

# Strengthening the Role and Function of Judicial Commission in Building Clean and Respectable Justice in Indonesia

**Zainal Arifin Hoesein**

Islamic University of Al-Syafi'iyah  
arifinhoesein55@yahoo.com

**Abstract-** Strengthening the role and function of Judicial Commission in building clean and respectable justice in Indonesia faces many problems and challenges. This paper has three objectives. The first is to highlights the development of the position and the authority of KY. The second is to discuss ways to improve KY as the respectable and clean institution. The third is to discuss ways to strengthen the role and function of KY. Note that throughout this study, the data and information collected was based on literature review as well as opinions suggested by the experts advanced in the media. The study argues that strengthening the role and function of KY in building the clean and respectable judicial institution in Indonesia was not an easy task. Of the many strategic steps that can be undertaken by KY are as follows. First, KY should conduct external supervision particularly related to uphold code of ethics and the improvement of judges behavior. Second, the relationship between the Judicial Commission and the Supreme Court should be optimized to settle any problems related to judicial matters. Finally, KY needs to expand and strengthen the networking with many stakeholders, not only with the government, but also with the NGOs and other civil societies including universities. However, this networking should not reduce its independency, impartiality, integrity, and the like in order to make the presence of KY accepted by the public in general. Thus, much remain to be done to optimize the existence of KY in Indonesia.

**Index Terms**— the judicial commission, independence, clean and respectable, strengthening, and Bangalore principles.

## I. INTRODUCTION

The introduction of the constitutional reform which started since 1999 to 2002 has changed fundamentally Indonesian constitutional system. State configuration structure that changes and grows have also led to the growing diverse theories and practices of the new constitutional system including the development of state and government organizations. The emergence of the Judicial Commission or so called Komisi Yudisial (KY) in Indonesia was argued by Moh. Mahfud MD as the response of many injustice in Indonesia. The injustice arises due to the following reasons. First, it is because of the intervention of extra-judicial powers, especially by the government. Second, it is because of the bad morality of the judges in the court (Ardhian Sumadhija et.al., 2010). These two factors further lead to the damaged of the judicial institution. Therefore, the establishment of KY can be as an auxiliary organ to support the power of judicial institution.

Actually, the idea to establish KY as checks and balances in the system of judicial power was not an entirely new. KY can also be found in many countries as an external agency to

ensure the independence and accountability of the judiciary. Also, this kind of institution has been proposed in 1968. The proposed previous name of this institution was the Advisory Council of Research Judges (MPPH). This institution was expected to provide consideration in the final decision towards the appointment, promotion, dismissal, and action / punishment of the official judges proposed either by the Supreme Court (MA) or by the Minister of Justice.

However, the above proposed institution has been rejected and was unable to be accommodated in the Law Number 14 Year 1970 concerning the Basic Provisions of Judicial Power. In the 1998 under the reform era, the idea to establish this kind of institution emerged again. As a consequence, under the decision of The People Representative Assembly (MPR), the KY was established in 2004. The establishment of this institution was based on the third amendment to the Constitution NRI 1945 and the Law Number 22 of 2004 on Judicial Commission. After a rigorous selection, there was seven persons appointed as members of KY from the period of 2005 to 2010 through a presidential decree July 2, 2005.

In many countries, especially develop countries the Judicial Commission exists generally within the judicial and law enforcement agencies and other government institutions. KY is a product of the cultural development of a legal system as well as an integral part of the welfare state. Asshiddiqie (2010) argued that the doctrine of the welfare state (*welvaartsstaat*) means that the state has to deal with things that were not previously addressed. This condition began since the middle of the 20th century in that the state plays important role in intervening public affairs (interventionist state). Ni'matul Huda argued that the state intervention were rooted in historical development, cultural, and social aspects of specific countries. Therefore, the existence of KY is unique and this institution cannot be seen outside the country context. Until now there are at least 43 countries (including Indonesia) that accommodate KY in the constitution with a variety of name (Sobirin Malian, 2011). Wim Voerman in Rimdan (2012) in his study in 1999 found that KY and the like in many countries play dominant role in the context to improve the court independency. See also, Mahbub et. al. (2010), Thohari (2004), Malian (2011) for detail reasons and arguments of the important of KY.

Due to the establishment of the Judicial Commission (KY) and the present pro and cons arguments of the existence of this KY, this paper has three objectives. The first is to highlights the development of the position and the authority of KY. The second is to discuss ways to improve KY as the respectable and clean institution. The third is to discuss ways to strengthen the role and function of KY. Note that throughout this study, the data and information collected was based on literature review

as well as opinions suggested by the experts advanced in the media. However, before the above three objectives of this paper are discussed, the following two sections deal with the historical background of the idea to establish KY and the tasks and function of KY according to the law.

## II. HISTORICAL BACKGROUND OF THE ESTABLISHMENT OF KY

Historical background of the establishment of KY was intended as checks and balances mechanism in the system of judicial power. This was necessary because the primary mission of judicial reform is not only limited to enforcing the independence and impartiality of the judiciary, but it also aims to establish and maintain the mechanism system of accountability and control for judges so that justice does not bring up the abuse of power or judicial tyranny. In the historical trajectory, the idea of the need for specialized institutions such as KY is actually not an entirely new idea. KY has been well known in many countries as an external agency that was established to ensure the independence and accountability of the judiciary, through a set of authority relating to the judiciary, such as the election of judges or judicial appointment, administration and supervision of judges (judicial administration and supervision and discipline of judges). In fact in many countries, the establishment of this commission is usually part of the agenda of legal reform in order to strengthen the independence and accountability of the judiciary. Even the existence of this commission becomes a trend in democratic countries as well as in the emerging democratic countries (Rishan, 2013).

Meanwhile, the history has shown that the "institution", whose role is to conduct surveillance activities in order to preserve and uphold the honor and the dignity and behavior of judges such as KY has been acknowledged its existence either in the law state with the tradition of civil law or in the law state with the concept *rechtsstaat* that relies on the continental legal system, called the civil law or in the law state with the concept of the rule of law, which is based on the system of law called common law. At the initial appearance, KY institutions are the main characteristics of the law state (*Rechtsstaat*) with the civil law tradition. As described by Lois Auction that: KY was rooted and grew in France. The establishment of KY was triggered by the growing discontent of French society against the intervention of the government on the judiciary system. As a result, in 1883 it was established the institution like KY with the name of the superior council of the judiciary or *Conseil Supérieur de la Magistrature*. This institution was established to oversee the judiciary and ensure the independence and conducting disciplinary mechanisms for judges (Rishan, 2013).

The establishment of the above institution encouraged many countries to form this KY institution. This rapid growth of KY institution was in line with the facts of the widespread practice of judicial corruption in the judiciary system. In fact the bad practices of the judiciary institution were not only happen in government, but it also spread to the public. The court is no longer a shaded house for those who seeking justice, but it has change from the hall of justice into a slaughter house (Rahardjo, 2010)). The modus operandi was to make the court as a court auction that trade justice for money. Without the absence of public control mechanisms, this condition

persists systemically and in a massive scale. The court had become a heaven for dirty actors in the judicial institutions. As a result, the law of nature which -according to Roscou Pound, should function as a tool of social engineering has shifted far to the dark engineering

However, the institutionalization of KY in some countries is different from one and another in terms of the names, authority, and composition of the commissioners of the institute. In some countries, for example, the name of the institution was the Judicial Council, the Judicial Service Commission, Judicial Qualification Committee, Council for Magistrature or the National Council for the Judiciary. While with regard to the authority, some countries which have already formed KY, KY does not just have the authority, roles and functions in the field of selection and discipline of judges, but also take care of the administrative budget of the human resources and other organizational and managerial aspects. The composition of commissioners is also different from one country to another. But it usually reflects the branches of state power, such as the executive, parliament, judiciary, and other stakeholders, such as lawyers, prosecutors, legal academics, civil society, the press and others.

Similarly, in terms of the external control of the judges, though there is a difference, but it usually the aim of the formation of KY including its role and function is linked to efforts to strengthen the independence and impartiality and accountability of the judiciary institution. As argued by Wim Voermans that the purpose of establishing KY in European countries is to strengthen the independence of the judiciary institutions as well as improving administrative and managerial efficiency of the institution. (Rishan, 2013). Also, in the Latin America, Emilio J Cardenas and Hector M. Chayer explained that KY in these countries are designed to maintain the independence of the judiciary from government intervention and parliament on one hand, and to improve the functioning of the judiciary institution by using the mechanism of independent oversight on the other hand. The importance of control according to Henry Fayol is to verify whether everything in infirmity with the plan adopted or what has been said by Newmann that "control is the assurance that the performance conform to plan" (Muchsan, 2000). This is in line with Bagir Manan (2000) who stated that a control contains not only control dimensional, but also supervision and direction.

In Indonesia the idea development concerning the Judicial Commission appears in the Main Principles of Judicial Power of 1968. The name of this institution was previously proposed to be the Advisory Council of Justice Research (MPPH). The council is expected to give consideration and a final decision regarding the suggestions or proposals concerning the appointment, promotion, dismissal, and action / punishment of justices either by the Supreme Court as well as by the Minister of Justice. However, this effort was fail and it did not become the substance of Law Number 14 Year 1970 on Basic Provisions on Judicial Power. But finally the idea to form this kind of institution has been accommodated in the Act No. 35 of 1999 concerning amendments to the Law No. 14 Year 1970 on Basic Principles of Judicial Authority Provisions. In addition to this act, the Honorary Board of Judges (DKH) was also formed. This Board of Judges has been given authorities to supervise judges, make recommendations on recruitment,

promotion and transfer of judges as well as drawing up a code of conduct for judges.

Finally, after the fall of the New Order regime, the House of Representatives (DPR) in 2004 enacted the Law No. 22 Year 2004 to formalize Judicial Commission (KY). In this act it was clearly stated in the Article 13 that KY has authority: (a) to propose the appointment of Chief Justice to the Parliament, and (b) to uphold the honor and dignity and maintain behavior of judges. KY today has an important role in efforts to establish independent judicial power through the proposal of appointment of justices and other authorities in order to preserve and uphold the honor, dignity, and the behavior of the judge for the sake of law and justice in accordance with the Constitution of the Republic of Indonesia Year 1945 especially in the Articles 20, 24, 24A and Article 24B. Also, it was based on Law Number 22 Year 2004 concerning Judicial Commission in conjunction with Law Number 18 Year 2011 concerning the Amendment to Law No. 22 Year 2004 concerning Judicial Commission, as well as Law No. 48 Year 2009 concerning Judicial Authority.

### III. DUTIES AND FUNCTION OF KY

Duties and function of KY can be found in the Act No. 22 of 2004 Regarding Judicial Commission that were formalized August 13, 2004 by the Fifth President of Indonesia, Megawati Soekarnoputri. There are important points of the need for the establishment KY as the state institution to execute the constitutional duty in terms of the authority to propose the appointment of the Chief Justice including the judges in the general courts, religious courts, military courts and administrative courts in order to preserve and uphold the honor, dignity and judges behavior of judges as stated in dictum of the preamble of the law. First, the Unitary Republic of Indonesia is a law state guaranteeing independent judicial power to run the judiciary to enforce law and justice based on the Constitution NRI 1945. Second, KY has an important role in efforts to establish independent judicial power through the nomination of justices as well as the supervision of the judge in order to uphold the honor and dignity, as well as keeping the behavior of judges.

However, due to the present and dynamic development of the laws and constitution, the Law Number 22 Year 2004 concerning Judicial Commission was no longer relevant. Based on these considerations as agreed by the Parliament together with the government, the Law Number 22 Year 2004 concerning Judicial Commission was amended by the Law Number 18 of 2011 on the Amendment of the Law No. 22 of 2004 on the Judicial Commission. Under the Act On KY, KY have the authority as follows.

#### Article 13

- a. propose the appointment of justices and judges ad hoc in the Supreme Court to Parliament for approval;
- b. maintaining the honor, dignity, and the behavior of judges;
- c. set Code of Conduct and / or the Code of Conduct of Judges together with the Supreme Court; and
- d. maintain and enforce the implementation of the Code of Conduct and / or the Judicial Code of Conduct.

#### Article 20

- (1) In order to preserve and uphold the honor, dignity, and the behavior of the judge, the Judicial Commission has the task:
  - a. monitoring and controlling the behavior of the judge;
  - b. receive reports from the public relating to violations of the Code and / or the Judicial Code of Conduct;
  - c. verification, clarification, and investigate reports of alleged violations of the Code and / or the Judicial Code of Conduct is closed;
  - d. decide whether or not reports of alleged violations of the Code and / or the Judicial Code of Conduct; and
  - e. take legal action and / or other measures against those individuals, groups, or legal entities degrading the honor and dignity of Judges.
- (2) In addition to the task referred to in paragraph (1), the Judicial Commission also has the task of increased capacity and welfare of Justice.
- (3) In order to preserve and uphold the honor, dignity and behavior of judges referred to in paragraph (1) letter a Judicial Commission may request assistance to law enforcement officials to conduct wiretaps and recorded conversations in the case of the alleged violation of the Code and / or Judicial Code of Conduct by the Judge.
- (4) Law enforcement officials are obliged to follow the request of the Judicial Commission as referred to in paragraph (3).

However, in between Articles 20 and 21, one article was inserted, namely Article 20A, which reads as follows:

#### Article 20A

- (1) In carrying out the tasks referred to in Article 20 paragraph (1), the Judicial Commission shall:
  - a. comply with laws and regulations;
  - b. enforce the Code of Conduct and / or the Judicial Code of Conduct;
  - c. maintain the confidentiality of information or information obtained which by its nature is confidential Judicial Commission obtained based on its position as a member; and
  - d. maintain the independence and freedom of Judges in check, try and decide the case.
- (2) Violation of the provisions referred to in paragraph (1) conducted by the members of the Judicial Commission be sanctioned in accordance with the legislation.

#### Article 22

- (1) In conducting the supervision referred to in Article 20 paragraph (1) letter a, the Judicial Commission receives reports from the public and / or information on the alleged violation of the Code and / or the Judicial Code of Conduct.
- (2) To carry out the supervision referred to in paragraph (1), the Judicial Commission can request information or data to Courts and / or Judge.
- (3) Leaders Judicial bodies and / or judge shall give any information or data requested by the Judicial Commission as referred to in paragraph (2) within a

period of fourteen (14) days after receiving the request from the Judicial Commission.

- (4) If the Judicial bodies and / or Judge not give any information or data in the period referred to in paragraph (2), the Judicial Commission to request information and / or data through the leadership of the Supreme Court.
- (5) The leadership of the Supreme Court asked the Justice Board and / or the Judge to give information or data referred to in paragraph (3) within 14 (fourteen) days from the date the request of the Judicial Commission.
- (6) If the request referred to in paragraph (2) and (4) not be met without a valid reason, the leadership of the Agency Justice or Judge concerned penalized in accordance with the legislation.
- (7) Further provisions concerning the procedures for the implementation of the tasks referred to in paragraph (1) is regulated by the Judicial Commission.

Between Articles 22 and 23 it was inserted seven Articles, namely Article 22A, 22B, 22C, 22D, 22E, 22F, and 22G as follows:

#### Article 22A

- (1) In the implementation of the tasks referred to in Article 20 paragraph (1) letter c, the Judicial Commission:
  - a. verification of the report;
  - b. examination of the alleged violations;
  - c. to call and ask for information from the Judge who allegedly violate the guidelines of honor, dignity, and the behavior of the judge for inspection;
  - d. to call and ask for information from witnesses; and
  - e. summed up the results of the examination.
- (2) In the event that the witness referred to in paragraph (1) letter d not call on the 3 (three) times in a row without a valid reason, the Judicial Commission can summon witnesses by force in accordance with the provisions of the legislation.

#### Article 22B

- (1) An examination by the Judicial Commission includes:
  - a. examination of the alleged violation of the Code and / or the Judicial Code of Conduct; and
  - b. request clarification of the judge who allegedly committed the violation referred to in paragraph a.
- (2) In every inspection as referred to in paragraph (1) reported for the examination passed and signed by the examinee and examiner.
- (3) Clarification referred to in paragraph (1) letter b shall be submitted by the Judge who allegedly committed the violations within a period of 14 (fourteen) days of receipt of the call that mentions the alleged violation of the Code and / or the Code of Conduct of Judges as inappropriate by Judicial Commission.

#### Article 22C

The results of the examination of the alleged violations of the Code and / or the Judicial Code of Conduct referred to in Article 22A paragraph (1) letter e states:

- a. convicted the alleged violation; or

- b. acquitted of the alleged violation.

#### Article 22D

- (1) In the case of alleged violations of the Code and / or the Code of Conduct of Judges convicted as referred to in Article 22C paragraph a, the Judicial Commission proposes the imposition of sanction against the judge who allegedly committed the violations to the Supreme Court.
- (2) The sanctions referred to in paragraph (1) in the form of:
  - a. Mild sanctions consist of:
    - 1) verbal warning;
    - 2) a written warning; or
    - 3) statements are not satisfied in writing.
  - b. Sanctions were comprised of:
    - 1) delay periodic salary increases no later than 1 (one) year;
    - 2) a decrease in salary of 1 (one) time salary increase periodically maximum of 1 (one) year;
    - 3) delay in advancement than 1 (one) year; or
    - 4) judges non palu period of 6 (six) months.
  - c. Severe sanctions consist of:
    - 1) exemption of structural positions;
    - 2) judges non palu more than six (6) months to two (2) years;
    - 3) temporary dismissal;
    - 4) dismissal remain with pension rights; or
    - 5) dismissal remains with respect.
- (2) the Supreme Court of Justice to impose sanctions against the violation of the Code and / or the Judicial Code of Conduct proposed by the Judicial Commission within a period of 60 (sixty) days from the date the proposal is received.

#### Article 22E

- (1) In case there is any divergence of opinion between the Judicial Commission and the Supreme Court on the proposed Judicial Commission about the imposition of sanctions and the Supreme Court has not imposed sanctions in the period referred to in Article 22D paragraph (3) the proposal of the Judicial Commission applies automatically and must be implemented by the Supreme Court.
- (2) In the event of disagreement between the Judicial Commission and the Supreme Court on the proposed Judicial Commission about imposing mild sanctions, sanctions moderate, and severe sanctions than those referred to in Article 22D paragraph (2) letter c number 4) and 5), do joint inspection of the Judicial Commission and the Supreme Court against the judge concerned.
- (3) In the case of the Supreme Court and the Judicial Commission within the period referred to in Article 22D paragraph (3) does not reach an agreement as referred to in paragraph (2), the proposal of the Judicial Commission insofar as they meet the provisions of Article 22B paragraph (1) letter a , applies automatically and must be implemented by the Supreme Court.
- (4) Provisions regarding the procedure as referred to in paragraph (1) shall be shared by the Judicial Commission and the Supreme Court.

#### Article 22F

(1) Sanctions severe form of dismissal remain as referred to in Article 22D paragraph (2) letter c number 4) and 5) proposed Judicial Commission to the Honorary Council of Judges.

(2) The Honorary Council of Justice referred to in paragraph (1) shall consist of four (4) members of the Judicial Commission and the 3 (three) justices.

(3) The Honorary Council of Judges examine and decide upon any alleged violation of the Code and / or the Judicial Code of Conduct proposed by the Judicial Commission or the Supreme Court within a period of 60 (sixty) days from the date the proposal is received.

(4) The decision of the Honorary Council of Judges referred to in paragraph (3) are taken by consensus and if not reached a decision taken by a majority vote.

(5) The Supreme Court shall implement the decision of the Honorary Council of Judges within a period of 30 (thirty) days from the date the decision is pronounced Honorary Council of Judges.

#### Article 22G

In the case acquitted the alleged violation as referred to in Article 22C paragraph b, the Honorary Council of Judges stating that the alleged offense was not proven and restore the good name of the judge complained against.

#### Article 25

(1) Decision-making is done by deliberation of the Judicial Commission to reach an agreement.

(2) If the decision-making by consensus cannot be reached, decisions made by majority vote. (3) The decision referred to in paragraph (2) is valid if the meeting attended by at least five (5) members of the Judicial Commission, unless a decision on proposing nominees to the Parliament and attended by all members of the Judicial Commission.

(4) In the event of a delay of three (3) times in a row over a decision on proposing nominees to the Parliament, the decision is considered valid if attended by five (5) members.

#### Article 26

To be appointed as members of the Judicial Commission, a candidate must meet the following requirements:

- a. Indonesian citizens;
- b. believe to the God Almighty
- c. loyal to Pancasila, the Unitary Republic of Indonesia, and the Constitution of the Republic of Indonesia Year 1945;
- d. aged a minimum of 45 (forty five) years and a maximum of 68 (sixty eight) years old at the time of the election process;
- e. have undergraduate degree in law or other relevant undergraduate and / or have experience in the legal field for a minimum of 15 (fifteen) years;
- f. is committed to improve the judicial system in Indonesia;
- g. have integrity and a personality that is not dishonorable;
- h. have the ability to physically and mentally;
- i. never been sentenced for committing a criminal act; and
- j. reported wealth.

## IV. THE STATUS DEVELOPMENT AND AUTHORITY OF KY

As mentioned at the outset that KY is one of the institutions supporting state in implementing the judicial power. The establishment of KY was a systematic effort in order to improve judicial institution that must be constantly maintained its independence and its accountability in enforcing the law and justice. KY as external oversight functions and concurrently with the constitutional authority is always expected to provide a guarantee for the independence and accountability of the judicial power. This is because one principle of the law state is to guarantee of the implementation of the power of the judiciary that are independent, free from any interference from any stakeholders to organize judiciary activities in order to enforce order, justice, truth, and law enforcement that are able to provide shelter to the people (Rimdan, 2012). Independent judicial power is one of the central things in the judicial process.

In general, the formation of Judicial Commission is not merely for the sake of following the trend that is happening in many countries, but it is a necessity in legal and judicial reform. The idea of the formation KY, as noted above, is to maintain and enhance the integrity of judges and the justice system. In other words, KY becomes actively involved and have a responsibility to strive for the achievement of the ideal conditions of an independent judiciary by strengthening the role and function of KY in building a clean and credible judiciary institution.

The position KY constitutionally was stipulated in the Article 24B consisting of four verses, namely: (1) KY is independent authorized to propose the appointment of justices and have other authorities in order to preserve and uphold the honor, dignity and behavior of judges. (2) Members KY must have knowledge and experience in the legal field as well as the integrity and personality that is not dishonorable. (3) Members of the Judicial appointed and dismissed by the President with the approval of Parliament. (4) The composition, status, and membership KY regulated by law. Thus, KY has obtained legitimacy based on Article 24B of the Constitution of 1945.

Aside from being a constitutional institutions guaranteed by the Constitution NRI 1945, KY is a state agency or independent commission. Asshiddiqie (2009) argued that KY like the National Army and Police, its position cannot be equated with the Supreme Court, the Constitutional Court, the House of Representatives, the Assembly, the President and Vice President. Thus, the position of KY is outside, but it is equal to the Supreme Court and the Constitutional Court. In addition, based on the article 24B paragraph (1), KY has two authorities. First, it has the authority to propose appointment of the Chief Justice. The second is to maintain and uphold the honor, dignity, and the behavior of judges. This indicates that KY is a state institution aligned with other state institutions namely supreme court (MA), Constitutional court (MK), Parliament (DPR), Regional Parliament (DPD), People Assembly (MPR), the President and the Vice President.

To sum up: KY clearly is not a law enforcement agency, but it is the enforcer of the rule of judicial ethics and good conduct. State institutions that have judicial functions or perform the function of the highest court is the supreme court and the constitutional court. The Judicial Commission is an agency ethics rather than legal institutions. Secondly, in terms of the functions of judicial power, KY can be regarded as

supporting system or as an auxiliary organ of the and in the branches of the judicial authority. KY serves as the guard and the enforcer of honor, dignity, and the judge's behavior into something that is absolutely necessary in the system of constitutional democracy.

#### V. CREATING CLEAN AND RESPECTABLE JUDICIAL INSTITUTION

An effort to create a clean and respectable judicial institution is a constitutional mandate. This has been confirmed in the National Constitution of 1945 (Amendment 3) in that it was stated that judicial power is the power of a sovereign state to conduct judiciary to uphold law and justice. This provision is an implementation of Article 1 verses (3) of Constitution as Indonesia is the law state. Given that, one rule of law is to guarantee of the implementation of the power of the judiciary is independent, free from the interference of extra-judicial powers to organize judiciary to enforce order, justice, truth, and law enforcement that are able to provide shelter to the people.

Independent judicial power is a precondition of a democratic state of law, as stated in MPR Decree No. X / MPR / 1998 on the Principles of Reform of development in order to secure and normalize the national life as a state policy. Of the many agendas that must be implemented is to separate between the functions of the judiciary and executive. The separation is carried out by the diverting organization, administration and financial body of justice agencies which are previously under the departments (executive) to a level below the High Court (Rimdan, 2012).

In the Law No. 48 Year 2009 on Judicial Power , it was explained that judicial power is the power of a sovereign state to conduct judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, for the implementation of the State Law of the Republic of Indonesia. Article 3 of Law No. 48 Year 2009 on judicial Power states that in carrying out its duties and functions, the judge should maintain the independence of the judiciary. Realization of the clean and respectable judiciary institution should be seen from the role and function of judges in doing their duties and functions while maintaining the independence and the impartiality of judges both in investigating and decision-making. Therefore, to build a clean and respectable institution, KY should maintain its independency and impartiality as well as accountability and adherence to the code of conduct.

It should be noted that to reach a clean and respectable judiciary institution is not only about the material aspects of law, but it also includes strengthening of the institutional aspects. Thus, the arrangement of the judiciary through legal reforms in order to realize a clean and credible judiciary is a certainty as it is demanded by today's society. Reform of the law in connection with law enforcement is not only the task of the judge / court alone, but it should also be as part of the job of the police as investigators, prosecutors, advocates and State Prison as it is often referred to as "criminal justice system".

The role of judge plays an important part in the law enforcement and reflects the face of the judiciary as a whole. The judges should be able to protect any bad practice in the court and should know everything that can then be issued a product in the form of the verdict with dignity and then be able to reclaim the public confidence in the justice sector. For that

reason, in order to build public confidence, many steps can be taken including the improvement of management system, human resources development and the like.

In conclusion, to realize clean and respectable justice, it is necessary to attempt to guide the behavior of all citizens of the judiciary in accordance with the values of the main judicial body of the Supreme Court by optimizing the supervision carried out by the Supreme Court. Also, to achieve effectiveness of supervisory internally, the Supreme Court must conduct effective oversight and select sincerely judges, clerks and officials of other courts in performing their duties, and externally Judicial Commission to carry out its duties and functions to maintain the honor and dignity of judges in the sense of carrying out surveillance relating to the conduct of judges. Apart from the above, there is also a need to setting up the infrastructures that were needed by the public. So that there will be no public complaints. The imposition of sanctions is also one way to improve the quality of work and performance of the judiciary citizens because sanctioning strictly and indiscriminately granted if the Supreme Court to be committing violations and the imposition of sanctions announced to the public in a transparent manner so that the public know about it.

#### VI. URGENCY IN STRENGTHENING THE ROLE AND FUNCTION OF KY

As the establishment of KY has already been formalized by the law, the road to reach the objectives of the institution was not so smooth. The establishment KY experienced systemic tragedy. This tragedy can be traced starting from the distortion of authority that was outlined on in the 1945 Constitution with the authority stated in the Act No. 22 of 2004 and the tragedy related with the Constitutional Court ruling No. 005 / PUU-IV / 2006 in that some of the authorities of KY was disarmed. Also, there has been problems associated with the incomplete revision of the Act by the Parliament. Not to mention the problem of resistance from the judiciary that is not willing to be supervised KY.

The distortion of the authority of KY that was outline in the Constitution of 1945 with that in the law No. 22/2004 can be explained as follows. First, the Constitution of 1945 contained the phrase "maintain and enforce". Maintain means the authority of a preventive nature, such as the authority to conduct education and training of judges, etc. While "Enforcing " means a repressive authority (supervisory function). In fact, in the Act KY contained only the phrase "uphold " merely repressive. Even then, the Act is also inconsistent, one side of the member authority repressive, but the other surveillance products KY may only make recommendations that are not imperative. Second, in the Constitution of 1945, the authority of KY explicitly states that " maintaining the honor, dignity, and behavior judge ". From the wording of the article is clearly seen that this aspect of the judge's behavior just to be a part of authority evidenced by the phrase " as well as the behavior of the judge ". But in fact the Act KY does not cover the intention of the authority indicated by the phrase " maintaining the honor and dignity.

Many people finally define the authority of KY in the narrow sense in that it does not include the technical and administrative matters. However, as the time goes the awareness of the importance of KY began in 2009. KY further gain authority support as the government issued the following

regulation. The first is the Act No. 3 Year 2009 regarding Second Amendment to Law No. 14 Year 1985 About the Supreme Court to provide reinforcement KY authority to introduce the formation of the Honorary Council of Judges (MKH). This regulation is further strengthened as there was common rule issued by the Judicial Commission and the Supreme Court No. 047 / KMA / SKB / IV / 2009-02 / SKB / P.KY / IV / 2009 on the Code of Ethics and Code of Conduct of Judges. The second is because of the issuance of the Act No. 48/ 2009 concerning Judicial Authority (Article 42), Law No. 49 of 2009 on General Courts (Article 13F), Law No. 50 Year 2009 concerning the Religious Courts (12F), Law No. 51 Year 2009 on State Administrative Court (Article 13F). Due to these regulations, KY then has the authority for the recruitment of judges together with the Supreme Court.

As the practice of judicial system is still terribly bad, the above regulations introduced have not been able to minimize the bad practice of the judicial systems. As a result, there is a need to issue further rules or laws to make the KY function proportionally. For this reason, revision toward the present laws is important. Of the many revisions undertaken is by optimizing the strategic role of the commissioner. In addition to that, many improvements toward the structural of organization, human resources development, financial operation and other administrative aspects were also made in order to strengthen the existence of KY.

Also, an open system to select judges has been established as follows. First, by announcing through various means such as the website, announcements in the print or electronic media mas, deployment announcements to various Law Faculties throughout Universities in Indonesia. Second, the selection process involves not just one institution alone, but two or more institutions as check and balance. In this context, the process of selection of judges was done jointly by the Supreme Court and the Judicial Commission. Thirdly, a transparent selection is done by tracing the track record of prospective judges so as to allow officials, committees or institutions authorized able to know the track record of selecting the candidates for judges. The use of a track record as one of the basic considerations for acceptance or rejection of the candidates is an appropriate method to recruit candidates who are considered qualified. For further details of discussion on this subject can be seen in Arifin (2016).

## VII. CONCLUDING NOTES

Strengthening the role and function of KY in building clean and authoritative judicial institution in Indonesia faced many problems and challenges. However, the presence of KY can be improved by undertaking the strategic steps. Of the many strategic steps that can be done by KY are as follows.

First, KY should conduct external supervision particularly related to uphold a code of ethics and improve judges behavior. Judges should meet ethical criteria such as independence, impartiality, integrity, propriety and decency, equality, skillful and competence and diligence, as well as understand the socio cultural values of life in Indonesia as outline in the Bangalore principles of judicial conduct in 2002.

Second, the relationship between the Judicial Commission and the Supreme Court needs to be optimized. This is critical in

making the role and functions of the Judicial Commission works effectively.

Finally, KY needs to expand and strengthen the networking with many stakeholders, not only with the government, but also with the NGOs and other civil societies. However, this networking should not reduce its independency, impartiality, integrity, and the like in order to make the presence of KY accepted by the public in general.

## REFERENCES

- [1] Ahsin Thohari, 2004. *Komisi Judisial dan Reformasi Peradilan* (Commission on Judicial and Justice Reform), Jakarta: Elsam.
- [2] Ali Taher, 2014. *Mencegah Runtuhnya Negara Hukum* (Preventing the Collapse of Law State), Jakarta, Grafindo BM.
- [3] Ardhian Sumadhija, et al., 2010. "Seminar tentang Model Komparatif dari Komisi Judisial: Peran Komisi Yudisial dalam Era Transisi Menuju Demokrasi (Comparative Model of Judicial Commission: Role in the Era of Transition to Demokrasi), Jakarta: The Judicial Commission of the Republic of Indonesia on the support of the National Legal Reform Program.
- [4] Asshiddiqie, J., 2010. *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Development and Consolidation of State Institutions Post-Reformation), Jakarta: Sinar Grafika.
- [5] -----, 2011. *Konstitusi dan Konstitualisme di Indonesia* (Constitutions and Constitutionalism in Indonesia), Jakarta: Sinar Grafika.
- [6] -----, 2009. *Komentar atas Undang-undang Dasar Negara republic Indonesia tahun 1945* (Comments of 1945 National Constitution), Jakarta: Sinar Grafika.
- [7] Bagir Manan, 2000. *Menyongsong Fajar Otonomi Daerah* (Toward the Dawn of Autonomous Region) ,Yogyakarta: UII FH Centre for Legal Studies.
- [8] Dinal Fedrian, 2012. *Dialektika Pembaruan Sistem Hukum Indonesia* (Dialectics of Legal System Reform Indonesia), Jakarta.
- [9] Idul Rishan, 2013. *Komisi Judisial: Suatu Upaya mewujudkan Wibawa Peradilan* (The Judicial Commission An Effort to Realize Judicial Authority), Yogyakarta: Genta Press.
- [10] Muchsan, 2000. *Sistem Pengawasan terhadap Perbuatan Aparat Pemerintah dan PTUN di Indonesia* (Supervision System of the Deeds Government officials and the administrative court in Indonesia), Yogyakarta: Liberty.
- [11] Muzayyin Mahbub, 2010. *Reformasi Peradilan dan Tanggung Jawab Negara* (Judicial Reform and the Responsibility of the State), Komisi Judisicla, Jakarta.
- [12] Riawan Tjandra, 2009. *Peradilan Tata Usaha Negara : Mendorong terwujudnya pemrintah yang bersih dan berwibawa* (The State Administrative Court: Pushing The clean and Respectable Government), Yogyakarta: Atma Jaya University.
- [13] Rimdan, 2012. *Judicial Authority Post Amendments to the Constitution*, Jakarta: Kencana Prenada Media Goup.
- [14] Siahaan, M., , 2011. *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Procedural Law of the Constitutional Court of the Republic of Indonesia), Jakarta: Sinar Grafika.
- [15] Sobirin Malian, 2011. *Perkembangan Lembaga Negara di Indonesia* (The development of state institutions in Indonesia), Yogyakarta: Total Media.
- [16] Triwulan, T., 2010. *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945* (Indonesia's Law Construction post the Amendment of 1945 National Constitution), Jakarta, Kencana Prenada Grup.