

# A Methodological Approach to Judges' Decisions as a Form of Supervision of Judge Behavior by the Supreme Court and the Judicial Commission

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Judges have a noble and burdensome task. They are obliged to examine cases and make decisions in the name of God and justice. Therefore the judge is given power by the constitution to be free and independent, without pressure or influence from anyone. Despite that, the judge is still an imperfect human being and often makes errors. Because of that, internal supervision by the Supreme Court and external supervision by the Judicial Commission are necessary to oversee the professionalism and behaviour of judges. The judge's decision is jurisprudence, which is an open legal doctrine that must be understood through legal logic. That is why academic aspects are needed for it to be more objective and effective. This article proposes the following problem: How is the methodological approach to judgment and decisions of judges based on legal logic, as an effort to supervise between the Supreme Court and the Judicial Commission on the behaviour of judges? The research applied the normative juridical method by studying the principles and theories of law and legislation related to the supervision of judges in Indonesia. The findings show that to conduct joint supervision between the Supreme Court and the Judicial Commission on the professionalism and behaviour of judges, a breakthrough is needed by carrying out a methodological approach and academic analysis of the judges' judgment and decisions. The results of the analysis of the judge's decision are not to overturn the judge's decision, but to indicate the existence of fairness, oddity, or deviation from the judge's behaviour objectively and effectively.

**Key words:** *Methodological Approach, Supreme Court, Judicial Commission.*

## Introduction

The judge is God's representative on earth in making a just legal decision (Kurniawan, 2013). The decision must be independent, free, and cannot be contested. It is guaranteed by the Constitution of 1945 Article 24 Paragraph (1) *Judicial Power is a sovereign power to administer justice in order to enforce law and justice. Besides, the judge's decision is a law that is coercive and must be implemented.* As a jurisprudence, the judge's decision also becomes one of the sources of law, which can also mean the doctrine of the law is contained in the decision (Mertokusumo, 2003). Therefore it must be justified logically and methodologically by law. As Oliver W Holmes said: “Law, it’s not just logic, but also experiences” (Willard Hurst, 1964), where the judge's decision must be in accordance with the logic of the law, and must reflect the reality in society in the sense of justice. It is similar to what Hans Kelsen said, “that the validity of a decision must be in accordance with the logic and principles of the law” (Kelsen, 2013).

However, judges are only ordinary people who are prone to errors. The weaknesses of judges in making fair decisions can be influenced by; the subjectivity of judges, the temptation of bribery or conflicts of interest, and the pressure of power that is sometimes difficult to avoid (Kurniawan, 2013). Because of that, the behaviour of judges in carrying out their professional duties and in social relations outside the service, needs to be monitored in order to maintain their dignity and honour (Ikhsan et al., 2017). The judge's honour is especially evident in the decisions they make, and the considerations that underlie the decision, or the whole decision-making process that is not only based on laws and regulations, but also their sense of justice and wisdom in society (Keputusan et al, 2009).

The problem of justice during the reformation era has given birth to the Judicial Commission institution as an external supervisor of the behaviour of judges. Whereas the existence of the Judicial Commission was regulated throughout the 3rd amendment to the 1945 Constitution in 2001 with two constitutive authorities, (1) to propose the appointment of a Supreme Court Judge, and, (2) the authority to maintain and uphold the honour, dignity, and behaviour of judges (Sejarah).

Yet the existence of the Judicial Commission raises different issues, including: first, the problem of disharmony between the Judicial Commission and the Supreme Court in conducting oversights of the behaviour of judges that have occurred for a long time (Fauzan, 2012). Since Law No. 22 of 2004 concerning the Judicial Commission was first enacted, it was immediately obstructed with a judicial review lawsuit to the Constitutional Court, which resulted in the Judicial Commission losing its supervisory authority during 2006-2008 (Sutiyoso, 2011). In fact, during the Judicial Commission's work to carry out its authority and duties, many positive things occurred, especially in the selection process for prospective

Supreme Court Judges. But the task of oversight of the behaviour of judges from misconduct and acts of unprofessional conduct has not run optimally (Gray & O'Reilly, 2009; Sutiyoso, 2011; Salmanowitz & Spamann, 2019). It is undeniably due to the political attitude of the Supreme Court over the fear of the formation of the Judicial Commission that their duties later may exceed the authority (Eksistensi). Considering the Supreme Court is an actor of judicial power as stipulated in the 1945 Constitution, judicial power is a free and independent power to uphold law and justice. Whereas the existence and authority of the Judicial Commission is also regulated in the 1945 Constitution Article 24 B paragraph (1) *The Judicial Commission is independent and has the authority to propose the appointment of Supreme Court Judges and has other authorities to maintain and uphold the honour, dignity, and behaviour of judges*. This phenomenon exposes a conflict of interest because of sectoral egos, where those two institutions are regulated by the 1945 Constitution (Fauzan, 2012).

Second, to continue the idea, Law No. 18 of 2011 was enacted as an Amendment to Law Number 22 of 2004 concerning the Judicial Commission. The regulation was followed up with the birth of several Joint Regulations between the Judicial Commission and the Supreme Court, as an agreement to conduct supervision in order to uphold the code of ethics (Keputusan, 2009) of the behaviour of Judges in carrying out their professional duties and in social relations outside the service. Joint regulations include (1) No 02/PB/MA/IX/2012 & 02/PB/P.KY/09/2012 concerning Guidelines for Enforcement of the Code of Ethics and the Code of Conduct for Judges, (2) No 04/PB/MA/IX/2012 & 04/PB/P.KY/09/2012 concerning the Procedure for Formation, Work Procedure, and Procedure for Decision Making of Honorary Panel of Judges, and (3) No 03/PB/MA/IX/2012 & 03/PB/P.KY/09/2012 concerning Procedures for Joint Investigations between Chairperson of the Supreme Court and Chairperson of the Judicial Commission of the Republic of Indonesia. However, this Joint Regulation is not effective because the joint investigation is never conducted (Ikhsan et al., 2017).

The ineffectiveness of the joint supervision is due to the lack of clarity of the methodology in carrying out the collective task. It can be seen from the Joint Regulations of the Supreme Court and the Judicial Commission on Procedures for Joint Investigations Chairperson of the Supreme Court and Chairperson of the Judicial Commission of the Republic of Indonesia, articles 5 to 8 are more about procedure and mechanism. The most crucial thing in carrying out supervision and inspection, such as indicators of deviation, standards of error, and substance of violations, are not visible in these provisions. So that, until now, supervision and inspection are carried out by each institution with their own results. The results can be seen from the data below.

**Table 1:** Recapitulation of Indonesian Supreme Court Supervisory Discipline Punishment and Proposed Sanctions from the Indonesian Judicial Commission of 2015 to 2019

Supreme Court Supervisory Body of Indonesia		Indonesia Judicial Commission	
Year 2015	111	Year 2015	116
Light	83	Light	79
Moderate	15	Moderate	29
Severe	13	Severe	8
Year 2016	58	Year 2016	87
Light	35	Light	57
Moderate	8	Moderate	19
Severe	15	Severe	11
Year 2017	62	Year 2017	58
Light	48	Light	39
Moderate	8	Moderate	14
Severe	6	Severe	5
Year 2018	108	Year 2018	63
Light	59	Light	40
Moderate	24	Moderate	11
Severe	25	Severe	12
Year 2019	77	Year 2019	121
Light	26	Light	88
Moderate	7	Moderate	25
Severe	11	Severe	8

**Source:** Data proceed from Mahkamah Agung dan Komisi Yudisial RI per-30 September 2019

From the above data, it is clear that there is no synergy or harmonious cooperation between the Judicial Commission and the Supreme Court in monitoring the behaviour of Judges.

### Research Problem

From the description above, it can be seen that the ineffectiveness of the joint supervision system between the Supreme Court and the Judicial Commission on the behaviour of judges, is more due to obstacles in political aspects and sectorial egos. An academic perspective is needed to provide a more objective and effective assessment. For this reason, this paper

focuses on: *What is the methodological approach to the judgment and decision of judges based on legal logic, as an effort to supervise the Supreme Court and the Judicial Commission on the behaviour of judges?*

## **Discussion**

The presence of the Judicial Commission is essential to avoid interference from executive power (Harjono, 2001). Thus, the independent and impartial judiciary can be realised, and at the same time, balanced by the principle of accountability (Rully Masrur, 2007).

The presence of the Judicial Commission gives new hope for justice seekers to accomplish a clean and authoritative judicial institution. This is evident from data from 2015 to 2019, where the Judicial Commission has received public reports of alleged violations of the Code of Ethics and the Code of Conduct for Judges (KEPPH) of 6,368 reports and 6,060 copies of copy statements. Since 2015 until 2019, the Judicial Commission has elicited 454 Judges who violated KEPPH to the Supreme Court (Meneguhkan, 2019).

The same phenomenon also occurred in other countries, such as the European Union. The reason for the establishment of a Judicial Commission (Judicial Service or Courts Service) in European countries is to revive public confidence in the world of justice, with the aim of making an efficient judiciary (Wim Voermans dalam Suparto, 2012).

Despite the data above, only 3.6% of total cases reported have been tried and recommended by the Judicial Commission, both due to misconduct and judicial technical errors (Legal Error/Unprofessional Conduct). (Aidul) This happened because the verification results concluded out of authority, forwarding to other agencies, forwarding as the request of monitoring and investigation, and unacceptable reporting (Meneguhkan, 2019).

Beyond that, there are normative issues in Article 14 and 15 of the Joint Regulation of the Chairperson of the Supreme Court and the Chairperson of the Judicial Commission of the Republic of Indonesia Number: 2/Pb/MA/IX/2012/02/Pb/P.KY/09/2012 Regarding the Code Enforcement Guidelines and Judges' Code of Conduct.

Article 15 states, *in conducting oversight of the Supreme Court and the Judicial Commission, it cannot declare the right or wrong of judicial consideration and the substance of the judge's decision. (Hal ini sesuai)* Judicial power is an institution that must be free and independent from the influence of legislative, executive, and other powers. Judges' independence is closely related to the impartiality of judges, both in investigation or in decision making (Iskandar, 2014).



The regulation implies that the judge's decision becomes a law that must not be touched nor reviewed by anyone, and this doctrine is that their word is sacred and cannot be tampered with. Even though the public report to the Judicial Commission was mostly dominated by unfair judge's decision (Suwarta, 2018). How can the fairness of the decision be judged, if it is not through the logic of the argument that was built before deciding on the case?

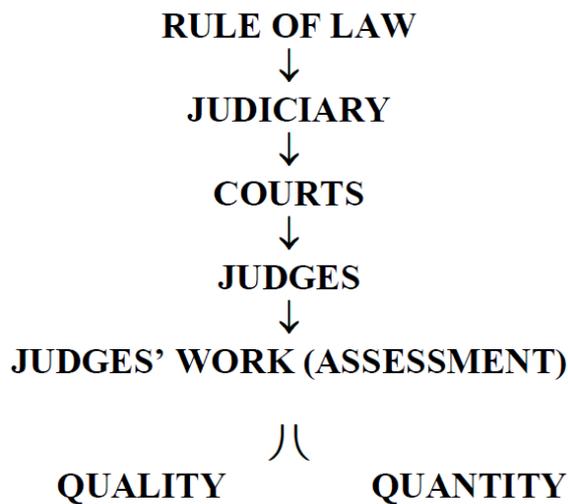
Whereas Article 14 paragraph (2) states that a professional attitude (Judge) will encourage an individual who always maintains the quality of work, and seeks to improve knowledge and performance to be effective and efficient and to achieve the highest quality of work. Somehow this article becomes contradictory to Article 15, that the highest quality of work results is impossible to achieve because of the missing quality assessment of the arguments and decisions of judges.

There is always a question: Do judges truly make impartial decisions? Various studies reveal that some extra-legal factors influence decision making in court. Judges rely heavily on intuitive reasoning in deciding cases, making them vulnerable to using shortcuts that can cause mistakes. In addition, judges sometimes rely on facts outside of records and facts about the more sympathetic perpetrators, despite the fact that they must be excellent decision-makers. However, the weight of the evidence shows that judges are vulnerable to systematic deviations from the idealism of the impartiality of the judiciary (Rachlinski, 2017).

Supposedly, in the Code of Ethics and the Code of Conduct of Judges in item 10.4, it is stated: *Judges are obliged to avoid mistakes in making decisions or ignore facts that can ensnare the accused or the parties or deliberately make considerations that benefit the defendant or the parties in judging the case (Keputusan et al, 2009)*. This provision becomes problematic when juxtaposed with Article 15 Guidelines for Enforcement of the Code of Ethics and the Code of Conduct for Judges. More questions will be raised about the phrase "*Judges must avoid mistakes in making decisions,*" by not questioning the arguments and decisions of judges in supervising judges.

In 2005-2007, the same situation caused anxiety in Canada, the United States, Britain, the Scandinavian countries (Denmark, Finland, and Sweden), Italy, Spain, France, and Germany. In response, they immediately conducted assessments of the performance of judges with several indicators and standards, both qualitative and quantitative (Boljević, 2007). The professionalism of judges is a moral attitude based on the determination to carry out the work with sincerity and supported with expertise on the basis of knowledge, skills, and broad insights (Keputusan et al, 2009). Therefore, the professionalism of judges is a pattern of performance that must be measured and standardised as illustrated by the scheme below (Boljević, 2007):

**Figure 1.** Professionalism of Judges



The efforts of other countries to supervise the behaviour and professionalism of judges are based on methodological academic views. It must not be inferred through political attitudes that lead to chaos and conflict, thus losing the essence of the task of supervising judges. A methodological approach provides an alternative to reduce long-standing tensions.

All issues should proceed without eliminating the sanctity of the judge's independence in making (legal) decisions, as it is also a universal doctrine used by the entire justice system in all countries (Sauveplanne, 1982). It is the eternal task of the court where the judge must make the law through a decision. That is why it is not only important for carrying out the judicial function but also the sustainability of the legal system and the community (Day, 1976).

Yet the fairness of judges' decisions as a jurisprudence must be measured based on the built logic on the judicial process. It must be understood that the application of the independence of judges is not arbitrary freedom, but limited to the legal rules themselves both in procedural and substantial terms. Judges are subordinate to the law and cannot act "*contra legem*." Moreover, the freedom and independence of judges are bound by accountability. So there is no absolute freedom without responsibility. The freedom of judges must be balanced with judicial accountability (Wiriadinata, 2013). Therefore, the judicial process from the demands or claims, answers, testimonies, documents, and evidence, narratives to academic decisions can be investigated and analysed through a methodological approach. It is expected to make the process of monitoring the professionalism of judges' objective removed from political sentiments and sectorial egoism.

The process and results of analysis of the decision are not to overturn a judge's decision, but to verify and confirm the community's report of an unfair decision. As William N. Dunn said,

supervision is a policy analysis procedure used to provide information about the causes and consequences of public policy (Iskandar, 2014). When it is logically the same as the judge's decision, then a logical cause and effect can emerge from the analysis of evidence, testimony, and argumentation to become a decision. When the decisions are untouchable, there is no consistency in judicial decisions because of lacking judgment and supervision in each decision (Wiriadinata, 2013).

It may comfortably be applied since there is already a reference to SK KMA Number 44 of 2014 concerning the Application of the Decision Templates and Numbering Standards for General Judicial Cases. (SK KMA Nomor 44 Tahun 2014) The template, especially in the legal considerations section, contains the principal of the lawsuit, the recognised arguments or at least not disputed, the disputed arguments, the consideration of the evidence presented by the parties and the consideration of the *petitum* of the lawsuit and so on. (Pedoman) These are narrative plots that can be analysed methodologically. As a result, the "strange" and "reasonable" logical legal decisions can be explicitly differentiated.

The results of the analysis are not to overturn the Judge's decision, but to indicate whether there is a deviation from professionalism and the behaviour of the judge. An academic methodological approach and analysis of this decision can be used as a model of judicial supervision by the Judicial Commission, together with the Supreme Court objectively, effectively and politically. Subsequently, the Supreme Court and the Judicial Commission can cooperate better to supervise the performance of judges.

## **Conclusion**

The discussion above implies that conducting joint supervision between the Supreme Court and the Judicial Commission on the professionalism and behaviour of judges requires a breakthrough to use a methodological approach and academic analysis of the judges' verdict and decisions. It is based on the idea that the judge's decision is jurisprudence, which must be analysed based on legal logic. The results of the analysis of the judge's decision are not to cancel it, but to indicate the existence of fairness, oddity, or deviation from the judge's behaviour objectively and effectively.



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## **Regulations**

Undang Undang Dasar Republik Indonesia 1945

Undang Undang No Nomor 18 Tahun 2011 Sebagai Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial

Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

Keputusan Bersama Ketua Mahkamah Agung RI dan Komisi Yudisial RI No 047/KMA/SKB/IV/2009 & 02/SKB/P.KY/IV/2009 Tentang Tentang Kode Etik Dan Pedoman Perilaku Hakim.

SK KMA Nomor 44 Tahun 2014 tentang Pemberlakuan Template Putusan Dan Standar Penomoran Perkara Peradilan Umum

Pedoman Penyusunan Putusan Tingkat Pertama Peradilan Umum – Perdata Mahkamah Agung Ri Jakarta 2014

Hal ini sesuai dengan Pasal 24 ayat (1) UUD 1945 yang menyebutkan “Kekuasaan Kehakiman merupakan kekuasaan yang merdeka untuk menyelenggarakan peradilan guna menegakkan hukum dan keadilan” *Juncto* Pasal 1 ayat (1) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, dinyatakan bahwa: “Kekuasaan Kehakiman adalah kekuasaan negara yang merdeka untuk menyelenggarakan peradilan guna menegakkan hukum dan keadilan berdasarkan Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 demi terselenggaranya Negara Hukum Republik Indonesia”.

Peraturan bersama No 02/PB/MA/IX/2012 & 02/PB/P.KY/09/2012 tentang Panduan Penegakan Kode Etik Dan Pedoman Perilaku Hakim

Peraturan bersama No 04/PB/MA/IX/2012 & 04/PB/P.KY/09/2012 Tentang Tata Cara Pembentukan, Tata Kerja, Dan Tata Cara Pengambilan Keputusan Majelis Kehormatan Hakim

Peraturan bersama No 03/PB/MA/IX/2012 & 03/PB/P.KY/09/2012 Tentang Tata Cara Pemeriksaan Bersama Ketua Mahkamah Agung Republik Indonesia Dan Ketua Komisi Yudisial Republik Indonesia.

Eksistensi serta kewenangan Komisi Yudisial diatur dalam UUD 1945 Pasal 24 B (1) *Komisi Yudisial bersifat mandiri yang berwenang mengusulkan pengangkatan hakim agung dan mempunyai wewenang lain dalam rangka menjaga dan menegakkan kehormatan, keluhuran martabat, serta perilaku hakim*

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### **Websites**

Aidul Fitriadi Azhari, Penegakan Kode Etik dan Pedoman Perilaku Pejabat Negara, [www.komisiyudisial.go.id](http://www.komisiyudisial.go.id)

Data dari Mahkamah Agung dan Komisi Yudisial RI per-30 September 2019

Laporan Tahunan Komisi Yudisial Tahun 2019



Sejarah Pembentukan Komisi Yudisial, [https://www.komisiyudisial.go.id/frontend/static\\_content/history](https://www.komisiyudisial.go.id/frontend/static_content/history)