

# Judicial Commission Supervision in the Relations with the Authority of the Supreme Court.pdf

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## Judicial Commission Supervision in the Relations with the Authority of the Supreme Court

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### Abstract

The Judicial Commission is formed with two constitutive authorities, namely to propose the appointment of Supreme Judges and have other authority in order to maintain and uphold the honor, dignity and behavior of judges. This study will focus on knowing and analyzing the implementation of the roles and functions of Judicial Commission in maintaining the dignity of judges and to know more deeply about the continuity and strength of sanctions, especially moderate and mild sanctions issued by Judicial Commissions on judges who violate the Code of Ethics and Judicial Behavior Guidelines (KE&PPH) so many proposed recommendations for sanctions of the Judicial Commission are execute by the Supreme Court of Justice as the executor of sanctions and what are the legal consequences of this act.

**Keywords:** Authority, Supervision, Sanctions, Judges

### I. Introduction

Indonesia is a dynamic legal state (material law state) or welfare state. In a dynamic legal state, state administrators are required to play a broad role in the interests and welfare of the people. One factor to guarantee people's welfare is through legal certainty. Therefore, to ensure legal certainty, there is a need for independent and impartial judiciary. This free and impartial justice must absolutely exist in every State of law.<sup>1</sup>

After the 1998 reforms, the demands of the community for the formation of an external supervisory institution became increasingly prevalent; this was due to the public's mistrust of the government so far. Some of the reform agendas that are carried out are the enforcement of legal supremacy, respect for human rights, and eradication of corruption, collusion and nepotism.

The birth of KY was driven partly because of the ineffectiveness of internal (functional) oversight in judicial bodies. Thus, the indisputable formation of KY as an external supervisory institution is based on the weak internal control. Weak internal control is caused by several factors, including: (1) inadequate quality and integrity of supervisors, (2) non-transparent process of disciplinary examinations, (3) lack of convenience for disadvantaged communities to submit complaints, monitor processes and results (lack of access), (4) enthusiasm for defending fellow corps (esprit de corps) which results in the imposition of sentences not balanced with actions and (5) there is no strong will from the leadership of law enforcement agencies to follow up on the results of supervision.<sup>2</sup>

The Judicial Commission is formed with two constitutive authorities, namely to propose the appointment of a Chief Justice and have other authority in order to maintain and uphold the honor, nobility, and behavior of

<sup>1</sup> Dr. Ibrahim, S.H.,M.H.,LL.M, *Pemantapan Kode Etik dan Pedoman Perilaku Hakim*, Sekretariat General of the Judicial Commission, First Print, April 2014.

<sup>2</sup> Achmad Santosa, artikel: *Menjelang Pembentukan Komisi Yudisial*, dalam harian Kompas tanggal 2 Maret 2005, p. 5

judges. Furthermore, in order to operationalize the existence of the Judicial Commission, Law Number 22 Year 2004 concerning the Judicial Commission was adopted in Jakarta on August 13, 2004.

In carrying out the duties and supervisory functions of the Judicial Commission judges together with the Supreme Court, they set the Code of Ethics and Judicial Behavior Guidelines (KE & PPH) to make a reference for judges, for judges who violate the provisions of KE & PPH sanctions can be imposed whether sanctions are mild, moderate and severe depending on level of violations committed by judges.

In 2017, KY has proposed the imposition of sanctions on 58 (fifty eight) reported judges which consisted of thirty 9 (nine) judges with proposed minor sanctions, 14 (fourteen) judges with proposed moderate sanctions and 5 (five judges) with the proposal was given severe sanctions. Of the 58 (fifty eight) proposals only nine proposals were followed up and the rest were not carried out for various reasons from the Supreme Court.

Based on 2016-2018 data, out of 208 recommendations sanctions imposed by KY, as many as 32 reports that can be followed up by the Supreme Court, 34 reports are proposed for joint examination, and 142 reports cannot be followed up by the Supreme Court. This means that the proposed KY recommendations that have been followed up by the Supreme Court amounted to 15.38%, while the proposed recommendations to be discussed at the joint KY-MA examination amounted to 16.35%, and the recommendations that had not been followed up by the MA were 68.27%.<sup>3</sup>

The large number of results of the proposed recommendations for specific and moderate sanctions proposed by the Judicial Commission to the Supreme Court and not implemented can lead to differences in treatment in the application of sanctions and legal uncertainty for judges and justice seekers.

The purpose of this study is first, to find out the validity and strength of sanctions issued by Judicial Commissions on judges who violate the Code of Ethics and Judicial Behavior Guidelines (KE & PPH) so that many proposed recommendations for sanctions for the Judicial Commission are not carried out by the Supreme Court as executors of sanctions and consequences the law of the matter.

Secondly, the existence of a Joint Regulation between the Supreme Court and the Judicial Commission concerning Guidelines for Enforcement of Judges' Code of Ethics and Code of Conduct used by the Supreme Court not to carry out mild and moderate sanctions proposals from the Judicial Commission.

This joint regulation regulates the procedure for implementing sanctions which is a joint reference between the Judicial Commission and the Supreme Court, what is the position of the Joint Regulation in the hierarchy of legislation in Indonesia.

To answer the problems that arise, a research is needed. This research qualifies as normative research, namely by examining problems through statute approach, historical approach (conceptual approach) and conceptual approach.

## II. Result And Discussion

### 2.1 Authority of the Judicial Commission in Maintaining the Honesty of Judges' dignity

Before discussing more deeply the authority of the Judicial Commission in supervising judges, it is necessary to know the source of authority according to experts; Philipus M. Hadjon divides the way to obtain authority in two ways, namely:

1. Attribution; and
2. Delegates and sometimes also mandates.<sup>4</sup>

The same was explained by Ridwan HR in the book State Administrative Law (pp. 101-102). Ridwan explained that along with the main pillar of the rule of law, namely the principle of legality, then based on this principle implied that the authority of the government came from legislation, meaning that the source of authority for the government was legislation. Theoretically, the authority derived from the legislation is obtained in three ways, as defined by H.D van Wijk / Willem Konijnenbelt, as follows:<sup>5</sup>

- a. Attribution is the granting of government authority by legislators to government organs.

<sup>3</sup> Farid Wajdi, Website Komisi Yudisial, *Hanya 15 Persen Rekomendasi Komisi Yudisial yang Ditindaklanjuti MA pada 2016-2018*, [http://www.komisiyudisial.go.id/frontend/pers\\_release\\_detail/103/hanya-persen-rekomendasi-sanksi-ky-yang-ditindaklanjuti-ma-pada](http://www.komisiyudisial.go.id/frontend/pers_release_detail/103/hanya-persen-rekomendasi-sanksi-ky-yang-ditindaklanjuti-ma-pada), March 18, 2019.

<sup>4</sup> Maria Farida Indrati, *Ilmu Perundang-Undangan I, Jenis, Fungsi dan Materi Muatan*, Yogyakarta: Kanisius, 2007, p.29

<sup>5</sup> Ridwan HR, *Hukum Administrasi Negara*, Jakarta: Rajawali Pers. 2016. p. 101

b. Delegation is the delegation of government authority from one organ of government to another government organ.

c. The mandate occurs when the governing body allows its authority to be run by other organs in its name.

Referring to the above, the Judicial Commission obtains attributive authority from the Article 24B Basic Law in safeguarding the dignity and dignity of the judges. In the third amendment to the 1945 Constitution of the Republic of Indonesia in 2001 it was agreed on the formation of a Judicial Commission. Provisions regarding the supervision of judges by the Judicial Commission are regulated in Article 24B paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads:

(1) The Judicial Commission is independent and has the authority to propose the appointment of Supreme Court Justices and has other authorities in order to maintain and uphold honor, dignity and behavior of judges.<sup>6</sup>

Attribution of the KY authority granted by the 1945 Constitution of the Republic of Indonesia also exists and is regulated in several other laws besides Law 18 of 2011 concerning changes to Law 22 of 2004 concerning the Judicial Commission. In Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, the authority of the Judicial Commission is regulated in several Articles. Article 11A paragraphs 3, 5, 6, 7, 10 and 13. Article 11A regulates the procedure for granting sanctions by the Supreme Court and / or Judicial Commission for judges who violate the Code of Ethics, along with the sound of the article:

(3) Proposed dismissal on the grounds as referred to in paragraph (1) letter b shall be submitted by the Supreme Court and / or Judicial Commission.

(5) The proposal for termination on the grounds as referred to in paragraph (1) letter f shall be submitted by the Judicial Commission.

(6) Before the Supreme Court and / or Judicial Commission submits a proposal for dismissal for the reasons referred to in paragraph (3), paragraph (4), and paragraph (5), the justices have the right to defend themselves before the Honorary Council of Judges.

(7) The Honorary Council of Judges shall be formed by the Supreme Court and Judicial Commission no later than 14 (fourteen) working days from the date of receipt of the dismissal proposal.

(10) In the case of self-defense as referred to in paragraph (6) being rejected, the Honorary Council of Judges shall submit a decision on dismissal to the Chair of the Supreme Court and the Judicial Commission no later than 7 (seven) working days from the date the inspection is completed.

(13) Provisions regarding the procedures for forming, working procedures, and procedures for making decisions of the Honorary Court of Judges are jointly arranged by the Supreme Court and Judicial Commission.<sup>7</sup>

In the same legislation also mentioned in Article 32 paragraph (2) states that it is admitted that the Judicial Commission has a position as external oversight in addition to the existence of internal supervision by the Supreme Court itself. Next is the sound of Article 32 paragraph (2):

External oversight of the behavior of supreme justices was carried out by the Judicial Commission.

Law 48 of 2009 concerning Judicial Power also regulates the supervision of judges by the Supreme Court and Judicial Commission, the supervisory authority is regulated in Article 40 paragraph (1) and (2), in this article states the position of the Judicial Commission as an external supervisor to maintain honor, the judge's nobility and dignity are based on the Code of Ethics and the Judicial Code of Conduct. The following is the sound of Article 40 paragraph (1) and (2).<sup>8</sup>

<sup>6</sup> Republic of Indonesia, the Constitution of the Republic of Indonesia, Article 24B paragraph 1 concerning the Judicial Commission.

<sup>7</sup> Republic of Indonesia, Law Number 3 Year 2009 concerning Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, Article 11A paragraphs 3, 5, 6, 7, 10 and 13, State Gazette of 2009 Number 3.

<sup>8</sup> Republic of Indonesia, Law 48 of 2009 concerning Judicial Power Article 40 paragraph (1) and (2), State Gazette of the Republic of Indonesia of 2009 Number 157.



- (1) In the context of safeguarding and enforcing honor, dignity and behavior of judges external supervision is carried out by the Judicial Commission.
- (2) In carrying out supervision as referred to in paragraph (1), the Judicial Commission has the duty to supervise the behavior of judges based on the Code of Ethics and Code of Conduct of Judges.

| No | Constitution                                                                                                          | Article                                                                                                                             |
|----|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Constitution of the Republic of Indonesia in 1945 3rd Amendment                                                       | Article 24B paragraph (1)                                                                                                           |
| 2  | Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court            | Article 11A Paragraph (3), (5), (6), (7), (10); Article 11A Paragraph (6), (7), (10), (13); Article 32A paragraph (2).              |
| 3  | Law Number 48 of 2009 concerning Judicial Power.                                                                      | Article 40 paragraph (1), (2); Article 41 paragraph (1), (3); Article 42; Article 43.                                               |
| 4  | Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts.              | Article 13A paragraph (2); Article 13C paragraph (1), (2); Article 13D paragraph (1), Article 13F; Article 16 paragraph (1a), (1b)  |
| 5  | Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.            | Article 12A paragraph (2); Article 12 C paragraph (1), (2); Article 12D paragraph (1), Article 12F; Article 15 paragraph (1a), (1b) |
| 6  | Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1985 concerning State Administrative Courts. | Article 13A paragraph (2); Article 13C paragraph (1), (2); Article 13D paragraph (1), Article 13F; Article 16 paragraph (1a), (1b)  |
| 7  | Law Number 18 Year 2011 concerning Amendment to Law Number 22 Year 2004 concerning Judicial Commission.               | Article 13                                                                                                                          |

Source: Primary legal material processed.

Some of the above laws prove that the supervision of judges by the Judicial Commission is attributed to various related laws. Some of these laws state that the Judicial Commission is a State institution that functions as an external supervisor of the judges.

## 2.2 The implementation of recommendations for minor sanctions and currently the Judicial Commission by the Supreme Court

With the number of 58 sanctions proposed to the judges in 2017 issued by the Judicial Commission (KY), only 9 sanction proposals were followed up, 33 could not be followed up and 16 judges in the administrative management stage in the Judicial Commission.

The data above shows that most of the proposed Judicial Commission sanctions are not carried out by the Supreme Court. Especially moderate and mild sanctions issued by the Judicial Commission with various arguments except severe sanctions, because severe sanctions were decided through the Judge Honor Council (MKH) and was the result of a joint decision in which members of the MKH trial had seven personnel, four personnel from the Judicial Commission Commissioner and four personnel others from Supreme Court officials.

If referring to Law Number 18 of 2011 concerning the Judicial Commission, it has regulated the implementation of minor and moderate sanctions. In Article 22D paragraph (3) states:<sup>9</sup>

The Supreme Court imposes sanctions on Judges who violate the Code of Ethics and / or Judicial Behavior Guidelines proposed by the Judicial Commission within 60 (sixty) days from the date the proposal was received.

The Supreme Court carries out proposals issued by the Judicial Commission regarding minor and moderate sanctions no later than 60 (sixty days) since the sanction was issued. This is applied if the Supreme Court directly accepts the proposed sanctions from the Judicial Commission without any dissent. Differences of opinion by the Supreme Court on sanctions proposed by KY are regulated in the next Article in the same Law where stated in Article 22E of the same Law states:<sup>10</sup>

(1) In the event that there is no disagreement between the Judicial Commission and the Supreme Court regarding the proposal of the Judicial Commission regarding the imposition of sanctions and the Supreme Court has not imposed sanctions within the period referred to in Article 22D paragraph (3), the proposal of the Judicial Commission applies automatically and must be carried out by Supreme Court.

(2) In the event of differences in opinion between the Judicial Commission and the Supreme Court regarding the proposal of the Judicial Commission regarding the imposition of minor sanctions, moderate sanctions and severe sanctions other than as referred to in Article 22D paragraph (2) letter c number 4) and number 5), an examination jointly between the Judicial Commission and the Supreme Court of the Judges concerned.

(3) In the case of the Supreme Court and Judicial Commission within the period referred to in Article 22D paragraph (3) not reaching an agreement as referred to in paragraph (2), then the proposal of the Judicial Commission as long as fulfilling the provisions in Article 22B paragraph (1) letter a, applies automatically and must be disclosed by the Supreme Court.

In the Undnag-Law indicates that actually the proposed sanctions from the Judicial Commission related to the types of minor and moderate sanctions are not recommendative (especially mild and moderate sanctions due to severe sanctions must go through the Judge's Honor), but the fact is that there are a number of mild and moderate sanctions from the Judicial Commission not implemented because the Supreme Court refers to the Joint Regulation 03/PB/MA/IX/2012 between the Judicial Commission and the Supreme Court.

Seeing the historical making of Law 18 of 2011 concerning changes to Law 22 of 2014 Regarding the Judicial Commission in the minutes of the session also illustrates that the purpose of the making of the Law a quo is to make sanctions mild and the Judicial Commission more bite unlike toothless tigers. The following are several pieces of minutes of the discussion concerning the authority to give sanctions recorded in the minutes of the meeting on May 19, 2011, at 10.00 WIB in the Commission III DPR meeting room. According to Eddy Sadeli from the Democratic Party Faction stated;

I think the Chairman; all this time the KY Law is a toothless tiger. There are no teeth. We are now, for what revisions if we keep making toothless tigers. We love the teeth and fangs, not just the teeth but the fangs can bite. I think I agree with Prof.'s proposal a B C. Only two, the temporary dismissal and the permanent dismissal were carried out by KY together with the Supreme Court. The other is KY sir. So he has his teeth and fangs.<sup>11</sup>

Benny's opinion from the Democratic Party faction states,

... I want to repeat what I said earlier. So, as we are passionate about strengthening the Judicial Commission. If his enthusiasm strengthens the Judicial Commission, then I suggested that the Judicial Commission have a single authority to impose sanctions. If this doesn't have one, the Judicial Commission has no benefit.<sup>12</sup>

<sup>9</sup> Law Number 18 Year 2011 concerning Amendment to Law Number 22 Year 2004 concerning Judicial Commission, State Gazette of the Republic of Indonesia in 2011 Number 106.

<sup>10</sup> *Ibid.*

<sup>11</sup> Elza Faiz et al., *Risalah Komisi Yudisial Cikal Bakal, Kelembagaan dan Dinamika Wewenang*, Secretariat General of the Judicial Commission, Jakarta, 2013.

<sup>12</sup> *Ibid.*

Because all factions have expressed their views or opinions, the Chairperson of the Panja Meeting of the KY Bill, Tjatur from the F-PAN then tried to conclude these opinions or views.

Everything is already done. These are factions already. I think the direction has gone down, that is the strengthening of KY. Only a little problem, almost all of the factions agreed that KY must have the authority to decide sanctions. Where did you get the authority? Until before the temporary stop or permanent stop. Approximately almost all the majority like that. And if KY recommends that this be given a permanent termination sanction, a new temporary dismissal is proposed by MKH. And that is for the Supreme Court because some of the factions for non-Supreme Court factions have shrunk for KY can immediately sanction ...<sup>13</sup>

In the amendment to the KY Law, the amendment of Law 18 of 2011 to Law 22 of 2004 concerning the Judicial Commission was intended to provide more binding authority to the Judicial Commission in carrying out its duties and functions.

That related to the number of minor and moderate sanctions from the Judicial Commission is not carried out by the Supreme Court because it refers to the Joint Regulation (PB) <sup>02/PB/MA/IX/2012</sup>/<sub>02/PB/P.KY/09/2012</sub> about Guidelines for Enforcement of the Code of Ethics and Code of Conduct for Judges and <sup>03/PB/MA/IX/2012</sup>/<sub>03/PB/P.KY/09/2012</sub> About the Procedure for Joint Examination.

Examples of norm conflicts that occur between Joint Regulations and the Judicial Commission Law, in Article 7 paragraph (5), (6) and (7) in the Joint Regulation <sup>03/PB/MA/IX/2012</sup>/<sub>03/PB/P.KY/09/2012</sub> About the Joint Examination Procedure also raises contradictions with law 18 of 2011 concerning the Judicial Commission, the sound of the joint regulations is as follows:

(5) Conclusions and recommendations of the Examining Team are taken based on deliberation and consensus.

(6) In the event that the Examining Team deliberations as referred to in paragraph (5) do not reach consensus, conclusions and recommendations are taken by the majority vote.

(7) In the event that conclusions and recommendations as referred to in paragraph (6) cannot be taken with the most votes, a decision is made that is most beneficial to the Reported Party.<sup>14</sup>

Whereas in Law Number 18 Year 2011 concerning Amendments to Law Number 22 Year 2004 concerning the Judicial Commission, Article 22E paragraphs (1), (2), (3) and (4) have been stipulated regarding the implementation of sanctions which read:

(1) In the event that there is no disagreement between the Judicial Commission and the Supreme Court regarding the recommendations of the Judicial Commission regarding the imposition of sanctions and the Supreme Court has not imposed sanctions within the period referred to in Article 22D paragraph (3), the Judicial Commission recommendations shall apply automatically and must be implemented by the Supreme Court.

(2) In the event of disagreements between the Judicial Commission and the Supreme Court regarding the recommendations of the Judicial Commission regarding the imposition of minor sanctions, moderate sanctions, and severe sanctions other than as referred to in Article 22D paragraph (2) letters c numbers (4) and numbers (5), a joint examination is carried out between the Judicial Commission and the Supreme Court of the Judges concerned.

(3) In the event that the Supreme Court and Judicial Commission within the period referred to in Article 22D paragraph (3) do not reach an agreement as referred to in paragraph (2), then the Judicial Commission's recommendations insofar as they fulfill the provisions in Article 22B paragraph (1) letter a, applies automatically and must be implemented by the Supreme Court.

(4) Provisions regarding the procedure for inspection as referred to in paragraph (1) shall be regulated jointly by the Judicial Commission and the Supreme Court.<sup>15</sup>

<sup>13</sup> *Ibid.*

<sup>14</sup> Joint Regulations of the Supreme Court and Judicial Commission Number 03 / PB / MA / IX / 2012 and 03 / PB / P.KY / 09/2009 concerning Procedures for Joint Examination, State Gazette of the Republic of Indonesia of 2012 Number 1054.

<sup>15</sup> Republic of Indonesia, Law 18 of 2011 concerning the Judicial Commission, Part Four, Article 22E paragraphs 1,2,3 and 4.



In PB Article 7 paragraph (7) states that if no agreement is reached then the most favorable sanctions taken are reported. Whereas in Law 18 concerning the Judicial Commission states different things, in the Act states if no agreement is found then as long as it is in accordance with the provisions, the recommendations apply automatically and must be implemented by the Supreme Court.

The constitution authorizes the making of general norms for certain administrative authorities, such as the head of state or cabinet minister, to elaborate the provisions of the law. General norms are a kind of regulation, which is not issued by the legislature but other organs on the basis of general norms called regulations or ordinances.

According to a number of constitutions, administrative organs under certain conditions are given authority which is usually regulated by the legislature through law.<sup>16</sup>

Position of the Joint Regulation in the hierarchy of legislation, Hierarchy Theory is a theory concerning the legal system introduced by Hans Kelsen which states that the legal system is a system of stairs with tiered rules. The relationship between norms that govern the actions of other norms and other norms can be referred to as super relations and sub-ordinations in the spatial context.<sup>17</sup>

Hans Kelsen's theory that gets a lot of attention is the hierarchy of legal norms and chains of validity that make up the legal pyramid (*stufentheorie*). One of the figures who developed the theory was Hans Kelsen's student, Hans Nawiasky. The Nawiaky theory is called *theorie von stufenaufbau der rechtsordnung*. The arrangement of norms according to the theory is:

- a. Fundamental norms of the country (*staatsfundamentalnorm*);
- b. Basic state rules (*staatsgrundgesetz*);
- c. Formal law (*formell gesetz*); and
- d. Autonomous implementing regulations and regulations (*verordnung en autonome satzung*).<sup>18</sup>

The hierarchy of laws and regulations in Indonesia can be seen in Law 12 of 2011 concerning the Establishment of Legislation in the following provisions:<sup>19</sup>

- (1) Types of hierarchy of laws and regulations consist of:
  - a. The 1945 Constitution of the Republic of Indonesia;
  - b. Decree of the People's Consultative Assembly;
  - c. Government Substitution Laws / Regulations;
  - d. Government regulations;
  - e. Presidential decree;
  - f. Provincial Regulation; and
  - g. Regency / City Regulation.

- (2) The legal strength of the Legislation in accordance with the hierarchy as referred to in paragraph (1).

In the aforementioned Article, it can be seen the hierarchy system of Legislation in Indonesia, and in paragraph (2) emphasizes the legal force of the Laws and Regulations in accordance with the hierarchy.

Higher legislation inspires the birth of lower regulations, and lower regulations certainly should not conflict with regulations that are hierarchically higher.

How is the position of Joint Regulations in the norm hierarchy system in Indonesia. This can be seen from the next article in the same legislation. Where in Article 8 paragraph (1) and (2) reads:<sup>20</sup>

- (1) The types of legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission,

<sup>16</sup> Hans Kelsen, *Teori Umum Tentang Hukum dan Negara*, Diterjemahkan dari *Hans Kelsen: General Theory of Law and State* (New York: Russel and Russel, 1971), Nusa Media, Print X, 2015, p. 187.

<sup>17</sup> Jimly Asshiddiqie, et al, *Theory Hans Kelsen Tentang Hukum*, First edition, Secretariat General and Registrar's Office of the Indonesian Constitutional Court, Jakarta, 2006, p. 110

<sup>18</sup> Maria Farida Indrati, *Op.Cit.* p. VI

<sup>19</sup> Republic of Indonesia, Law 12 of 2011 concerning Establishment of Legislation Regulations, State Gazette of the Republic of Indonesia of 2011 Number 82.

<sup>20</sup> *Ibid.*



Bank Indonesia, Ministers, agencies, institutions, or commissions established by the Law or Government at the behest of the Law, Provincial Regional Representatives, Governors, Regency / City Regional Representative Council, Regents / Mayors, Village Heads or equivalent.

(2) The laws and regulations as referred to in paragraph (1) are recognized and have binding legal powers insofar as they are translated by higher legislation or formed based on authority.

In Article 8 above states that State institutions as referred to in Article 8 paragraph (1) can make regulations on legislation other than those referred to in Article 7 paragraph (1), on the basis of which the Joint Regulations can be categorized as included in the hierarchy of legislation where Regulations Together born on the basis of the law of an institution.

Due to the Joint Regulations born based on the Law, the regulation has not met the rules that make up the rules.

Seeing this is based on the principle of the *lex superior derogat lex inferior* which means that higher regulations set aside the low (hierarchical principle), In the framework of thinking about the types and hierarchies of legislation, the Joint Regulation must not conflict with the Law as the basis for its formation.

According to this adage, laws and regulations that are of a lower level may not conflict with the higher laws and regulations in regulating the same. If there are two laws and regulations that are not equal in regulating the same and contradictory objects, then it must use higher laws as a basis for consideration. The legal consequences of the principle *lex superiori derogate lex inferiori* are:<sup>21</sup>

- a) Laws made by higher authorities have a higher position;
- b) Higher laws cannot be changed or deleted / revoked by a law that has a lower position.
- c) Lower laws may not conflict with higher laws.

So it can be seen that moderate and mild sanctions from the Judicial Commission should be absolutely carried out by the Supreme Court because it is a mandate of the governing law, but in fact many of the sanctions were not executed by the Supreme Court.

The Supreme Court as a judicial institution in Indonesia should be a good example to the public in the enforcement and adherence to applicable rules. The Judicial Commission is also the institution that issued the proposed sanctions to control the implementation of sanctions that have been considered to be less than optimal.

This happened due to poor legal awareness. Low legal awareness will affect the implementation of the law. Low legal awareness is a constraint or obstacle in good law enforcement.

### III. Conclusion

Based on all the results of the research stages that have been carried out in writing this thesis conclusions can be drawn as follows:

1. The authority of the Judicial Commission in its duties and functions in order to maintain the dignity of dignity and behavior of judges is the authority of attribution of the 1945 Constitution of the 1945 Republic of Indonesia to the 3rd amendment to Article 24B, which in clarifying its functions and clarifying its duties is reinforced by Law No. 3/2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1985 concerning State Administrative Courts, Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 Year 1986 concerning General Justice, Law Number 50 Year 2009 concerning Second Amendment to Law Number 7 Year 1989 concerning Religious Courts, Law Number 48 Year 2009 concerning Judicial Power and Law Number 18 Year 2011 concerning Amendments to Law Number 22 Year 2004 concerning the Judicial Commission. The authority to maintain the dignity of the judges (supervision) of judges is the main authority of the Judicial Commission in addition to selecting candidates for Supreme Court Justices.

<sup>21</sup> Umar Said Sugiarto, *Pengantar Hukum Indonesia*, Sinar Grafika, Jakarta, 2013, First edition, p. 62.

2. Whereas in carrying out its duties and functions, the Judicial Commission can issue sanctions, where sanctions, especially minor sanctions and are being applied automatically and must be implemented by the Supreme Court as the executor of sanctions. However, there is no legal effect if the Judicial Commission does not implement sanctions recommendations by the Supreme Court due to the absence of further regulations.

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