

The Right to Immunity from the Judicial Commission in Supervising The Behavior of Judges in the Indonesian Justice System

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ABSTRACT

Objective: This study aims to analyze the immunity rights of the Judicial Commission in supervising the behavior of judges in the Indonesian judicial system. **Method:** This research uses normative juridical method with legislative and literature approach. This research is based on Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission. **Results:** The Judicial Commission as a state institution tasked with overseeing the behavior of judges requires immunity rights in carrying out its oversight function. Although the Judicial Commission has a strong constitutional foundation and legal guarantees to carry out its duties, the absence of this immunity right has made this institution vulnerable to criminalization. **Novelty:** This article reviews the immunity rights of the Judicial Commission in supervising the behavior of judges in the Indonesian judicial system. This research focuses on the immunity rights of the Judicial Commission. Because the Judicial Commission can be vulnerable to becoming a suspect because it has great authority in supervising the behavior of judges and enforcing discipline among them.

INTRODUCTION

In a state governed by law, all acts of governance must be conducted appropriately and be accountable under the prevailing law by an independent judiciary. This can be realized if the implementation is free from interference by other state institutions, such as the legislative or executive branches [1]. Judicial power is exercised by the Supreme Court and the Constitutional Court. According to Chapter IX of the 1945 Constitution, it mandates the establishment of a state institution currently known as the Judicial Commission. Although the Judicial Commission is not formally part of the judiciary, its existence is grouped with judicial authority because it functions as a buffer and balance within the judicial system.

Judges play a crucial role in the judicial system. They are tasked with leading trials, examining cases, deliberating, and rendering decisions fairly and impartially based on the law. Judges have the authority to decide cases and determine the fate of individuals [2]. Therefore, judges must maintain integrity and exemplary conduct. The Judicial Commission is established to protect and uphold the honor, dignity, and behavior of judges. One of its main duties is to monitor judges' conduct to ensure they perform their duties properly and fairly. Such oversight is essential to maintain public trust in the judiciary [3].

Immunity rights refer to the freedom of expression granted to certain state officials to protect them from criminal or civil liability for actions taken in the execution of their duties and authority. These rights are codified in various laws and regulations. The

primary purpose of immunity is to allow officials to perform their duties without fear of unfounded legal actions, ensuring professional and independent execution of responsibilities. The core function of immunity is to maintain the independence and accountability of state officials. With immunity, officials can act courageously and objectively without concern about being sued or prosecuted [4].

The Judicial Commission is a state institution established under the Amendment to the 1945 Constitution, Article 24B, and further strengthened and expanded through various laws governing judicial authority, including Law Number 18 of 2011, which amends Law Number 22 of 2004 on the Judicial Commission [5]. Established in 2004, the Judicial Commission plays a critical role in protecting and maintaining the honor, dignity, and behavior of judges throughout Indonesia. It ensures the independence and accountability of the judiciary by monitoring judges' professionalism and integrity, thereby enhancing public trust in Indonesia's judicial system. Since its establishment, the Judicial Commission has demonstrated its commitment to upholding judicial ethics and professionalism, resolving thousands of cases related to violations of the Code of Ethics for Judges, and collaborating with the Supreme Court and Constitutional Court to improve the quality of the judiciary [6].

The establishment of the Judicial Commission took a long time. During the drafting of Law Number 14 of 1970 on the Fundamentals of Judicial Power, the creation of an institution similar to the current Judicial Commission was planned. The Commission's duties include recommending appointments for Supreme Court judges to the House of Representatives and safeguarding the honor, dignity, and behavior of judges, as regulated in Law Number 18 of 2011, amending Law Number 22 of 2004. The Judicial Commission was formed to protect the independence and integrity of the Supreme Court and its subordinate courts, ensuring that the judiciary can operate transparently and uphold justice [7]. The emergence of the Judicial Commission in Indonesia's constitutional system reflects national political dynamics, demanding improved oversight of judicial practices, which had previously lacked regulation. The Judicial Commission functions as a supervisory body, monitoring judges to achieve a transparent judicial system that upholds justice. While it provides hope and trust to the public regarding fair and transparent judicial power, it also creates friction within the Supreme Court, which oversees the judges being monitored [8].

As a state institution, the Judicial Commission should have full authority. However, most of its powers are non-authoritative. Many judicial irregularities occur due to insufficient internal monitoring of courts. The Judicial Commission emerged as an external supervisory body to address weaknesses in internal court oversight. Ineffective internal supervision is mainly caused by unfair sanction application and the reluctance of court leadership to act on internal monitoring results, allowing judges who violate laws or ethics to avoid accountability. Hence, an external body like the Judicial Commission is crucial [9].

The Judicial Commission's main role is to protect and uphold the honor, dignity, and behavior of judges in Indonesia. However, in carrying out its duties, the Commission

faces several challenges. One issue is its institutional weakness and the narrowing of its authority. For instance, Judicial Commission staff encounter difficulties conducting oversight through wiretapping and recording judges' conversations, especially during trials. Moreover, immunity rights are considered necessary to protect Judicial Commission personnel from unfounded legal claims, allowing them to perform their duties without fear and potentially enhancing the Commission's performance. Immunity is also essential to maintain the independence of the Judicial Commission itself [10].

Recently, media coverage highlighted a case where members of the Judicial Commission became suspects. On Friday, July 10, 2015, the Chief of the Criminal Investigation Division, Budi Waseso, stated that two suspects had been named in a defamation and slander case reported by Judge Sarpin Rizaldi. The suspects were the Chairman of the Judicial Commission, Suparman Marzuki, and Commissioner Taufiqurahman Sahuri. Judge Sarpin Rizaldi of the South Jakarta District Court had granted a pretrial petition for Commissioner General Budi Gunawan. Following this decision, the suspect status assigned to General Budi Gunawan by the KPK was annulled. The pretrial decision by Judge Sarpin Rizaldi was criticized by various parties, including Judicial Commission members responsible for supervising judges. Judge Sarpin Rizaldi claimed that comments made by Taufiqurahman and Suparman Marzuki defamed him, leading him to report them to the Police Criminal Investigation Department [11].

According to FW Brilliana, facing widespread corruption in the judiciary, starting with ethical violations by judges, the Judicial Commission (KY) is expected to enhance oversight of judges' behavior. Although KY has provisions for wiretapping to minimize harmful actions, its status as a non-investigative body focusing on ethical supervision has sparked controversy and opposition. Therefore, a study on the implementation of wiretapping authority by the Judicial Commission in monitoring and enforcing the judges' code of ethics is necessary.

According to Kusuma in the study "Optimization of the Supervisory Function of the Judicial Commission on Judges," increasing public understanding of the Judicial Commission's role strengthens its supervision of judges, allowing KY to work effectively. This is useful for reinforcing KY's role as a liaison with judges, enabling it to monitor judges without waiting for public complaints, thereby providing better information to the public about the judiciary.

YSRI Devi found that the monitoring authority of the Judicial Commission remains weak, limiting its ability to supervise judges' ethics and behavior. Although Law Number 18 of 2011 grants the right to recommend sanctions, such recommendations are often not implemented by the Supreme Court.

The conclusion from these previous studies is that there is no discussion regarding the immunity rights of the Judicial Commission. Therefore, this research will focus on immunity rights for the Judicial Commission. The Commission is vulnerable to becoming a suspect due to its significant authority in overseeing judges' behavior and enforcing discipline, as evidenced by several news reports about Judicial Commission members being named suspects.

Research Problem: Can the Judicial Commission obtain immunity rights in performing its supervisory duties over judges?

Research Questions:

1. How is immunity granted in the practice of state institutional administration in Indonesia?
2. Does the Judicial Commission, as a state institution, have the right to immunity protection while performing its supervisory functions?

RESEARCH METHOD

This study uses a normative juridical research method with a statutory approach. The research is based on Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 on the Judicial Commission. Normative juridical research is legal research that emphasizes the analysis of legal documents as well as literature or sources related to the research topic. This study also employs Library Research, also known as literature research. In Library Research, data collection involves in-depth study of literature, books, notes, and reports relevant to the research.

RESULTS AND DISCUSSION

A. Granting Immunity Rights in the Practice of State Institutional Governance in Indonesia

The term “immunity” originates from the words **immune** and **immunity**, meaning invulnerability or protection. In democratic countries, many grant immunity rights to representatives in parliament, but these rights have limitations to protect the freedom, authority, and dignity of parliament. The purpose of granting immunity to representatives is to allow them to perform their duties freely and without fear. In law, there are two types of immunity rights. The first is absolute immunity, which cannot be revoked by anyone. The second is qualified immunity, which is relative in nature, meaning it can be set aside if the use of the right is “intentionally” aimed at insulting or degrading the reputation or dignity of others. Absolute immunity covers statements made in parliamentary meetings or court sessions by high-ranking officials while performing their duties. Meanwhile, qualified immunity includes press releases regarding the main topics of Congress or court proceedings, or reports by authorized officials about these matters. In Indonesia, immunity rights are rights granted to members of state institutions to discuss and express matters within the institution in writing without being prosecuted in court.

In the practice of institutional governance in Indonesia, immunity rights are granted to members of the House of Representatives (DPR) as regulated in Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Due to the shift from authoritarianism to liberal democracy emphasizing freedom, immunity rights for representatives were formally recognized after the second amendment to the 1945 Constitution. DPR immunity rights are recognized by the state under the principles of modern democracy. In this context, members of parliament cannot be challenged in any

circumstance regarding actions taken in performing their legislative duties, including statements or opinions expressed in their capacity as parliamentarians. Therefore, they cannot be sued in civil, criminal, or other legal proceedings.

The implementation of immunity rights for DPR members has limits; not all actions of DPR members are exempt from legal regulation. The boundaries of this immunity include opinions expressed and activities conducted during or outside DPR meetings that are related to their duties, functions, and authority as DPR members. DPR members are also entitled to immunity rights considering the significant responsibilities they hold. This immunity ensures that minor legal issues do not hinder their performance in executing their duties. Immunity also serves to maintain the honor of the council while providing clear boundaries. The implication of immunity rights for DPR members is that they cannot be prosecuted in court for statements made during or outside parliamentary sessions.

Members of the Regional Representative Council (DPD) are also granted immunity in performing their duties and functions as regional representatives at the national level. This immunity is regulated in Law Number 17 of 2014 concerning the MPR, DPR, DPD, and DPRD (MD3), particularly in Article 290. This provision provides legal protection for DPD members for statements made orally or in writing during DPD meetings or outside meetings related to the functions, duties, and authority of the DPD. This protection includes immunity from legal prosecution and guarantees that their positions cannot be altered because of the opinions expressed. However, similar to DPR immunity, this right has limitations, especially regarding state secrets or the disclosure of materials agreed to be confidential in closed sessions. Thus, the immunity of DPD members serves as an important instrument to ensure their freedom in voicing regional aspirations and performing oversight functions over government policies affecting their regions.

The DPD is part of Indonesia's legislative system but has immunity rights different from those of the DPR. Current regulations show that DPD members do not have the same immunity as DPR members. In the 1945 Constitution, DPR immunity is only mentioned in Article 20A paragraph 3 and does not provide similar provisions for DPD members. However, Law Number 17 of 2014 (MD3) grants immunity rights to DPD members in Article 290, similar to those provided to DPR members in Article 224.

Nevertheless, DPD members still have legal protection in performing their duties as regional representatives. They are protected by general legal provisions ensuring freedom of speech and expression, as long as it is exercised within the limits established by law. However, this protection is not as comprehensive as the immunity granted to DPR members, which offers broader legal coverage for statements or opinions expressed in the course of their official duties. This difference reflects the distinct roles and functions of the DPR and DPD in Indonesia's state system, where the DPR has broader legislative, budgetary, and oversight functions compared to the DPD, which focuses more on regional issues.

B. The Judicial Commission as a State Institution Entitled to Immunity Protection in Carrying Out Its Supervisory Functions

The Judicial Commission (KY), the DPR, and the DPD have different rights because the position and functions of each institution within Indonesia's state system differ. The Constitution and laws clearly guarantee that the DPR and DPD, as legislative bodies, have immunity rights. They enjoy the same immunity to speak and express opinions without fear of legal repercussions, allowing them to perform their duties effectively and without interference from legal threats.

On the other hand, the KY, which holds a very important role and authority in supervising the behavior of judges, does not possess the same immunity rights. The following table provides a comparative explanation regarding the rights of the KY, DPR, and DPD [18].

Table 1. Comparison of the Rights of the Judicial Commission, DPR, and DPD.

Komisi Yudisial	DPR	DPD
- Hak protokoler	- Hak interpelasi	- Hak imunitas
- Hak keuangan dan fasilitas	- Hak angket	- Hak Bertanya
- Hak tindakan kepolisian	- Hak menyatakan pendapat	- Hak Menyampaikan usul dan pendapat
	- Hak protokoler	- Hak Memilih dan dipilih
	- Hak membela diri	- Hak membela diri
	- Hak imunitas	- Hak protokoler
	- Hak mengajukan usulan RUU	- Hak keuangan dan administratif
	- Hak mengajukan pertanyaan	
	- Hak memilih dan dipilih	
	- Hak keuangan dan administratif	
	- Hak pengawasan	
	- Hak mengusulkan dan memperjuangkan program	
	- Hak melakukan sosialisasi UU	

When the Judicial Commission exercises its authority to supervise the performance of judges, it is granted protocol rights as stipulated in Article 7, Part 3 of Law Number 22 of 2004 concerning the Judicial Commission. In general, protocol refers to all regulations governing the conduct of activities, whether in official offices or in public settings.

Protocol rights themselves are special privileges granted to certain officials or state institutions based on their position and function within the state system. These rights include various special treatments, facilities, and procedures during official state events intended to honor and facilitate the execution of their duties.

The leadership of the Judicial Commission holds a protocol status equivalent to the leadership of other state institutions, such as the DPR and DPD, indicating that the Commission is recognized for its important role. Moreover, the Judicial Commission has the right to communicate directly with the leaders of other state institutions to ensure good cooperation in carrying out its duties.

In performing its supervisory function, the Judicial Commission has the right to access courts and their facilities, including the right to enter courtrooms, examine case files, and obtain information and data from judicial institutions needed to gather evidence. Given the sensitive nature of the Judicial Commission's work, when supervising judges who violate the Code of Conduct and Code of Ethics for Judges (KEPPH), the Commission can receive protocol rights for security protection, including accompaniment by the police.

The following table provides a comparative explanation regarding the authorities of the KY, DPR, and DPD [19].

Table 2. Comparison of the Authorities of the Judicial Commission, DPR, and DPD.

Komisi Yudisial	DPR	DPD
- Mengusulkan pengangkatan hakim agung dan hakim ad hoc di Mahkamah Agung kepada DPR guna mendapatkan persetujuan - Menjaga dan menegakkan kehormatan, keluhuran martabat, serta perilaku hakim - Menetapkan KEPPH bersama Mahkamah Agung - Menjaga dan menegakkan pelaksanaan KEPPH	- Melakukan pengawasan terhadap pelaksanaan UU, APBN dan kebijakan pemerintah - Membahas dan menindaklanjuti hasil pengawasan yang disampaikan oleh DPD - Menyusun dan membahas RUU - Menyusun program Legislasi Nasional - Menerima RUU yang diajukan DPD - Membahas RUU yang diusulkan Presiden atau DPD - Menetapkan UU bersama Presiden - Menyetujui atau tidak menyetujui peraturan pemerintah pengganti UU untuk ditetapkan menjadi UU - Memberikan persetujuan RUU tentang APBN - Memperhatikan pertimbangan DPD atas RUU tentang APBN dan RUU terkait pajak, pendidikan dan agama - Menindaklanjuti hasil pemeriksaan pengelolaan dan tanggungjawab keuangan negara oleh BPK - Memberikan persetujuan pemindahtanganan aset negara atau perjanjian yang berdampak bagi rakyat terkait beban keuangan negara	- Melakukan pengawasan terhadap Pelaksanaan UU - Berwenang dalam pengajuan RUU - Berwenang ikut membahas bersama DPR dan pemerintah terhadap penyusunan RUU - Berwenang memberikan pandangan dan pendapat RUU - Berwenang memberi pertimbangan terhadap RUU tentang APBN

The legal guarantees provided by the Indonesian state for the Judicial Commission to carry out its duties and authorities have a strong constitutional basis in Article 24B of the 1945 Constitution. These guarantees are further detailed in Law No. 18 of 2011 concerning Amendments to Law No. 22 of 2004 on the Judicial Commission. Legal

protection also grants the Judicial Commission rights and authority to perform its duties. However, the current Judicial Commission Law (UU KY) does not provide adequate legal protection for its members in carrying out supervision of judges' behavior. Although the UU KY provides a legal foundation for the Judicial Commission to exercise its functions, including protocol rights and access to court information, it does not include comprehensive protection such as the immunity rights enjoyed by members of other state institutions, such as the DPR and DPD. The absence of strong legal protection leaves Judicial Commission members vulnerable to legal threats and criminalization while performing their supervisory duties [20].

As mentioned above, the Judicial Commission does not currently have immunity rights to perform its duties and authorities. This is evident from cases where members of the Judicial Commission became suspects. On Friday, July 10, 2015, Chief of the Criminal Investigation Agency Budi Waseso stated that two suspects had been named in a defamation and insult case reported by Judge Sarpin Rizaldi. The two suspects were the Chairman of the Judicial Commission, Suparman Marzuki, and Commissioner Taufiqurahman Sahuri. Sarpin Rizaldi was a Judge at the South Jakarta District Court who granted the pretrial petition of Commissioner General Budi Gunawan. As a result of Judge Sarpin Rizaldi's pretrial decision, the suspect status assigned by the KPK to General Budi Gunawan was nullified. The pretrial decision made by Judge Sarpin Rizaldi was criticized by various parties, including members of the Judicial Commission who are tasked with supervising judges. Judge Sarpin Rizaldi felt that comments made by Taufiqurahman and Suparman Marzuki had defamed him. Subsequently, Judge Sarpin Rizaldi reported Chairman Suparman Marzuki and Commissioner Taufiqurahman Sahuri to the National Police Criminal Investigation Agency [21].

The case of naming two Judicial Commission members as suspects over Judge Sarpin Rizaldi's report regarding alleged defamation and insult raises complex legal and ethical issues. This incident highlights the tension between the supervisory function of the Judicial Commission and the protection of judicial independence. On one hand, the Judicial Commission has a constitutional mandate to monitor judges' behavior, including offering criticism of controversial decisions. On the other hand, such criticism can be perceived as defamation by the concerned judge. This situation creates a dilemma between performing supervisory duties and the risk of criminalization for Judicial Commission members.

The impact on performance resulting from the suspect designation of two Judicial Commission members significantly affects the Commission's work. Following this incident, an impression of intimidation emerged, potentially hindering the Judicial Commission from performing its supervisory tasks effectively. Members might be more cautious in offering criticism or commentary on controversial judicial decisions due to fear of legal consequences. This can reduce the accountability and transparency of Indonesia's judicial system by weakening the role of the Judicial Commission as an external supervisory body [22].

This case may also affect public trust in the Judicial Commission and its performance. The ability of the Commission to perform its duties independently and without pressure could be questioned by the public, reducing confidence in the institution. Another consequence is the potential delay in improving judges' professionalism, efforts that the Judicial Commission has been striving to achieve, because the Commission's resources and energy may be diverted to handling legal cases involving its own members. Moreover, such situations could affect future cases of a similar nature, where criticism, suggestions, or opinions expressed by the Judicial Commission regarding judicial decisions—which should be part of democratic oversight—can easily be criminalized, resulting in negative repercussions for the Commission in the public eye [23].

The Judicial Commission should have and require immunity rights equivalent to those of other state institutions such as the DPR and DPD. Although the status and functions of the Judicial Commission differ from legislative bodies like the DPR and DPD, one shared authority among the Judicial Commission, DPR, and DPD is supervision. The authority to monitor judges' behavior is as important as maintaining the integrity of Indonesia's judicial system. Cases where members of the Judicial Commission were named as suspects for criticizing judicial decisions demonstrate the vulnerability of this institution to potential criminalization, which can significantly hinder its supervisory efforts. The Judicial Commission needs immunity rights for several crucial reasons. First, its members will be protected from legal threats while performing their duties and authorities. Second, immunity allows the Commission to critique, advise, and supervise judges without fear of legal consequences. Finally, immunity is essential to maintain the independence of the Judicial Commission and ensure the institution can carry out its duties effectively [23].

Without immunity rights, members of the Judicial Commission would be more cautious or even reluctant to provide criticism and recommendations regarding controversial judicial decisions. This could render the Commission's supervision less effective and weaken its function as an external judicial oversight body. Consequently, the transparency and accountability of Indonesia's judicial system could be compromised. Granting immunity to the Judicial Commission would also help preserve public trust in the judicial system as a whole and in the Commission specifically. With legal protection, the Judicial Commission could focus more on enhancing judges' professionalism and the quality of the judicial system without being disrupted by the threat of criminalization. Legal protection would also allow the Commission to perform its duties as part of the democratic process and public oversight without fear of being criminalized. Therefore, granting immunity to the Judicial Commission is a crucial step to ensure that this institution functions effectively in carrying out its authority. Without adequate legal protection, members of the Judicial Commission remain vulnerable to lawsuits or legal actions that could impede the effectiveness of their work.

CONCLUSION

Fundamental Finding : The granting of immunity rights in Indonesia's institutional practice is provided to the DPR and DPD, particularly the immunity rights for DPR members as regulated in Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia. While carrying out its duties and authorities, the Judicial Commission is provided protection in the form of legal guarantees, which are constitutionally grounded in Article 24B of the 1945 Constitution. As a state institution tasked with supervising judges' behavior, the Judicial Commission has the right to and requires immunity rights in performing its supervisory functions. **Implication :** Granting immunity rights to the Judicial Commission enables it to provide criticism, suggestions, and oversee judges, allowing the KY to perform its duties as part of the democratic process and public oversight. **Limitation :** The discussion focuses primarily on the constitutional and legal guarantees of immunity rights and does not explore the practical challenges or limitations faced by the Judicial Commission in implementing these rights. **Future Research :** Future research could examine the effectiveness of immunity rights in practice, evaluating how such rights impact the Judicial Commission's supervision of judges and the public perception of accountability and transparency within Indonesia's judicial system.

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