

## AN OVERVIEW OF THE JUDICIAL MONITORING AND SUPERVISION URGENCY IN MAKING CLEAN JUDICIARY

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### ABSTRACT

A clean judiciary is the hope of all levels of Indonesian society. A clean judiciary is a court that carries out its duties and functions based on the provisions of the applicable laws and prioritizes legal certainty, justice, and benefit. This study aims to see how regulating and changing forms of judicial supervision and warning in realizing clean justice and to answer whether other legal rules are still needed to strengthen the role of the people who participate in and monitor the judicial path. This research is normative legal research, it is a study that examines matters of a theoretical nature, principles, conceptions, legal doctrine, and legal principles related to judicial supervision and supervision in the context of realizing a clean judiciary. Meanwhile, the legal materials used are primary, secondary, and tertiary legal materials and their sources. The results of this research are a) judicial monitoring and supervision should be done in order to conduct a clean judiciary, b) monitoring and supervising are done not to intervening the results of courts decisions but as a measuring tool to what extent the decisions are fair to the society, c) there are still several judges' decisions which, according to society, are controversial, illustrating the public's distrust of the judiciary.

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## 1. INTRODUCTION

This study aims to see how regulating and changing forms of judicial supervision and warning in realizing clean justice and to answer whether other legal rules are still needed to strengthen the role of the people who participate in and monitor the judicial path. This research is important to be done because there are situations where people are disappointed with the court decisions that are considered unfair, only defending the rich or the power. The law is still deemed blunt upward and downward sharp even there is already a court supervisory agency.

The existence of a clean judiciary is always an interesting discussion. This is because clean justice is the hope of all levels of Indonesian society. A clean judiciary is a judiciary that is independent, authoritative, and cannot be influenced by any party in carrying out the entire judicial process according to the rules and producing decisions by legal truth as a basis

for consideration before passing a verdict on both criminal cases and other cases. The administration of the judicial system needs to be accountable to gain the trust and respect of the community and in gaining the trust and respect of the community, the judicial system must be open and transparent in handling a case (Nawawi, 2010). From 2012 to March 2018, based on data released by the Indonesian Judiciary Monitoring Society (MaPPI), there were 27 court officials caught in corruption cases, the majority of whom were judges and clerks. They carry out illegal levies on cases that are currently being handled (Trisia, 2019). " With so many cases of judicial mafia that have occurred, it is necessary to think about ways to restore the image of the court that is tarnished by irresponsible judicial elements, including involving many parties and various ways to participate in judicial care, one of which is by opening a room for supervision and monitoring of the trial. However, it must be clear that the regulations and forms of trial supervision and monitoring are the legal basis.

In the Law of the Republic of Indonesia, Number 48 of 2009 concerning Judicial Power in Chapter II, the Principles for the Implementation of Judicial Power are stipulated in Articles 2 to 17, which contain regulations regarding the administration of judicial power in full, for example, decisions must be based on divinity. The Almighty, state courts implement and enforce law and justice based on Pancasila, all judiciary in Indonesia is regulated by Law and Judiciary is carried out on the principle of simple, fast and low cost also regulates the duties and functions of judges in carrying out justice. "Also, there are also rules regarding free and independent judicial power based on the Code of Conduct published by the Supreme Court of the Republic of Indonesia which contains a series of basic principles as morality and must be upheld by Indonesian judges both inside and outside their service. A judge should have an independent attitude which can be interpreted in the sense that the word is free, this principle means that the ability to act independently of other parties, free from interference, and free from any influence. The principle of judicial freedom is a prerequisite for the rule of law and a fundamental guarantee for the implementation of a fair trial, therefore a judge must uphold and give an example of judicial freedom, both in the individual, structural and institutional aspects. The above explanation shows that judicial power is a power that is free, independent, and cannot be influenced by the influence of state power, in this case, the government or other parties, which can affect the independence of a judge in carrying out his duties in handling a case.

Furthermore, in the "Trial Monitoring Guidelines issued by the Judicial Commission, there are also 10 basic principles regarding the code of ethics and code of conduct for judges, namely 10 rules of conduct, including behave fairly, honestly, wisely and wisely, be independent, have high integrity, be responsible, uphold self-esteem, are highly disciplined, behave humbly and be professional. " The participation of the public and other institutions that are concerned with running a clean judiciary by the Law on Judicial Powers, as well as

guidelines for judge behavior are also needed, in addition to the supervisory and monitoring that has been carried out by the Judicial Commission. The existence of the Judicial Commission as an institution to carry out judicial oversight is expected to realize a clean judiciary, namely, the existence of transparent, accountable, and impartial court performance and prioritizes aspects of certainty, justice, and benefit (KY, 2018).

"In Article 24B of the 1945 Constitution, it explains that the existence of the Judicial Commission is an inseparable unit in the Judicial power which has the authority to propose the appointment of supreme judges and have other powers to maintain and uphold the honor, dignity, and behavior of judges, although it is still a job. a complicated and complicated house for the Judicial Commission and the Supreme Court, especially issues related to issues of judicial integrity". (Arsha Putra, 2017).

Another issue that is also important is building the integrity and personality of law enforcers in the criminal justice system, especially for judges. Involving civil society, academics as well as institutions and activists who care about the impartial judicial process in resolving legal issues following applicable laws and regulations, one way is to involve the community in monitoring and monitoring the judicial process to ensure that the judiciary is clean as expected and based on the applicable provisions in Indonesia. A clean court will ensure the realization of the expectations of the people who highly uphold the law, from this the Supreme Court strengthens this role by issuing a Supreme Court Circular Number 4 of 2012 concerning the recording of trial processes.

This trial recording is only one form that can be done to supervise and monitor the behavior of judges in handling a case. By recording it in the trial, it can indirectly monitor the behavior of judges, whether they have carried out their duties and functions according to the applicable provisions, so that they are serious about examining the case being tried, so that they are expected to be able to give decisions that not only fulfill the principle of legal certainty, but also can fulfill in terms of justice and benefit. The trial recording that has currently been carried out is the recording of trials of criminal cases of corruption, cooperation between KPK institutions and universities throughout Indonesia, but not only corruption cases should be monitored by recording trials, but also other cases. so that the public can follow the course of the trial. Supervision and monitoring activities in the trial process also look at the behavior of judges in carrying out examinations at trial, both how to lead the trial and all matters relating to the case being examined, and the most important focus in supervision is the behavior of the judge. Supervision and monitoring of this trial are aimed at maintaining and emphasizing the honor, dignity and behavior of judges in carrying out their duties and functions. Other regulations regarding the supervision and monitoring

of judge behavior are also regulated in Article 20 paragraph (1) letter an of Law no. 18 of 2011 concerning the Judicial Commission, where it contains the rules that the Judicial Commission in supervising the behavior of judges is accompanied by reports from the public regarding violations of the code of ethics and code of conduct of judges (KEPPH) The trial recording activity is only one form of supervision and monitoring of the trial because there are still many ways and forms that are regulated in judicial supervision and monitoring so that the realization of a clean judiciary is following the applicable regulations in Indonesia and according to the expectations of the Indonesian people who want a judicial system clean and transparent so that with a clean judiciary, the decisions made by judges are also truly based on the objectivity of the impartial trial process. Besides, it is also hoped that there will be no more controversial judges' decisions in the community that is not based on correct laws, for this reason, researchers are interested in examining what rules regulate and their forms related to trial supervision and monitoring to realize clean justice in Indonesia.

## **2. LITERATURE REVIEW**

The Judiciary is the third organ of the government. It has the responsibility to apply the laws to specific cases and settle all disputes. The real 'meaning of law' is what the judges decide during the course of giving their judgements in various cases. From the citizen's point of view, Judiciary is the most important organ of the government because it acts as their protector against the possible excesses of legislative and executive organs. Role of Judiciary as the guardian-protector of the constitution and the fundamental rights of the people makes it more respectable than other two organs (Ghai, 2020). There are several functions of Judiciary as bellow:

1. To Give Justice to the people
2. Interpretation and application of laws
3. Role in law-making
4. Equity legislation
5. Protection of right
6. Guardian of the constitution
7. Power to get its Decisions and Judgements enforced
8. Special Role in a Federation
9. Running of the judicial administrations
10. Advisory function
11. To conduct judicial inquiries. (Ghai, 2020).

Judiciary is a source of confidence and fearlessness. The common man depends upon judiciary for getting justice. Without a security of rights and freedom guaranteed by the

judiciary, they cannot really hope to carry out their jobs and enjoy their living. They are more dependent upon judiciary than the legislature and the executive. Without judicial protection, their lives can become miserable. From citizens point of view Judiciary is the most important organ of the government. Garner (Ghai, 2020) states that a society without legislature is conceivable, and indeed, legislative organs did not make their appearance in the state until modern times, but a civilized state without a judicial organ and machinery is hardly conceivable.

### **3. METHODOLOGY**

This type of research is normative juridical legal research. It is normative because it is related to the character of legal science itself. So, the selection of this type of research will limit the formulation of the problem, the research object, and the character of legal scholarship. The data are taken from the related documents and the observation in the field. After data are collected, the researcher analyzes the data based on the theory used. The data are read hermeneutically by relating it to the context (the law and the fact). Before finalizing the result, the researcher makes a triangulation to validate the data.

### **4. RESULTS AND DISCUSSION**

#### **4.1. Setting the urgency of the judicial monitoring and supervision in realizing the clean judiciary**

Having a clean judiciary is one of the things that the people of Indonesia aspire to, a judiciary that is trusted by the community in developing its functions and duties, enforcing the law, and producing fair decisions and valid legal rules. However, there are still pros and cons related to the existence of the judiciary in Indonesia, there are still many negative comments/opinions on efforts to strengthen judicial integrity. The negative opinion about the judiciary has made this institution believed to have the potential to lead to corrupt actions (Judicial Corruption) and full of actions that injure the values of justice, (Thohari, 2010). In addition to negative opinions regarding the supervision of the judicial system, (Malik, 2017). It is still weak, namely towards the Police, Prosecutors, and especially Judges. In the Criminal Justice System where several sub-systems are interrelated with each other to achieve the objectives in the Criminal Justice System, the sub-systems include the Police, Prosecutors, Judges, and Correctional Institutions must be connected so that it runs well following the applicable laws. Judges as one of the Criminal Justice Systems also receive great attention from the public when carrying out their duties to decide a case.

At present, it is undeniable that the level of public trust in the judiciary is still low, seen from how people sometimes tend to “take justice” themselves to solve a case. This solution model was chosen because of the public's distrust of the forecasting apparatus itself. This settlement model occurs due to the influence of the view that settlement through the judicial mechanism is full of games, injustice, and uncertainty under the guise of legal certainty. Therefore, all the views of the society that are getting lower and lower must be changed immediately or there is enlightenment that a clean judiciary can be realized according to the prevailing laws and regulations, one of which is to continue to supervise and monitor the judiciary.

Various ways can be done to carry out judicial supervision and monitoring in Indonesia, both strengthening existing laws and regulations or involving many elements of society. The purpose of conducting supervision and monitoring of the judiciary is not intended to intervene in the power of independent and independent judges in producing a decision, but rather to participate in seeing whether the resulting decision is correct and correct under the applicable legal rules. Both in terms of formality and in terms of procedures for the Criminal Justice System in Indonesia. Monitoring is carried out on the trial process as well as to observe the behavior of the panel of judges in presiding over the trial or anything related to the case being examined. The focus of this trial supervision is on the behavior of judges as the object under supervision. Trial monitoring is an important part of the process of monitoring judge behavior in court. From the Judicial Commission side, trial monitoring is aimed at maintaining and upholding the honor, dignity, and behavior of judges. The duties of the Judicial Commission in monitoring and supervising the behavior of judges are contained in Article 20 paragraph (1) letter an of Law Number 18 of 2011 concerning amendments to Law no. 22 of 2004.

The presence or formation of the Judicial Commission (KY) with the existence of supervision and monitoring of judiciary in Indonesia is currently regulated in Law no. 18 of 2011 concerning amendments to Law no. 22 of 2004 concerning the Judicial Commission and the Code of Conduct of Judge Code of Conduct (KEPPH) which regulates what can be done by a judge or is prohibited for violating the ethics of a judge, there are 10 guidelines for judge behavior that must be guided by judges in carrying out their functions and duties, among others, fair, honest, wise and wise, independent, high integrity, responsible, respect for self-esteem, high discipline, humble and professional behavior. The existence of this Judicial Commission is new hope for the public to take an active role in supervising and monitoring the course of a trial until a decision is made. If there is an indication that a trial is full of fabrications and results, it becomes controversial in the community because it contradicts the applicable rules, then one of them is What the public can do is to report to the Judicial Commission against judges who produce a

decision to be examined whether it is by the rules of the verdict or fraud that occurred at the trial so that the result of the verdict turns out to be controversial. However, it still has to be pressured, it does not mean participating in interfering with the judge in deciding a case, but rather looking at the judge's behavior in producing the decision, whether it has followed the existing legal corridors or not. In the context of strengthening external supervision carried out by the public/community, it is also necessary to support traditional healers by strengthening community capacities regarding the judicial mechanism so that in carrying out supervision and monitoring of the judiciary it does not go out of its main goal, namely to create a clean judiciary and under applicable legal rules.

The public must be provided with knowledge about the stages of justice that exist and apply in Indonesia. To provide an understanding of the current judicial process so that it is hoped that it will increase public sensibility if there are irregularities in the judicial process. With a good sensibility, the implementation of supervision and monitoring of the judiciary by the public is getting better and wider, which has an impact on the more cautious attitude of law enforcement officials in the framework of law enforcement. With a cautious attitude, law enforcers in matters of law enforcers, including one of the judges, are expected to produce decisions that truly reflect a sense of justice and legal certainty. People who are guilty and are indeed proven guilty must be punished according to their actions and the public will agree with that, lest there be parties who get injustice in a court because of the deviant behavior of the judge and detrimental to the way of justice itself, this must be So the main focus is why there is need for supervision and monitoring of the judiciary so that the aspirations of the community to have a clean judiciary can truly be realized.

To make this happen, it needs synchronization from various parties, both government and society. The Judicial Commission is expected to be able to carry out its duties properly in supervising and monitoring the behavior of judges in carrying out their profession. With good supervision and management, it is hoped that there will be no more controversial decisions from judges that deviate from existing legal regulations. The public is expected to be able to take an active role in supervising and monitoring the judiciary through reporting supported by sufficient evidence if they see any irregularities committed by the Judge in the trial process.

Apart from the Judicial Commission Law which regulates matters of judicial supervision and monitoring, it is also regulated in Law no. 48 of 2009 concerning Judicial Power, is regulated in Chapter II Articles 2 to 17 which contains regulations regarding, the administration of judicial power in full, for example, decisions must be based on Almighty God, state justice applies and enforces law and justice based on Pancasila, all judiciary in

Indonesia is regulated by law and the judiciary is carried out on the principles of simple, fast and low cost also regulates the duties and functions of judges in conducting judiciary. Laws and regulations relating to the supervision and monitoring of the judiciary that already exist in Indonesia will not be able to create clean justice as expected by the community, but it needs cooperation to make it happen by continuing to carry out supervision and monitoring of the judiciary according to existing regulations so that in the future it is hoped that it will not Again there are irregularities in the judiciary.

#### **4.2. Forms of judicial monitoring and supervision in achieving a clean judiciary**

In the case of carrying out monitoring activities of observers, it is necessary to convey to the head of the court which is the location for carrying out surveillance and monitoring activities, so that there is no misunderstanding, either from the judge's side of the observer's side, which could cause obstacles. Activities to carry out trial monitoring are carried out by several methods, starting from monitoring, observing, and recording the trial process, followed by interviews to obtain trial documents.

These stages are carried out to assess how the court adheres to fair trial standards and provides a complete picture of the court process that is by the law of procedure. Monitoring and monitoring of judges' behavior are necessary because several things have been revealed, there have not been many judges applying procedural law in court, so there is an imbalance in judges' competence in handling special cases. The integrity of a judge in carrying out his duties, namely, examining and deciding a case and court support as an institution that has not been optimal in providing services to the public who use courts/justice seekers, causing the decisions produced at a trial do not reflect a sense of justice in society following the law applies, including in terms of criminal procedural law, (Farid, 2020). Several findings from the observations made still exist in the trial of judicial practices that have the potential to harm justice seekers based on procedural procedures, judges' attitudes, and the track record of parties in handling a case. Therefore, it is still necessary to monitor the judge's behavior so that the judge's behavior is carried out under the actual legal provisions.

Specifically, for the process of carrying out supervision as well as monitoring in court, including judge behavior aimed at maintaining and upholding honor, dignity, and judge behavior. In the guidelines regulated by the Judicial Commission (KY), monitoring and supervision of judge behavior must be based on the Guidelines on the Code of Ethics and/or Code of Conduct for Judges established by the Judicial Commission and the Supreme Court (Article 19A of Law Number 18 the Year 2011). The next step is to also set up a Joint Regulation of MA and KY No. 02 / PB / MA / IX / 2012 or 02 / PB / P.KY /



09/2012 concerning Guidelines for Enforcement of the Code of Ethics and Code of Conduct of Judges. In this Joint Regulation of the Supreme Court and the Judicial Commission, it does not specifically explain whether the judge's behavior in this provision includes the problem of the judge's behavior in deciding on a case he is examining. However, what has clearly stated is that the judge's behavior includes actions or ethical behavior performed by the judge when carrying out his professional duties. Meanwhile, the issue of the authority of the Judicial Commission to supervise the behavior of judges in the monitoring process is emphasized, the trial procession up to the judge's decision cannot be intervened by any party. When it comes to trial processions and decisions are related to the independence or independence of judges and judicial institutions. The regulation on judicial supervision and monitoring described earlier can be carried out in various forms involving various elements, both the government, in this case, the Judicial Commission and the community, in this case, is carried out by social institutions that do focus on judicial supervision and monitoring. The forms of judicial supervision and monitoring include:

a. Judicial Commission:

- 1) To maintain and uphold the honor, dignity, and behavior of judges, external supervision is carried out by the Judicial Commission.
- 2) In conducting as referred to in paragraph (1) KY must supervise the behavior of judges based on KEPPH.

b. Involving civil society, academics as well as institutions and activists who really care about the impartial judicial process in resolving legal issues in accordance with applicable laws and regulations, one way is to involve the community in monitoring and monitoring the judicial process to ensure that the court is clean as expected and based on the applicable provisions in Indonesia. A clean court, will ensure the realization of the expectations of the people who highly uphold the law, from this the Supreme Court strengthens this role by issuing a Supreme Court Circular Number 4 of 2012 concerning the recording of trial processes. The recording of the trial at the Corruption Court is aimed at having a positive impact on the implementation of the corruption trial process in the regions, including:

- a. Changing the behavior of judges and prosecutors during the trial for a better direction because they feel they are being watched.
- b. The trial schedule is more transparent.
- c. Assisting the clerk in carrying out filings with the trial recordings.
- d. In terms of verdicts, it is better than before there is a recording.
- e. To become a trigger for the campus in conducting judicial supervision.

- f. As a learning material for students and academics in the field of law ".  
(Hafrida, 2014).

Apart from that, it can also involve elements of society who are focused on conducting supervision and monitoring of the judiciary, including the Indonesian Judicial Monitoring Society (MaPPI), the Coalition for Judicial Monitoring, etc. These elements of society participate in supervising and monitoring the judiciary to realize a clean judiciary by referring to the combination of trial monitoring issued by the Judicial Commission.

## 5. CONCLUSION

Based on the discussion above, the research showed that the supervision and monitoring arrangements for the judiciary in Indonesia are currently regulated in Law no. 18 of 2011 concerning amendments to Law no. 22 of 2004 concerning the Judicial Commission and the Code of Ethics for the Code of Conduct of Judges (KEPPH) and in Law no. 48 of 2009 concerning Judicial Power, regulated in Chapter II Articles 2 to 17.

Forms of Judicial Supervision and monitoring consist of two main points, *first*, conducted by the Judicial Commission regulated in Article 40 of the Law on Judicial Powers, namely by carrying out external supervision of the Judges. *Second*, involving community elements including by conducting a trial recording process in court based on the Supreme Court Circular Letter Number 4 of 2012 concerning the recording of trial processes, and several elements of society also focus on conducting supervision and monitoring of the judiciary, including the Indonesian Judiciary Monitoring Society (MaPPI), the Justice Monitoring Coalition, and various other community institutions that focus on trial supervision and monitoring.

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