaat resemble conceptions of the rule of law: both concepts provide similar answers to similar questions. The starting point for each is an investigation of what it means for a person be governed bay law, as opposed to being subject to the dictates of the powerful (RM Ananda B. Kusuma, 2004: 102).

Indonesia has formally since 1945 (pre-amended 1945 Constitution) declared itself as a legal state as evidenced in the explanation of the 1945 Constitution that it has been firmly stated, "*Indonesia is a state* on *law and not a state based on mere power*". The concept of the rule of law in Indonesia is confirmed by the 1945 Constitution as a result of the amendments in Article 1 paragraph 3 which stipulates: "*The State of Indonesia is a State of Law*".

Emphasizing the principle of the rule of law, the principles of the Indonesian rule of law as contained in the amendments to the 1945 Constitution include: *First*, the protection of human rights and citizens. We can see this by the inclusion of provisions on human rights in a separate chapter (Chapter XA Article 28A to Article 28J). *Second*, there is an independent judicial power (Article 24 paragraph 1 of the 1945 Constitution). *Third*, there is a state administrative/administrative court (Article 24 paragraph 2 of the 1945 Constitution).

Paying attention to the formulation of the concept of the rule of law in Indonesia, Ismail Suny noted four requirements for the state of law formally which are our obligation to implement them in the Republic of Indonesia: 1) Human Rights; 2) Power sharing; 3) Government by law; and 4) Administrative justice (Ismail Suny, 2004: 5-6). Regarding the existence of administrative justice as a characteristic of the rule of law, Philipus M. Hadjon said:

> In essence, administrative law is an instrument of the rule of law. Associated with this concept, the measure or indication of the rule of law is the functioning of administrative law. On the other hand, a state is not a state of law in reality if administrative law does not function (Philipus M. Hadjon, 2004: 1).

The implementation of the firm concept of the rule of law in Indonesia is a system of direct elections by the people so that they are free to determine their attitudes and opinions, in Oemar Seno Adji free elections are fundamental to the rule of law (Denny Indrayana, 2004: 105**)**. Because through direct elections the accountability of members of parliament is getting higher.

The concept of the Supreme Judge

The term judge in the Indonesian context does not belong to the original Indonesian nation, but is an absorption element (*receptie*) from Arabic, even though it has been adopted into Indonesian and has been used in various official forums, such as the Legal Forum or Courts and has also been used in in the practices of everyday people's

lives (Soetjipno, 2006: 361). From the point of view of Legal Studies, the process of *reciepti* term judge according to Soetjipno, runs in 4 (four) phases, namely: *First*, *theoritische receptie*, in the sense that theoretically a term in this case a language has been accepted in life or the world of Campus/Academics. *Second, practice receptie,* with that after learning a language, the community concerned puts it into practice for practical purposes. *Third, wetenschapelijke receptie,* namely *recepties* that go through study forums in universities through the process of scientific studies, then there is *a wetenschapelijke receptie*. *Fourth, positive reception,* in the sense that a language is not only accepted, but has also been adopted into languages and has officially entered the Indonesian treasury itself, so that we all forget that the term a language comes from a foreign language (Soetjipno, 2010). 2005: 13-14).[2]

The Indonesian constitutional system affixes the term "Hakim" in Indonesian with the term *'Judges'* in English, from the Latin translation *'Vulgate'* which is influenced by the Greek translation *'Septuagint'*. Of the three languages, 'the word judge' has the meaning of "judge." Indeed, this term is somewhat misleading, because most British people associate the concept of modern judges with Israeli judges[3] (Thomas L. Constable, http://www.soniclight.com).

Of note, judges in Israel did not have new offices throughout the historical period. Moses commanded the people to assign judges in each of the cities of Israel to settle civil strife. In addition, some are presiding judges in places of worship, who act as high priests. He helps solve difficult cases for local judges. Thus, it is clear that there are several judges in the place of worship who act as a Supreme Court (Thomas L. Constable, http://www.soniclight.com).

[2] Arabic terms that have become a language like the original Indonesian term itself, such as Hakim, Yakin, Mufakat, and others. Likewise with Continental European languages such as Substation, Books, Slender and others. All of them have been adopted as if they were native terms in Indonesian.

[3] As is well known, 'judges' were very different from judges today. So is the term Judge Shophetim in Hebrew. Some literature accepts the term based on its principles and character, as written in the *Book of Joshua.*

In contrast to Indonesia, in several countries, both those that adhere to the *common law* and *civil law* systems, they have different terms regarding judges. In the United States, the designation of judges is different for each court environment. There are at least 3 (three) judges in the judicial environment in the USA, namely: (1) judges for low and high courts are called "*Your Honor*" or "*Judge*"; (2) judges on the United States Supreme Court, referred to as "*Juctice*"; and (3) judges for the Supreme Court of the United States of America and the states are called "*Juctice of Peace*" (http://hosted.ap.org). In Dutch constitution, the term *Rechter* for lower court judges and *de Leden van den Hoge Raad der Nederlanden* for Federal Court (MA) judges. While in the French Constitution, the terms *Conseillers* and *Conseillers Referendaires*, while in the Philippine Constitution the terms *Member of the Supreme Court*.

According to Soetjipno, to simplify the term 'judge' in the Indonesian context, at least 3 (three) approaches are used: *First*, a terminological approach. From a terminological point of view, the term judge can be viewed in terms of history, acculturation, *reception* and language. *Second*, the nomenclature approach. In terms of nomenclature, the term 'judge' has been used practically or officially for a particular need or need, to refer to naming something in a certain field, such as a legal field. Based on that, the term judge is used to give a name to a state office or position in society, whose duties, functions and roles are to adjudicate, which ultimately must take or determine a Fair Decision against certain litigants to obtain justice. *Third*, the functional approach. As the name implies, the functional approach refers to the function of something, regardless of its structure or nomenclature. That is, if you intend to resolve a problem, case or conflict, which is carried out through examination, research and discussion methods that end in the consideration and decision-making step - then all the steps, tasks, functions, and roles that are needed, are not required. it doesn't matter who it is, whether it's a state or not, what's important is its function – there's none other than the judge. After that, they will look for the right terminology or

nomenclature for such tasks, functions and roles (Soetjipno, 2006: 362-384).

According to As-Shiddieqie, the term "judge" has two meanings, namely people who adjudicate cases in court and wise people (Dudu Duswara Machmudin, 2006: 52). In formal juridical terms, judges are state judicial officials who are authorized by law to adjudicate (1 point 8 of the Criminal Procedure Code). Excavating is a series of judges' actions to accept, examine, and decide cases (criminal, civil etc.) based on the principles of being free, honest and impartial in court proceedings in matters and according to the method regulated by law (Article 1 point 9 of the Criminal Procedure Code).

Judges are also defined as officials who exercise judicial power as regulated by law (Article 31 UUKK 2004), while judicial power is the power of an independent state to administer justice to enforce law and justice based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia (Article 1 UUKK 2004). The term deciding a case relates to a court decision which means a judge's statement spoken in an open court session, which can be in the form of punishment or free or free from all lawsuits in terms of and according to the method stipulated in the law (Article 1 point 11 UUKK 2004).

In the context of the *Common Law System* and *Civil Law System* as applicable in the USA and Continental Europe it is stated:

> A 'judge' or justice is an official who presidents over a court. The powers, functions, method of appointment, discipline, and training of judges vary widely across different jurisdictions. (http://hosted.ap.org).

A judge or Supreme Court Justice is an official who leads a judicial environment. The authority, function, method of appointment, discipline, education and training of judges covers a wide variety of different fields of study.

Regarding the understanding of judges, Claire Palley said:

> A judge is the person entrusted, on behalf of the community, to weigh these conflicting interests - to weigh on the one hand the respect due to confidence in the profession and on the other hand the ultimate interest of the community in justice being done, or in the case of a tribunal such as this, in a proper investigation being made into these serious allegations (J. L. Jowell and J. P. W. B. McAuslan (eds), 259).

A judge is a person who is trusted by the community, in terms of: (1) to give consideration to a dispute; (2) to give consideration to one hand in relation to trust on behalf of the profession and not on the other hand regarding the community's request for the implementation of a sense of justice.; and (3) give consideration to a case in court, if a case investigation without meaningful evidence.

Based on several cases involving judges and supreme judges in law enforcement and justice, the hypothesis in this study is that the position and function of judges as law enforcement actors in the Judicial Power as regulated in the 1945 Constitution of the Republic of Indonesia is not yet fully reflects the principles of independence in order to uphold the rule of law.

Results and Discussion

The Results

The result of the practice of abuse of authority in the judiciary tend to strengthen and damage all aspects of the judiciary. This results in a decrease in the authority and trust of the public, and the international community towards the judiciary. A case note written by Goenawan Muhammad in Tempo Magazine in early 2004, recounts that one day in 1987, an act of humiliation was committed by a woman named Ny. Mimi against the Panel of Judges at a court in Jakarta. Mrs. Mimi threw the shoes she was wearing at the Panel of Judges who were hearing the fraud case that happened to her. It turned out later, Mrs. Mimi expressed anger and disappointment at the Panel of Judges who only lightly punished the perpetrators of fraud against her, even though she had already handed over Rp. 2.5 million to the judge, and he warned (ordered) that his opponent be sentenced to the maximum

severity. He felt that Hakim had cheated on him – his opponent had given him a bigger bribe. (Pinggir Notes in Tempo Magazine No. 48/XXXII/26 January – 01 February 2004).

Based on the case notes, it can be concluded that Mrs. Mimi has committed two insults to the Panel of Judges; *First*, he threw shoes, objects that usually come into contact with unclean and dirt on the street, at the judge. *Second*, he views Hakim as – a 'despicable being' whose energy can be bought and is expected to satisfy his lust. But the question is, how can a Judge perform such despicable behavior? Isn't there already a code of ethics and also internal control over the behavior of judges who can maintain the honor and dignity of judges as law enforcers.

The case of ad hoc judge of the Supreme Court (MA) Syamsul Rakan Chaniago was disqualified for 6 months because he was proven to have committed an ethical violation when he met with a defendant's lawyer. Indonesia Corruption Watch (ICW) has spoken out for the KPK to 'intervene' in this matter. Syamsul is a member judge of the Supreme Court panel of judges who tried Syafruddin Arsyad Temenggung who at that time was a defendant in a corruption case related to the Certificate of Completed Bank Indonesia Liquidity Assistance (SKL BLBI) which was handled by the KPK. The cassation decision released Syafruddin from the legal trap. It turned out that Syamsul had had a meeting with Ahmad Yani who was listed as one of Syafruddin's lawyers. This is why Syamsul was sentenced to ethical sanctions by the Supreme Court. On the other hand, this is also a big question mark for ICW. This is similar to the case of Ramlan Comel who was suspected of receiving bribes and sexual gratification from litigants, namely the former Mayor of Bandung Dada Rosada, which ended in dishonorable dismissal.

This state of the judiciary cannot be allowed to continue, extraordinary efforts need to be made that are oriented towards the creation of a judicial body and judges who can truly ensure that the public and justice seekers receive justice, and are required in a fair

manner in the judicial process in accordance with statutory regulations, invitation.

The principle "*res judicata pro varitate habetur*"[4] which states that a judge's decision must be considered correct as long as there is no new decision canceling it, even though it is contrary to law and legislation, does not 'justify' a judge's decision that is not qualified (Ceklik Setya Pratiwi, 2008: 7). This means that in deciding a case the judge must really explore and be guided by the principles of truth and justice and is a form of scientific and moral responsibility (BJ van Heys, 1985). It should be realized that the practice of abuse of authority in the judiciary is caused by many factors, including and primarily the ineffectiveness of internal (functional) oversight in the judiciary (Supreme Court of the Republic of Indonesia, 2003; 93).[5]

According to Mas Achmad Santosa, the weak internal control was caused by several factors, including: (1) inadequate quality and integrity of supervisors; (2) non-transparent disciplinary inspection processes; (3) the absence of facilities for disadvantaged communities to submit complaints, monitor the process and results (no access); the spirit of defending fellow corps (*esprit de corps*) which resulted in the imposition of sentences that were not balanced with deeds. Every effort to improve a bad condition will definitely get a reaction from those who have benefited from the bad condition; and; (4) there is no strong will from the leadership of law enforcement agencies to follow up on the results of supervision (Malik, 2007: 30).

The position and role of judges, and the Supreme Court Justices as the main actors in the judiciary, becomes very important, especially with all the authority they have, for example a judge can transfer

[4] this principle was originally emphasize the principle of judge independence or the independence of judges in making decisions so that they are free from influence of other parties. But in the course of this principle is used as a justification for judges to make 'wring' decisions, thereby injuring the sense of justice which is the main purpose of implementing the decision.

[5] Supervision of judges, including supreme judges, carried out by the Supreme Court (MA) has raised various problems for judges, including Supreme Court Justices. This issue relates to the integrity and personality of judges in general.

someone's ownership rights, revoke the freedom of citizens, declare arbitrary government actions against the community, even order the removal of a person's right to life, therefore, the authority and duties of a judge must be carried out in the context of upholding law, truth and justice according to a code of ethics indiscriminately by not discriminating between people as regulated in the pronunciation of a judge's oath, where everyone is equal before the law (*equality before the law*) and the judge.

The judge's enormous authority demands a high responsibility, so that the court's decision pronounced with *the words* "For Justice based on the One Godhead" implies that the obligation to uphold truth and justice must be accounted for horizontally to all humans, and vertically accountable. to God Almighty.

To be able to carry out all of its functions effectively, judges certainly need the trust of the community and justice seekers, because with this trust the court can resolve cases through legal channels properly. Trust in the judiciary does not arise by itself, but must go through various proofs that the judiciary and judges truly uphold the law and uphold truth and justice correctly and consistently. Therefore, in the context of enforcing law and justice, judges as the main executor of court functions, must have commitment, determination, and enthusiasm in cleaning up the judiciary from all forms of abuse of authority and in the context of restoring the authority of the judiciary and efforts to restore public trust in judges. One of the important things that is highlighted by the community in trusting the judge is the behavior of the judge concerned, both in carrying out his judicial duties and in his daily life. Therefore, every judge must maintain and uphold the honor, dignity, and behavior of judges in the context of realizing truth and justice based on the One Godhead.

The failure of the internal control system as mentioned above has not yet been overcome by the judiciary, although at the same time the concept of a one-roof judicial system in the Supreme Court (hereinafter referred to as MA) which actually raises concerns about a monopoly. power. These situations and concerns prompted the idea

to form an independent institution outside the Supreme Court, which could counterbalance the monopoly of power within the institution. In order to realize this idea, a Judicial Commission (hereinafter referred to as KY) was formed which is expected to be an "*external auditor*", which can balance the exercise of judicial power. The existence of a supervisory system in the judicial power system is expected to encourage the creation of a better judiciary.

Discussion

Existence of Judicial Power in the Indonesian Legal State

Judicial power is the third pillar in the modern power system. In Indonesia, this judicial power function is often referred to as the judicial branch of power as a translation of the terms *jucicatief* (Dutch) and *judicative* (English). The existence of judicial power in the practice of state administration manifests itself in the judiciary. This is as stated by Jimly Asshiddiqie, that in the context of judicial power, several terms are commonly used, namely court, judiciary, and adjudicating. And among these terms are related to each other (Jimly Asshiddiqie, 2008: 509).

According to Mukti Arto, the existence of the judiciary is very important for three reasons, namely: (1) the court is the guardian of the constitution; (2) free trial is an element of a democratic state; and (3) courts are the root of the rule of law (A. Mukti Arto, 2001: 20). Thus, judicial power which is free and independent and responsible, has a very urgent and absolutely necessary role in the modern state structure and accommodates one of the components in order to realize the rule of law and justice.

Judicial power in the realm of the rule of law is the main feature of the rule of law and the principle of the rule of law. Jimly Asshiddiqie wrote, there are at least two main functions of the judicial power: *First*, the judicial power, both in terms of substance and administration, has been determined to be independent and integrated under the guidance of the Supreme Court, but at the same time the role of the DPR to control the Supreme Court's power is enhanced through the determination of the Supreme Court.

appointment and dismissal of Supreme Court justices, and with the establishment of a Judicial Commission to oversee the administrative aspects of judicial power. *Second*, taking into account the considerations of the Supreme Court, the President is given the right to grant clemency, abolition and amnesty (Jimly Asshiddiqie, 2004: 220).

Judiciary powers the modern state system is a branch that is organized separately as one of the essences of state activities. In response to this, John Alder said, "*The principle of separation of power is particularly important for the judiciary*". (Jimly Asshiddiqie, 2004: 521).

According to the context of the state of the Republic of Indonesia, Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia. *Because* of its independence and independence, in the tradition of the United States and many other countries, according to Jimly Asshiddiqie, the branch of judicial power has often set *aside a* statutory regulation stipulated by parliament deciding a concrete case in order to uphold justice in resolving cases. Jimly Asshiddiqie, 2008: 522). According to Paulus E. Lotulung, the principle of an independent judiciary is natural and universal. This provision has also been adopted in Article 10 of The Universal Declaration of Human Rights, that "*everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations of any criminal charge against." him*". (That everyone has the right in full equality to have his voice heard in public and fairly by an independent and impartial court, in terms of determining his rights and obligations and in any criminal charges directed against him) (Jur A. Hamzah, 2003: 3).

The intervention of executive power on judicial power in the historical trajectory of the Indonesian state administration is recorded, that in guided democracy after the Presidential Decree of July 5 1959, it was seen in two laws governing the function and position of judicial

power. The two laws are Law Number 19 of 1964 concerning Basic Provisions of Judicial Power and Law Number 13 of 1965 concerning Courts in General Courts.

Article 19 of Law Number 19 of 1964 states: "*In the interest of the revolution, the honor of the state and the nation, or the interests of the community, the President may step down or intervene in court matters*." Furthermore, Law Number 13 of 1963 concerning Courts within the General Court and the Supreme Court states that: "*in carrying out their functions must comply with the political vision of the government*." Judges. Article 24 paragraph (2) of the 1945 Constitution as a result of the amendment states:

> "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court".

Based on these provisions, it is clearly determined: (1) judicial power is exercised by an MA and a MK. This means that the current existence of the Supreme Court is not the only institution that holds judicial power, but there are other institutions of equal position, namely the Constitutional Court; and (2) the judicial power exercised by the Supreme Court consists of four judicial environments, namely the general court environment, the religious court environment, the military court environment, and the state administrative court environment.[6] In addition, a new institution was adopted whose duties and functions were related to judicial power, namely the Judicial Commission.

Amendments to the 1945 Constitution as mentioned above have brought about changes in the life of the state administration in the exercise of judicial power. Based on these changes, it was emphasized

[6] In addition to the four courts under the Supreme Court, in order to meet the growing needs, several special and *ad hoc* courts such as human rights courts, tax courts, commercial courts and the like are also held.

that judicial power is exercised by: the Supreme Court and the judicial bodies under it in the general court environment, the religious court environment, the military court environment, and the state administrative court environment and the Constitutional Court. In addition, there is also an Islamic Sharia Court in the Province of Nanggroe Aceh Darussalam, which is a special court within the Religious Courts Environment (as long as its authority relates to the authority of the religious court) and the General Courts environment (as long as its authority concerns the authority of the general court). In addition to changes regarding the administration of judicial power.

Judicial power is regulated in Law No. 4 of 2004 which replaced Law No. 14 of 1970. Article 1 of Law No. 4 of 2006 stipulates that judicial power is the power of an independent State to administer justice in order to uphold law and justice based on Pancasila for the sake of the implementation of the State of Law of the Republic of Indonesia. This means that the judge is free from extra-judicial parties and is free to find law and justice. However, the freedom is not absolute, there is no limit, but limited in terms of macro and micro. From a macro perspective, it is limited by the government system, political system, economic system and so on, while from a micro perspective, the freedom of judges is limited or supervised by Pancasila, the Constitution, Law, morality and public order. The limitation of judges' freedom is not without reason, because judges are human beings who cannot escape from mistakes. To reduce errors in making decisions, the freedom of judges needs to be limited and their decisions need to be corrected. Therefore, the principle of good judicature, among others, is the existence of supervision in the form of legal remedies.

Article 2 of Law Number 4 of 2004 states that judicial power is exercised by the Supreme Court and the Constitutional Court. Article 11 of Law Number 4 of 2004 states that the Supreme Court is the highest court of the four judicial circles, while Article 12 reads that the Constitutional Court hears at the first and last levels. Thus after 2004

we no longer have the highest court. What is the position of the MA & MK? Prior to 2004, we knew what was called the unification of the judiciary (*eenheid van rechspraak*). In the absence of a high court in the Republic of Indonesia, there is no longer a judicial unit.[7]

Position of Supreme Court Justices

Efforts to improve legal reform in general and judicial power in particular to improve the rule of law is not enough to improve the law by changing or revising it, but more importantly increasing its human resources from the legislative, executive and judicial elements, from an intellectual perspective. and morals.

The Supreme Court as one of the bodies exercising judicial power is the highest state court of all judicial circles which in carrying out its duties is independent from the influence of the government and other influences and carries out the highest supervision over the actions of other courts. The Supreme Court has duties and functions in carrying out its role as the highest court, including: judicial function, supervisory function, regulating function, advisory function and administrative function (Rizky Argama, et al., 2006: 6).

In carrying out its duties and functions, the Supreme Court is an institution that is free, independent and independent from the

[7] Except because the Constitutional Court is adjudicating at the first and final level, there is no legal remedy at all. All judicial environments under the Supreme Court are available for legal remedies, so that court decisions at the first and second level in the environment under the Supreme Court are possible to be corrected by a higher court.the absence of such a supervisory mechanism, the power of the Constitutional Court is absolute and does not fulfill the *principle of good judicature*? Article 19 of Law Number 4 of 2004 paragraph 3 states that the judge's deliberation meeting is confidential, which means that it cannot be known by the public or outside those who participate in the deliberation, while paragraph 5 says that in a deliberation session a unanimous consensus cannot be reached, the judge's opinion which differ must be included in the decision (*dissenting opinion*).

influence of the government and other influences. One of the manifestations of the independence and independence of the Supreme Court is the resources of Supreme Court judges who have a personality that is not reprehensible, professionally fair, and experienced in the field of law. A logical consequence, given that the Supreme Court judge as one of the law enforcement officers has a central position in the Supreme Court.

To improve the quality of Supreme Court justices, there are at least three steps that need to be carried out synergistically, namely: (1) the independence of judges; (2) recruitment pattern; and (3) supervisory mechanism.

Independence of Supreme Court Justices

As a consequence of the rule of law, in judicial power, the independence of judges is an essential element of the rule of law (*rechtsstaat or rule of law*). Based on these principles, the independence of judges must be protected from any pressure, influence, and interference from anyone. The independence of judges is a basic prerequisite for the realization of the ideals of the rule of law and is a guarantee for the enforcement of law and justice. This principle is deeply embedded and must be in the process, examination and decision making of each case and is closely related to the independence of the court as an authoritative, dignified, and trusted judicial institution. The independence of judges is manifested in the independence of judges, both individually and as institutions, from various influences that come from outside the judge in the form of interventions that are directly influencing in the form of persuasion, pressure, coercion, threats, or countermeasures due to certain political or economic interests. from the government or political power in power, certain groups or groups, with rewards or promises of rewards in the form of positional benefits, economic benefits, or other forms.

The independence of judges is closely related to the impartiality or impartiality of judges, both in examinations and in decision-making. Judges who are not independent cannot be expected to be neutral or

impartial in carrying out their duties. Likewise, judicial institutions that depend on other organs in certain fields and are unable to regulate themselves independently will also cause a non-neutral attitude in carrying out their duties. Independence also has a different aspect. Functional independence, contains a prohibition for other branches of power to intervene against judges in carrying out their judicial duties. However, this freedom is never interpreted as containing an absolute nature, because it is limited by law and justice. This independence also means that judges are free to make decisions according to the values they believe in through legal interpretation, even though decisions based on such interpretations and beliefs may be contrary to those with political and administrative power. If the decision is not in accordance with the wishes of the party in power, it cannot be used as a reason to take retaliatory action against the judge either personally or against the authority of the judiciary ("... *when a decision adverse to the beliefs or desires of those with political power, can't affect retribution on the judges personally or on the power of the court"*).[8]

The independence of judges is related to examination and decision making in cases faced by judges, in order to obtain a decision that is free from pressure, influence, both physical, psychological, and corruption due to KKN, then in fact the independence of judges is not a *privilege* or privilege. judges, but rather is an inherent right (*indispensable right* or *inherent right)* to judges in order to guarantee the fulfillment of the human rights of citizens to obtain an independent and impartial *trial (fair trial).* Thus, reciprocally, it is the duty of judges to be independent and impartial in order to fulfill the demands of justice seekers' human rights *(justitiabelen, justice seekers).* This in itself also implies the judge's right to is treated free from pressure, influence and threats above. The 1945 Constitution provides this guarantee, which is then elaborated in the UUKK and

[8] heodore L. Becker in Herman Schwartz (2003) as quoted in the consideration of the Constitutional Court in *the judicial review* of Law no. 22 of 2004 concerning the Judicial Commission

other laws. Independence must be interpreted within the limits determined by law and in the context of applying the law fairly, as stated above. Independence also goes hand in hand with accountability which is manifested by supervision. However, the sensitivity level of the judges' independence is very high because there are two parties who are opposing the rights and interests of the disputing parties. Therefore, the independence of judges is not only an inherent right of judges but also a prerequisite for the creation of an impartial attitude *(impartial)* for judges in carrying out their judicial duties. The form of accountability required of judges requires a format that can absorb this sensitivity. An inadvertence in setting up an accountability mechanism in the form of supervision, as well as carelessness in its implementation, can have a negative impact on the ongoing judicial process. The trust needed to demand obedience and acceptance of what the judge decides is currently in a critical state. However, no matter how thin the level of trust that remains now, it must be maintained so that it does not disappear completely, so that the intention to maintain the honor, dignity, and behavior of judges, actually becomes counterproductive and in turn creates legal *chaos*.

According to Adi Sulistiyono, the freedom of judges can be tested in 2 (two) ways, namely impartiality and the disconnection of relations with political actors (*political insularity*). The impartiality of judges can be seen in the idea that judges will base their decisions on the law and facts of the trial, not on their relationship with one of the litigants (Sulistiyono, 2006: 8). Meanwhile, the decision of judges from politics is important for a judge so that he does not become a tool to realize political goals or prevent the implementation of political decisions.

Although judicial power must be independent, this independence must not make judges have uncontrolled power, because this can lead to judicial tyranny.

Pattern of Recruitment of Supreme Court Justices

According to A. Ahsin Thohari, in several countries, the recruitment of Supreme Court justices always invites political power to participate

in it. The executive and legislative powers always try to seat the desired people as supreme judges so that they can fight for the political interests they carry (Thohari, 2004: 28).

This fact can be understood, because the supreme judge has a very large role in deciding the major cases he faces, so that a supreme judge must have several ideal criteria. This can only be achieved if the pattern of recruitment, selection, and training of judges are adequately available and carried out by an independent body, so that the assessment of them is more objective.

The presence of the Judicial Commission in the structure of judicial power can be an instrument to distance the recruitment process of Supreme Court justices from political interests which are often distorted and ignore the principles of meritocracy. F. Andrew Hanssen argues:

> The system of recruitment and promotion of a supreme judge can be a measure of how far an independent judicial power is actually implemented in a country, because technically the system of recruitment and promotion of judges can open up space for political power intervention in it (Thohari, 2004: 28).

In the context of Indonesia after the amendment of the 1945 Constitution, the mechanism for recruiting judges is fully the authority of the Judicial Commission. Article 24A paragraph (3) of the 1945 Constitution states that the Judicial Commission has the authority to propose Candidates for Supreme Court Justices to the DPR for approval.

This provision is reaffirmed in Article 24B paragraph (1) of the 1945 Constitution which stipulates that the Judicial Commission is independent, has the main authority to propose appointments of judges. The Supreme Court also has other powers in the context of maintaining and upholding the honor, nobility, dignity, and behavior of judges.

The phrase "proposing the appointment of Supreme Court Justices" means that the mechanism for recruiting prospective judges is the

absolute authority of the Judicial Commission. As we know, the mechanism for appointing Supreme Court Justices and judges at the first instance and at the level of appeal is different. District courts and high courts use a closed system, while the Supreme Court uses an open system.

Before the establishment of KY, the mechanism for filling candidates for Supreme Court Justices and Constitutional Justices was different. Constitutional Justices are proposed by the Supreme Court, the DPR, and the President, while the Supreme Court Justices are selected through a fit and proper test in the DPR.

Supervision Mechanism of Supreme Court Justices

The supervisory mechanism in the judicial environment is currently carried out by three institutions, namely the Supreme Court, the National Ombudsman Commission (KON), and the Judicial Commission (KY). The Supreme Court, which was formed according to Article 24 of the 1945 Constitution, is the holder of judicial power. For supervision of the judiciary, by Article 32 of Law Number 14 of 1985, he is given the task of carrying out the highest supervision over the administration of justice in all judicial circles and also overseeing the behavior of judges in all judicial environments.

The second institution that is given a role to oversee the judicial environment is the KON. This commission was formed based on Presidential Decree No. 44 of 2000 on March 10, 2000. The establishment of the KON in the Presidential Decree was deemed appropriate at that time, due to pressure from the community and students who demanded improvement of public services and eradication of corruption. The presidential decree was also chosen because the process of its formation was not complicated.

Based on the Presidential Decree, it is clearly stated that the KON is a community monitoring institution that is independent, and has the authority to clarify, monitor, and examine public reports on state administration by government officials, including judicial institutions, especially in the community. Based on the Presidential

Decree, KON's duties include supervising state administration and public services carried out by government institutions and other legal entities, including legal services for judicial bodies that are non-judicial in nature and whose existence supports fast and easy legal services.

The third institution is KY. This institution was formed based on the third amendment to the 1945 Constitution. Article 24B paragraph (1) states that the Judicial Commission is independent and has the authority to propose the appointment of Supreme Court justices and has other powers to maintain and uphold the honor, dignity and behavior of judges. Specifically, Article 20 of the UUKY states that efforts to maintain and uphold the honor, dignity and behavior of judges are carried out through monitoring the behavior of judges. Then, Article 22 describes the KY's duties in carrying out this supervision, namely by receiving public reports on the behavior of judges, and conducting examinations of alleged violations by judges, as well as making examination reports and recommendations submitted to the MA and MK, with copies to the President and DPR.

With the presence of KY, this commission can be positioned as an external and independent supervisor of the Supreme Court and the judges of the Constitutional Court, because it was formed with the approval of the DPR. Thus, the Supreme Court can concentrate on dealing with cases that are currently piling up. Associated with the authority to supervise judges, MA and KY should be able to work synergistically. In this case, the Supreme Court's findings can be responded to positively by following up on it, and vice versa. Regarding the mechanism, MA and KY can sit down together to solve their problems. If the goal is to uphold the dignity of judges, the presence of KY does not need to be considered as a competitor. In fact, the Supreme Court can use KY to help uphold the dignity of judges.

With the mechanism of judge supervision carried out by the three institutions, MA, KY, and KON, the question is whether the three institutions have overlapping tasks or can they work synergistically?

This question was raised with the consideration that the case that arose between the Supreme Court and the Judicial Commission, because the Supreme Court felt that its supervisory authority was taken over by the Judicial Commission, had raised the question, is it true that the powers of the two overlaps? When viewed from the perspective of each, of course what appears is overlapping authorities. However, this perspective can be changed to create a synergistic relationship.

Taking a closer look, UUMA actually gives supervisory authority over judges only. In addition, if you look at the Supreme Court as judicial power holders, it is clear that the Supreme Court's supervisory function is internal. Reportedly, the implementation of the supervisory function in the Supreme Court has been running, both in stages and inherently, through functional supervision and the Honorary Council of Supreme Court Justices [DKHA]. However, in reality, the functions of supervisory officials in the Supreme Court and the High Court are not running effectively. Also, the DKHA, which was formed based on the General Elucidation of Law no. 35 of 1999, categorized as implementing internal control, even though the Supreme Court is of the opinion that DKHA performs an external supervisory function, and is independent. DKHA also has to be questioned about its function, because there are indications that DKHA is not working optimally. As evidence, the follow-up to the results of judicial oversight so far has tended to be closed, thus raising doubts about the effectiveness of supervision by the Supreme Court.

Functions of the Supreme Court Justices in Enforcing the Supremacy of the Law

Enforcement of the rule of law is a necessity in a state of law. In this context, an independent (independent), neutral (impartial) and competent judiciary is one element. Only a court that has all these criteria can guarantee the fulfillment of human rights.

The supreme judge, as the main actor of the judiciary, holds a very important position and role, especially with all the authority he has. Because the Supreme Court Justice is one of the organs of the

Supreme Court in charge of receiving, examining and deciding cases that have been decided by the Court of Appeal and the first instance in the general courts, religious courts, military courts, and state administrative courts. In addition, the Supreme Court judge is also tasked with examining and deciding cases that have been decided by the commercial court, human rights court, corruption court (tipikor), tax court, arbitration, business competition supervisory commission (KPPU), consumer dispute settlement agency (BPSK). In addition, the industrial relations court (PHI) decided, following the fisheries court.

These duties and authorities are only part of the implementation of the function of the Supreme Court, namely the function of adjudicating. Through his decision, the Supreme Court Justice can transfer a person's ownership rights, revoke the freedom of citizens, declare the government's arbitrary actions against the community illegal, up to ordering the elimination of a person's right to life. Everything must be done in order to uphold the law and justice. An authority that is very large and requires a high responsibility, namely responsibility towards oneself, the state and above all to God Almighty.

Naturally, the power and authority that a person has, including supreme judges, often tends to be abused, as the adage put forward by John Emerick Edward Dalber Action, "*to corrupt and absolute power tends to corrupt absolutely*." Power tends the greater the tendency to be misused) (Dudu Duswara Machmudin, 2006: 53).

In order for the judge's attitude to be in line with expectations, namely to decide based on the law, the law, the truth, and community justice, as well as the justice of the defendant, a judge is bound by the rules of law and a code of ethics.

Regarding the code of ethics for judges, at the *International Judicial Conference* in Bangalore, India in 2001, a draft code of ethics and behavior for judges worldwide was agreed upon which was later called *The Bangalore Draft*. After undergoing many revisions and improvements, *draft* was finally widely accepted by various judges in

the world as a joint guideline with the official title of *The Bangalore Principle of Judicial Conduct*.

There are 6 (six) important principles that must be used as a guide for judges in the world as stated in *The Bangalore Principle* namely: First, Independence (*Independence Principle*), which is a guarantee for the rule of law and justice, and a prerequisite for the realization of the ideals of a rule of law. . Second, impartiality (*impartiality principle*), that is the principle inherent in the nature of the judge's function as a party who is expected to provide a solution to every case brought to him. Third, Integrity (*Integrity Principle)*, that the inner attitude that reflects the integrity and balance of the personality of each judge as a person and as a state official in carrying out his duties. Fourth, Propriety and Courtesy (*Proprietary Principle*), that the norms of personal decency and norms of interpersonal decency are reflected in the behavior of every judge, both as individuals and as state officials in carrying out their professional duties, which creates respect, authority, and trust. Fifth, Equality (*Equality Principle)*, that is the principle that guarantees equal treatment of all people based on just and civilized humanity without discriminating one another on the basis of differences in religion, ethnicity, race, color, gender, marital status, physical condition, socioeconomic status, age, political opinion or similar reasons. Sixth, *Competence and Diligence Principle*, that the prerequisites are important in the implementation of a good and reliable judiciary. Skills are reflected in the professional abilities of judges obtained from education, training and/or experience in carrying out their duties. While similarity is a judge's personal attitude that describes accuracy, prudence, thoroughness, perseverance, and sincerity in carrying out the professional duties of judges (Jimly Ashsidiqqie, 2008: 531-534).

Long before *the Banglore Principle*, in Indonesia there were attitudes that must be upheld by judges, listed in the judge's code of honor, which was reflected in the symbol or character of judges called PANCA DHARMA HAKIM, namely: (1). KARTIKA : The symbolize *the One Godhead;* (2) CAKRA: A powerful weapon from the God of

Justice that is able to destroy all evil, injustice and injustice, means *Fair;* (3) CANDRA: The moon that illuminates all dark places, a ray of light in darkness, *Wise* and *Authoritative;* (4) SARI : Flowers with a fragrant aroma permeate people's lives, meaning that they *are virtuous and have no blemish;* and (5) TIRTA: Water, cleans all the dirt in the world, requires that a judge must be honest (Sirajuddin, 2008).

The Chief Justice of the Supreme Court, Bagir Manan, is of the opinion that a law enforcer (judge) must carry out his professional duties based on sufficient knowledge, reliability, skills, and a solid personality. Besides, in Bagir's perspective, judges must be dignified, namely feeling noble and proud of their work. On this noble and proud basis, the person concerned will always maintain and uphold his job or position (Bagar Manan, 2005: 43).

Judges in the Islamic perspective are ordered to decide cases fairly, wisely, firmly, and honestly. Al-Qur'an Surah Al-Maidah 42 states: *"And if you decide their case, then decide (the matter) between them fairly. Indeed, Allah loves just people."*

Closing

The principle of the rule of law, confirmed and contained in the amendments to the 1945 Constitution, includes: First, the protection of human rights and citizens. We can see this by the inclusion of provisions on human rights in a separate chapter (Chapter XA Article 28A to Article 28J). Second, there is an independent judicial power (Article 24 paragraph 1 of the 1945 Constitution). Third, there is a state administrative/administrative court (Article 24 paragraph 2 of the 1945 Constitution).

Judicial power in the realm of the rule of law is the main feature of the rule of law and the principle of the rule of law. There are at least two main functions of judicial power: First, judicial power, both in terms of substance and administration, has been determined to be independent and integrated under the guidance of the Supreme

Court, but at the same time the role of the DPR to control the Supreme Court's power is enhanced through determining the appointment and dismissal of judges. Supreme Court, and with the establishment of a Judicial Commission to oversee the administrative aspects of judicial power. Second, taking into account the considerations of the Supreme Court, the President is given the right to grant clemency, abolition and amnesty.

The enforcement of the rule of law is a necessity in a state of law and an independent (independent), neutral (impartial) and competent judiciary is one element. Only a court that has all these criteria can guarantee the fulfillment of human rights. In this context, the position and function of the Supreme Court justices as the main actors of hold very important positions and roles, especially with all the authorities they have [*w*]

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