

Rekonstruksi kewenangan komisi yudisial sebagai peradilan etik (court of ethics) hakim Indonesia = Reconstruction the authority of judicial commission as court of ethics for Indonesian's judges / Syafitri Apriyuni Supriatry

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Abstrak

ABSTRAK

Tesis ini bertujuan untuk menganalisis kinerja Komisi Yudisial sebagai penegak kode etik (code of ethics) hakim dan merekonstruksi kewenangan Komisi Yudisial sebagai peradilan etik (court of Ethics) hakim Indonesia. Penelitian ini adalah penelitian hukum normatif dengan pendekatan konseptual, sejarah hukum, dan perbandingan hukum. Hasil penelitian ini menunjukkan kinerja Komisi Yudisial sebagai penegak kode etik hakim belum optimal. Rekomendasi dari Komisi Yudisial yang dilaksanakan oleh Mahkamah Agung relatif sangat kecil, angka ini dapat ditafsirkan bahwa rekomendasi Komisi Yudisial belum efektif dilaksanakan sehingga fungsi Komisi Yudisial dalam menjaga dan menegakkan kode etik hakim belum optimal yang disebabkan oleh Pertama, ketidakjelasan garis demarkasi antara ranah etik dan teknis Yudisial oleh Komisi Yudisial dan Mahkamah Agung. Kedua, resistensi hakim terhadap lembaga penegak kode Etik di luar struktur lembaga. Ketiga, Kewenangan Komisi Yudisial yang terbatas pada usulan penjatuhan sanksi. Maka didasarkan hal tersebut Kewenangan Komisi Yudisial di masa depan (ius constituendum) perlu direkonstruksi sebagai peradilan etik (court of Ethics) hakim dengan cara, Pertama, Memetakan Yuridiksi ranah etik dan teknis Yudisial oleh Komisi Yudisial dan Mahkamah Agung yaitu dengan menganulir kewenangan KY untuk menilai putusan hakim dan menyerahkan seluruh kewenangan dalam penegakan kode etik hakim kepada Komisi Yudisial. Kedua, Mengklasifikasikan hakim Indonesia yaitu, hakim agung, dan seluruh hakim di bawah Mahkamah Agung. Ketiga, menerapkan konsep Quasi peradilan dan prinsip peradilan modern dalam merkonstruksi Komisi Yudisial. Keempat, mengkomposisikan keanggotaan Komisi Yudisial terdiri atas Ketua Komisi Yudisial yang dijabat oleh Ketua Mahkamah Agung secara ex-officio dan enam komisioner lain dengan komposisi anggota mayoritas non-hakim. Kelima, amandemen konstitusi sebagai upaya merekonstruksi Komisi Yudisial.

ABSTRACT

The reasearch aims to analyze the achivement of Judicial Commission as the institutions that enforce the code of ethics of judges and to reconstruct the authority of the Judicial Commission as court of Ethics for Indonesian judges. This research is a normative research that use historical, comparative, and conceptual approach. The results of this reasearch indicate the performance of the Judicial Commission to enforcing the code of ethics of judges has not been optimal. Recommendation of the Judicial Commission are implemented by the Supreme Court is relatively small, this can be interpreted to mean that the Judicial Commission's recommendations have not been effectively implemented so that the function of the Judicial Commission in guarding and enforcing the code of ethics of judges has not been optimal. This was caused by the First, unclear demarcation line between ethics domain and Judicial Technical by Judicial Commission and the Supreme Court. Second, the resistance of judge against an external institution to enforce code of

ethics. Third, the limited authority of the Judicial Commission to propose the punishment. So based on that, the authority of the Judicial Commission in the future (*ius constituendum*) needs to be reconstructed as court of Ethics for Indonesian judges. These things done in some ways, First mapping the jurisdiction of the ethics domain and technical Judicial by the Judicial Commission and the Supreme Court is with annulled the authority of judicial commission to to assess a judge's decision and hand over all the authorities in the enforcement of the code of ethics of judges to the Judicial Commission. Second, classifying of Indonesian judges are supreme court judges, and all the judges under the scope of Supreme Court. Third, applying the concept of Quasi-judicial and modern judicial principles in the reconstruction of Judicial Commission. Fourth, compose the membership of the Judicial Commission consists of the Chairman of the Judicial Commission is chaired by the Chief Justice as *ex-officio* and six other commissioners with the composition of the majority of non-judges. Fifth, amending the constitution to reconstruct the Judicial Commission.