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## Paradigm for the Recruitment of Supreme Court Judges by the House of Representatives is Part of Constitutional Political Intervention

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**Abstract:** The pattern of recruitment of Supreme Court justices which is constitutionally regulated in Article 24A paragraph (3) requires that the nomination of Supreme Court judges is carried out through a nomination mechanism that has been carried out by the Judicial Commission to be approved by the DPR and determined by the President as part of the check and balance concept. However, in such a mechanism it actually confronts a paradigm in which the concept of checks and balances that is presented actually intersects with the concept of independence from the judicial power itself. So by using the literature study or library research method, a conception is obtained that so far the concept of checks and balances has not been placed in the right realm. So that it often creates a problem that intersects one authority with another, including in the realm of the mechanism for the recruitment of Supreme Court justices. So it is important to understand how the conception of Article 24A paragraph (3) is the legal basis for the pattern of recruitment of Supreme Court justices. As well as occupying the concept of the independence of the Judicial Commission in an effort to create accountable supreme justices.

**Keyword:** Recruitment Of Supreme Court Justices, Independence, Political Intervention.

### INTRODUCTION

The meaning of the position of judge as a noble profession ora noble office making it closely related to various efforts to accommodate the conception of justice expected by society. Judges are expected to be able to pave the way for the establishment of justice that justice seekers aspire to. This is what then makes judges also positioned as God's representatives. On this basis, of course a judge needs adequate qualities in determining and considering the problems faced by justice seekers through a decision.

This is important for judges to have, considering that only in the position of a judge is it justified to impose punishment on someone, which can generally be universally understood as ethical violence. On this basis, the principle of Lex Talionis or the Principle of Retribution is then laid which is the basis for justifying reasons rather than the authority to punish which only resides in a judge (Muhlizi, 2013). So it is important that the strategic position of a judge must be held by someone who certainly has sufficient capability and competence for this.

In this regard, in accordance with the provisions in Article 6A of Law No.3 of 2009 concerning the Second Amendment to Law no. 14 of 1985 concerning the Supreme Court explains that judges are required to have integrity and a good personality in carrying out their mandate. This indicates that the profession of judge is indeed a profession that should be free from contamination from various things that could boomerang on the position of judge itself in the future. Apart from the good integrity that a judge must have, judges are also required to explore the values that exist in society so that the resulting decisions are still able to accommodate the side of justice that exists in society.

On this basis, of course, realizing the quality of judges through these qualifications can only be achieved through a good recruitment mechanism that is free from any conflict of interest. Considering the context, the recruitment of judges is the opening door to a new face of the judiciary that upholds justice for justice seekers. This means that going through this recruitment stage then determines whether the judge will be able to carry out the duties and responsibilities of the judge's profession well.

In this level of context, it can be understood that the recruitment of judges is actually one part of the gateway to open independent and independent judicial power, in the sense of being free from interference from any party. So, in line with this, the concept of the rule of law mandates that the exercise of judicial power is carried out through judicial bodies that have been established by law. In this case, one of them is held by the Supreme Court in accordance with the provisions in Article 24 Paragraph (2) of the 1945 Constitution (Naibaho & Hasibuan, 2021).

Talking about the Supreme Court, which in this case of course houses the Supreme Court justices, in this context leads to an interesting discussion regarding the recruitment mechanism for the Supreme Court justices themselves. As is known in the provisions of Article 24 A paragraph (3), it can be understood that the mechanism for recruiting candidates for Supreme Court justices is proposed by the Judicial Commission to be submitted to the DPR in order to obtain approval from the DPR for the candidates who wish to be put forward. To be further determined by the President.

In this regard, it can be affirmed that the authority of the Judicial Commission in the recruitment of Supreme Court justices begins with the selection of candidates for Supreme Court justices and then the names of candidates for Supreme Court justices are determined and submitted to the DPR within a period of 15 days as stipulated in Article 18 paragraph (4) of Law no. 18 of 2011 concerning the Judicial Commission. As an institution that has the authority to uphold and maintain the nobility of the judge's profession, in this case it can be understood that the role of the Judicial Commission here is as a controller of the existing judicial power in order to maintain the integrity and high moral values of judges.

In relation to the recruitment pattern of Supreme Court justices, this could be considered prone to giving rise to conflicts of interest here. This is based on the background when the Judicial Commission itself is appointed and dismissed by the President through the approval of the DPR in accordance with the mandate of Article 24B paragraph (3) of the 1945 Constitution. In this position it becomes vulnerable when questioning the aspect of the independence of the Judicial Commission which is free from any conflicts of interest that occur. Of course, as an independent institution, the Judicial Commission should not be allowed to get involved in political vortices which would actually harm the independence of an institution which should be able to produce credible and competent Supreme Court judges.

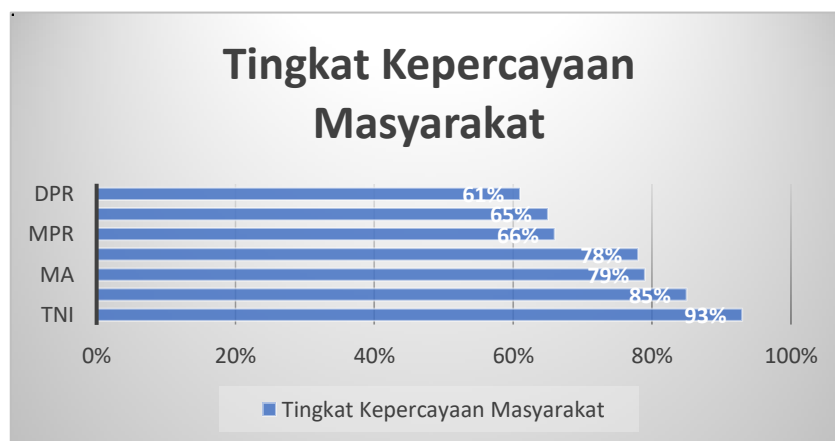
This of course also has logical implications for the recruitment mechanism, which according to Article 24A of the 1945 Constitution is carried out through a proposal by the Judicial Commission to obtain approval from the DPR and will later be appointed by the President as supreme judge. Essentially it can be understood that the emergence of the names of candidates for Supreme Court justices is certainly inseparable from the role of political parties. Political parties here are present as a balance or part of the concept of checks and

balance itself. This is also a conception of democratic practice, that power requires supervisory authority as part of maintaining accountability in the realm of judicial institutions (Prasetianingsih, 2016).

In this case, it actually also leads to another conception that there is a paradigm that in relation to checks and balances it also intersects with the principle of a judiciary that is impartial and free from interference from any party or institution. Considering the implications of implementing such a recruitment scheme, it makes it prone to political content. Moreover, the names of the candidates for Supreme Court justices must obtain approval from the DPR, which in this case must be interpreted as a political institution as well as representatives of the people.

The political content that is so strong in the process of recruiting Supreme Court justices is clearly visible in the implementation of the fit and proper test by the DPR which makes the Judicial Commission seem to have lost its teeth in its implementation. Apart from that, the DPR, which is also a political institution, sometimes also brings the interests of political parties into it, which does not rule out the possibility of this happening in the recruitment process for Supreme Court justices itself. So it is feared that political content plays a bigger role than focusing on exploring individual abilities in a judge.

These practical weaknesses which lead to pragmatic practical politics then lead to the question of whether the DPR's approval in the nomination of Supreme Court justices here is really an approval for the proper recruitment of candidates for Supreme Court justices or is it instead a political agreement wrapped up constitutionally within the framework of the authority to approve the. Moreover, in this case it is not an open secret that the DPR has a trust issue in society. It is still embedded in the public mind that the councilors are officials elected by the people but have not been able to present the interests of the people in them. The logic certainly needs to be questioned if an institution that is experiencing a crisis of confidence is really capable of producing good policies or recommendations.



Picture 1: Level of Public Trust in State Institutions

In the data taken from the results of a survey of 1,200 respondents using the multistage random sampling method in the period 11-12 February 2022 above, it can be concluded that the DPR occupies the lowest position in terms of the level of public trust. Namely with a public trust index of 61% (CNN Indonesia, 2022). Of course, this value is considered very low when compared with other state institutions or institutions. This indicates that the public's trust in their representatives in parliament is still very low. Moreover, there are many corruption cases that have involved members of the council, which of course adds to the issue of trust in society regarding the performance of the DPR so far.

From this it can be seen that apart from the internal factors of the DPR which have had a crisis of trust in society, in the mechanism for recruiting Supreme Court justices there is also the fact that relations between institutions are still not yet harmonious. Legislative power, in this case the DPR, seems to have a greater authority and role in determining the results of the recruitment of Supreme Court justices. Meanwhile, judicial power is only limited to the authority to make recommendations. This is what makes the recruitment process for Supreme Court justices not yet present how the actual division of powers is implemented.

On this basis, it seems necessary to reaffirm the principle of judge independence in relation to actual judicial institutions. Considering that among the three types of branches of power in the *trias politica*, the judiciary can be interpreted as “the last dangerous to the political rights of the constitution” or political rights that are not dangerous in a constitution. This is based on the fact that compared to executive or legislative institutions, the judiciary does not have any influence in terms of power or finances but only has influence in terms of the strength of its decisions (Ihsan, 2022).

In line with this, there is concern that the lack of independence of judges in the mechanism for recruiting Supreme Court justices will actually affect the output of the selection of Supreme Court justices themselves. Bearing in mind that the role of the executive institution in this case is considered to be greater than the authority of the judicial institution. This then brings the paradigm that the concept of checking and balance in the recruitment of Supreme Court justices has not been implemented properly. Even though there is nothing constitutionally violated in this matter. However, in essence, this actually harms the independence of the judicial power exercised by the Judicial Commission. So it becomes a justification when this is interpreted as a political intervention supported by the constitution against existing independence.

Therefore, the formulation of the problem that needs to be answered in this writing is: First, what is the legal risk of the provisions of Article 24A paragraph (3) of the 1945 Constitution related to the recruitment of Supreme Court justices? Second, what is the conception of the independence of the judicial commission in order to realize accountable recruitment of Supreme Court judges? Based on the description above, there is a novelty (novelty value) which in principle the author will examine the legal ratio contained in the provisions of Article 24 paragraph (3) of the 1945 Constitution relating to the recruitment of Supreme Court justices and examine and provide an analysis and portrait of the conception of the independence of the judicial commission in order to realize accountable and transparent recruitment of Supreme Court judges.

## **METHOD**

Writing about how the Paradigm for Recruitment of Supreme Judges by the DPR is Part of Constitutional Political Intervention was carried out using a scientific method approach. This method is based on facts, analysis results, and also pre-existing theories. From there, it is hoped that a relevance will be found between the results of the existing analysis and theory and the actual facts in the field.

For the approach taken in this writing, the author uses a formal legal rules and material law approach, which is an approach that links applicable laws and regulations with the reality of cases that occur (Achmad, 2013). The data obtained in this writing uses secondary data. Secondary data itself is data obtained indirectly from the object of writing. This research uses the statute approach method in the form of the 1945 Constitution, especially focusing on Article 24A paragraph (3) of the *a quo* law and the conceptual approach which focuses on explaining the problem of recruiting Supreme Court judges by the DPR which is considered to be a constitutional political intervention.

The data collection technique in this writing uses library research techniques, namely a study of sources that are considered relevant to obtain a solution or a constructive view related to the problem or case that you want to find a solution for or the case that will be researched (Diantha, 2019). So it is hoped that with the methods, approaches, data acquisition and collection techniques that have been carried out in writing this journal, this writing will be able to meet the criteria to become existing scientific reference material. So as to create more usefulness in terms of presenting literacy sources in academic circles. As an effort to participate in educating the nation's life.

## **RESULTS AND DISCUSSION**

### **Legislative Ratio Provisions of Article 24 A paragraph (3) of the 1945 Constitution Relating to Recruitment of Supreme Court Judges**

Historically, the birth of the provisions of Article 24 A paragraph (3) of the 1945 Constitution of the Republic of Indonesia went through a fairly long discussion process to carry out reforms to the selection and recruitment mechanism for Supreme Court judges. Supreme Court justices have a fundamental role in the judicial process so that a transparent and accountable selection process for Supreme Court justices is important, with the aim of producing Supreme Court justices who are competent and highly integrated and preventing political interests from occurring in the selection of Supreme Court justices. In several countries, the process of selecting Supreme Court justices is generally influenced by politics, as Christopher E. Smith's opinion states that presidents tend to have certain political goals in making Supreme Court justices. The president usually nominates someone who shares his ideological background and policy preferences (Rishan, 2016).

If viewed from a historical aspect, in the context of limiting presidential power during the New Order, efforts were made to improve it through discussing the first amendment to the 1945 Constitution of the Republic of Indonesia, on several topics, one of which was about power relations in the context of recruiting Supreme Court justices. Harun Kamil, as chairman of the meeting, was of the opinion that the selection of Supreme Court justices was carried out based on the DPR's proposal to be appointed and dismissed by the MPR. Meanwhile, another view came from Gregorius Seto Harianto (F-PDKB) who stated that the procedures and requirements for appointing Supreme Court judges must be made tougher. So that the people who sit on the Supreme Court are people who are ethically and morally secure and are able to be responsible to God Almighty.

Sri Sumantri as an expert was present to convey that judicial power in Indonesia was experiencing a decline, if previously it was only first-level and high-level courts. However, now it has spread to the highest judicial power. Therefore, according to him, what is important is the issue of recruiting Supreme Court justices who have integrity with the requirement that those who are appointed as Supreme Court justices must be honest, fair and dignified and not be reprehensible in their behavior (Rakyat, 2010).

Sri Sumantri also said that when he met a professor from India during the International Symposium at Waseda University in Japan, he said that the Supreme Court in India is very, very powerful. Then the recruitment is so strict that to get a judge with high integrity, you need to ask the faculty concerned. whereas in Indonesia up to now, Supreme Court Justices are nominated by the People's Representative Council, where previously one seat was proposed, now, in order not to offend the President's feelings, two candidates are proposed. This means giving the President the opportunity to choose a candidate who roughly matches the President's own wishes (Rakyat, 2010).

Based on the opinions above, the relational model of how Supreme Court justices are selected can conclude that the recruitment of Supreme Court justices is carried out at the suggestion of the DPR, then they are appointed and dismissed by the MPR. However, this relationship pattern needs to be evaluated because it will cause the recruitment of Supreme



Court justices to be indicated by the President's political interests and intervention. Thus, it is necessary to strengthen the procedures and requirements for appointing Supreme Court justices. To produce supreme judges who are ethically and morally secure and capable of being accountable to God Almighty. Bearing in mind that the judiciary in Indonesia is experiencing a decline, especially the issue of recruiting Supreme Court judges, which needs to emulate recruitment in India, which is so strict that it is necessary to ask the relevant faculty to study.

Discussion of the second amendment to the 1945 Constitution of the Republic of Indonesia was carried out at a meeting from 25 November to 2 August 2000. In this meeting, I Dewa Gde Atmadja, as an expert invited by PAH I, was of the opinion that the recruitment of Supreme Court justices must be balanced, open and transparent. With a transparent recruitment model by the president with careful consideration from the DPR. Meanwhile, Agun Gunandjar Sudarsa (F-PG) proposed that judicial power is an independent power. Avoid the influence of government power, state institutions and various other parties. Furthermore, I Dewa Gede Palguna (F-PDIP) proposed the formation of an independent body called the Judicial Commission at both national and regional levels, so that previously supreme judges were appointed by the president and the minister of justice, now it is based on proposing a national Judicial Commission. while ordinary judges outside the supreme court are appointed by the president based on the regional Judicial Commission (Rakyat, 2010).

During the discussion of the third amendment to the 1945 Constitution of the Republic of Indonesia, the process of recruiting Supreme Court judges became more mature compared to previous changes, the discussion process in formulating the recruitment of Supreme Judges began to have good opportunities. Agun Gunandjar Sudarsa from (F-PG) believes that in order for the judiciary to be independent and not interfered with by political interests, Supreme Court Judges are appointed and dismissed with the approval of the DPR based on the recommendation of the Judicial Commission. The use of the words with the approval of the DPR means that the DPR no longer carries out fit and proper tests and selection processes, but only gives approval to accept or reject a number of candidates for Supreme Court justices proposed by the Judicial Commission. Furthermore, he believes that the judicial power needs to continue to adhere to the principle of checks and balances in the recruitment of Supreme Court justices by including other branches of state power, including the executive and legislative branches. These checks and balances lie in the approval of the DPR in accordance with the ICW and the release remains a Presidential Decree (Rakyat, 2010).

Meanwhile, Harjono (F-PDIP) expressed his opinion that he strongly agreed that the authority to approve Supreme Court Justices was in the hands of the president, not in the hands of the MPR because if later a Supreme Court Justice was needed, for example to fill several posts, the MPR would have to convene for that. Therefore, if the Judicial Commission becomes a permanent and independent commission, the Judicial Commission can carry out a screening and then the president will approve the filter as supreme judge (Rakyat, 2010).

The difference of opinion expressed by Affandi (F-TNI/Polri) stated that the recruitment of Supreme Court judges in principle agrees with the previous one that the DPR plays a big role. There just has to be someone who inaugurates, appoints or determines, so it is recommended that the sentence still originates from the Judicial Commission's proposal, then it goes to the Council, then at the Council it is put forward for processing, then to the President, the President appoints, appoints or inaugurates. So the formula is that Supreme Court Judges are appointed and dismissed by the President as Head of State with the approval of the DPR based on recommendations from the Judicial Commission. In line with this opinion, Asnawi Latif (F-PDU) said that there was a need to add "validating" information and find out the formulation, so that the President only validates it, unlike past experiences so

that the candidates who have been proposed and approved by the DPR are not hanging in the balance and are free from presidential intervention (Rakyat, 2010).

Discussion of the third amendment to the 1945 Constitution of the Republic of Indonesia produced several results, including 1) the model of judicial power so that it is independent and not interfered with by political interests, the Supreme Court Judges are appointed and dismissed with the approval of the DPR on the recommendation of the Judicial Commission. 2) The DPR no longer carries out fit and proper tests and selection processes, but only gives approval to accept or reject a number of candidates for Supreme Court justices proposed by the Judicial Commission. 3) In recruiting supreme judges, judicial power must continue to adhere to the principle of checks and balances by including other branches of state power, including the executive and legislative branches. These checks and balances lie in the approval of the DPR and the release remains a Presidential Decree. 4) the addition of the statement “validating” so that the President only validates it, unlike past experience and that the candidates who have been proposed and approved by the DPR are not hanging in the balance and are free from presidential intervention. Until November 8 2001, at the 7th plenary meeting chaired by the Chairman of the MPR, namely M. Amien Rais. Some of the results of the model and recruitment process for supreme judges from the discussion of the third amendment to the 1945 Constitution of the Republic of Indonesia gave rise to article 24 A paragraph (3) which states that candidates for supreme justices are proposed by the Judicial Commission to the People's Representative Council for approval and then appointed as supreme justices by the President (Rakyat, 2010).

The background to the birth of the Judicial Commission nomenclature is a manifestation of the commitment of the Indonesian people to carry out reforms in social, political, legal, cultural and economic life, as well as concerns over judicial practices that do not reflect justice (Subiyanto, 2012). This major reform agenda was first born from discussions on the second amendment to the 1945 Constitution of the Republic of Indonesia (Rishan, 2016). The Judicial Commission is an independent institution that plays an important role in efforts to create an independent judiciary by nominating supreme judges and supervising judges in a transparent and participatory manner in order to uphold honor, dignity and dignity judge's behavior (Subiyanto, 2012).

With the provisions as in Article 24 A paragraph (3), what is meant by the DPR's approval in the recruitment of Supreme Court Justices is that it is an institution that accommodates the aspirations of the people which has the right to give approval or not in order to determine who is appropriate to become a Supreme Court Judge in accordance with the aspirations and interests of the people to obtain certainty. and justice. So with this, the DPR can participate in controlling or supervising the performance of public officials in carrying out their respective duties and authorities so that they comply with the provisions of the constitution and applicable laws and regulations.

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In recruiting supreme judges, judicial power must continue to adhere to the principle of checks and balances by involving other branches of state power, including the executive and legislative branches. Although the checks and balances process applies only involves the DPR and the President. Checks and balances have the aim of forming a democratic government and preventing dominant power in a state organ which could disrupt the balance

of power. The position of authority of the DPR in the recruitment of Supreme Court justices is an embodiment of the principle of popular sovereignty as stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that sovereignty is in the hands of the people (Larasati, 2020). However, according to Sri Hastuti Puspitasari, there are differences of opinion in that the recruitment of Supreme Court justices in the DPR is not in line with the principle of Check and Balances because in the recruitment of Supreme Court justices, the DPR is not dealing with the power of the President but is dealing with the Judicial Commission which is the state auxiliary organ (Puspitasari, 2018).

### **Concept of Independence of the Judicial Commission to Realize Accountable Recruitment of Supreme Court Judges.**

#### **Realizing Independence and Accountability in the Formation of the Judicial Commission is a Mandate of the 1945 Constitution**

In its development, judicial independence must be in line with the principle of public accountability which must be carried out in a balanced manner. The International Bar Association Code of Minimum Standards of Judicial Independence confirms in number 33 that:

*“It should be recognized that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.”*

(It must be acknowledged that judicial independence does not necessarily free judges from public accountability, but the press and other institutions must be aware of the potential conflict between judicial independence and excessive pressure on judges) (Tutik, 2012).

According to the rules explained above, the independence of judicial or judicial power cannot be interpreted absolutely. The International Commission of Jurists notes that “Independence does not mean that the judge is entitled to act in an arbitrary manner.” Therefore, since the idea of amending the 1945 Constitution emerged, awareness of the need for effective external supervision in the field of judicial ethics has emerged as a counterweight to independence and to maintain the authority of the judiciary, as is the case in several countries, namely by establishing a Judicial Commission (Tutik, 2012).

Article 24 paragraph (1) of the 1945 Constitution explicitly emphasizes that judicial power is an independent power to administer justice to uphold law and justice (MPR-RI, 2020). Likewise, Article 24A paragraph (2) of the 1945 Constitution expressly states that a Supreme Court Judge must have integrity and a personality that is beyond reproach, fair, professional and experienced in the legal field (MPR-RI, 2020). In order to maintain the integrity of judges, there were changes in the 1945 Constitution which gave rise to a new institution, namely the Judicial Commission, as regulated in Article 24B of the 1945 Constitution. In addition, Article 24 paragraph (2) of the 1945 Constitution stipulates that judicial power is exercised by the Supreme Court and the Constitutional Court as an institutional institution.

The Republican Judicial Commission (KY) is a government body established based on the 1945 Constitution and has the task of proposing the appointment of Supreme Court Judges and maintaining the honor, dignity and behavior of Judges. The Judicial Commission is a state institution that is independent and free from interference and influence from other powers in carrying out its duties (Mujiburohman, 2017). The Judicial Commission also has a responsibility to the community through the DPR, by publishing annual reports and providing access to complete and accurate information. In the reform era, the Judicial Commission was established as a state body that carries out its duties independently without any influence from any party. The formation of the Judicial Commission was motivated by a very noble



main objective, namely to ensure the implementation of reforms in the law enforcement sector (Indonesia, 2016), by prioritizing the principles of justice and the supremacy of law and fighting all forms of corruption, collusion and nepotism (KKN).

The Judicial Commission is present in Indonesia as a guarantee that the independence of judicial power can be realized in line with accountability in the performance of that power, as well as as a checks and balances mechanism (Indonesia, 2016). Apart from being based on constitutional theory, the author also refers to the theory of supervision (checks and balances), which is the task of the Judicial Commission to supervise and maintain the balance of power, even though supervision is carried out externally. As explained by Abdulatif (Alamsyah, 2010), changing the state paradigm from parliamentary supremacy to constitutional supremacy requires a theory of (judicial) supervision. In the context of a modern state, the orientation of changes in the constitutional paradigm is related to the balance of power in a system of checks and balances.

The definition of checks and balances refers to the Black Law Dictionary, that checks and balances are the arrangement of governmental power whereby the powers of one governmental branch check or balance those of other branches. See also separation of power (Rahmatullah, 2013). So the aim of checks and balances is clear, namely maximizing the function of the power of one government institution over other government institutions by checking or balancing the authorities and limiting the authority of government institutions. In Article 24B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that “The Judicial Commission is an independent body which has the authority to propose the appointment of Supreme Court Judges and has other authorities in order to maintain and uphold the honor, dignity and behavior of judges.” (MPR-RI, 2020) This role and authority was then further clarified and strengthened by Article 13 of Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission.

Therefore, in the author's opinion referring to Article 24B of the 1945 Constitution of the Republic of Indonesia, it can be understood that the Judicial Commission was established with two constitutive authorities, namely: first, in the phrase “...has the authority to propose the appointment of a Supreme Court Judge” this proposes the appointment of a Supreme Judge to the DPR, in essence, it is an authority in the form of preventive supervision (Alamsyah, 2010), meaning that the Judicial Commission has the task of selecting candidates for Supreme Court Justices who have good qualities, such as integrity, professionalism and independence. Once selected, the candidate will be proposed to the DPR. If the Judicial Commission is able to find candidates for Supreme Court Justices who meet the above requirements, then these judges will carry out their duties with full honor and dignity.

However, this preventive effort is limited by the provisions of the Constitution which limit the involvement of the Judicial Commission in the selection of judges to “proposing” and is limited to “Supreme Judges” only. If the preventive logic is not limited, then the Judicial Commission can be given the authority by law to establish judges' schools starting from playgroup, kindergarten (TK) to tertiary level, or even appoint babies deemed worthy of being judges into the Commission's domain (Sidin, 2017). Judicial. Is this bad? Of course not, but this action is excessive and violates the principle of constitutionalism or constitutional restraint.

Furthermore, secondly, in the phrase “having other authority in order to maintain and uphold the honor, dignity and behavior of judges” this means taking action to maintain and uphold the honor, dignity and behavior of judges, in essence it is a form of authority and task of monitoring repression (Alamsyah, 2010), what this means is that the Judicial Commission will do three things, namely (1) receive reports from the public, (2) periodically request reports from the judiciary, and (3) conduct examinations of alleged behavioral violations by judges. To carry out these functions, Law Number 22 of 2004 concerning the Judicial

Commission was established as the basis for operationalizing the existence of the Judicial Commission.

With the explanation above, the Judicial Commission as a state institution certainly has the authority, among others:

1. Proposing the appointment of Supreme Court Justices and ad hoc judges at the Supreme Court to the DPR for approval;
2. Maintain and uphold the honor, dignity and behavior of judges;
3. Establish a Code of Ethics and/or Code of Conduct for Judges (KEPPH) together with the Supreme Court;
4. Maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges (KEPPH) (Undang-Undang Nomor 18 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2011).

Meanwhile, to carry out the above authority, the Judicial Commission has several tasks, including: 1) Registering candidates for Supreme Court Justices; 2) Selecting candidates for Supreme Court Justices; 3) Determine candidates for Supreme Court Justice; and 3) Proposing candidates for Supreme Court Justice to the DPR (Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2004).

In the Constitutional Court Decision Number 43/PUU-XIII/2015 point 3.9, it is explained that Article 24B paragraph (1) of the 1945 Constitution which states “other authorities determined by law” relating to the authority of the Judicial Commission is only limited to maintaining and upholding honor and nobility, dignity and behavior of judges (Konstitusi-RI, 2015). Other interpretations that expand this authority cannot be carried out by the legislator because it is not provided in the 1945 Constitution (Ulya, 2016). Therefore, it can be concluded that the phrase “other authority” in Article 24B paragraph (1) of the 1945 Constitution cannot be interpreted broadly or interpreted differently. other than what is written.

Therefore, the author has another perspective on the phrase “other authorities”, namely that this phrase refers to the authority of the Judicial Commission which is explicitly stated in Article 13 of Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, stated: “a. propose the appointment of Supreme Court Justices and ad hoc judges at the Supreme Court to the DPR for approval; b. maintain and uphold the honor, dignity and behavior of judges; c. establish a Code of Ethics and/or Code of Conduct for Judges together with the Supreme Court; and D. maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges.” (Undang-Undang Nomor 18 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2011) In this way, adhering to the Method of Interpretation or Interpretation in the theory of Legal Discovery, the phrase “other authorities” according to the author uses Restrictive Interpretation, which means an interpretation that explains a provision of a law by limiting its scope, namely narrowing the meaning of a regulation by starting from its meaning according to the language. Strictly speaking, Restrictive Interpretation is an interpretation that is limiting (Hiariej, 2021).

So, it can be concluded that the authority of the Judicial Commission is limited to proposing the appointment of Supreme Court and ad hoc judges, maintaining the honor, dignity and behavior of judges, as well as establishing a code of ethics for judges. Based on this type of authority, there is no obligation to expand this authority by other laws, including in the case of the appointment of first instance court judges. However, the provisions in the three first level judicial laws which require the participation of the Judicial Commission in the appointment of first level judicial judges are contrary to Article 13 of Law Number 18 of 2011 concerning the Judicial Commission.

Discussion regarding the conception of the independence of the Judicial Commission in realizing accountable recruitment of Supreme Court Judges is very important in the world of

politics and law. This aims to ensure that the recruitment process for Supreme Court Justices can be carried out transparently and free from interference from irresponsible parties. The formation of the Judicial Commission as a form of reform demands in 1998 was based, among other things, on the idea that independent or independent judicial power cannot be left without supervision. Therefore, the independence of judicial power must be balanced with accountability so as not to give rise to absolute judicial power (*judicial tyranny*) (Indonesia, 2016). A constitutional format (*social institution*) that is as bad as executive tyranny and legislative tyranny is when the judicial power has the authority to make legal decisions on matters that should not be legal (*necessitas facit liticum goad or non est liticum*). However, they cannot be reached by any means or by any institution, including by institutions authorized to carry out supervision (Tutik, 2012).

According to the author, it is important to note that the meaning of independence refers to a condition or status where a person is not bound to a particular party. In other words, the individual acts independently and does not have interests supported by certain parties, groups or organizations (Ulya, 2016). In principle, according to the author, independence and accountability are cumulative, meaning they are two things that cannot be separated in fighting for the same goal (Faiz et al., 2013). Without responsibility, the freedom fought for will be meaningless. This can be seen in the context of judicial independence, which must be accompanied by judicial accountability to prevent tyrannical policies. Therefore, the Judicial Commission plays an important role in overseeing the implementation of justice independently but remaining responsible. Therefore, independence must be balanced with public accountability. This reflects the checks and balances mechanism in place, including for the Judicial Commission.

The Judicial Commission was formed with the aim of being able to carry out intensive monitoring of the implementation of judicial power by involving elements of society:

1. The main objective of the Judicial Commission is to increase the efficiency and effectiveness of judicial power, both in terms of recruiting Supreme Court Judges and in monitoring the behavior of Judges.
2. The Judicial Commission aims to maintain the quality and consistency of decisions of the judiciary by carrying out intensive and independent supervision.
3. As a liaison between judicial power and governmental power, the Judicial Commission is tasked with ensuring the independence of judicial power (Munawir, 2016).

In the author's opinion regarding the purpose of establishing the Judicial Commission which has been explained above, in the second point the phrase "consistency of decisions of the judiciary" when linked to Article 24B paragraph (1) of the 1945 Constitution states that the Judicial Commission has other powers which are limited to maintaining honor and nobility, dignity, and behavior of judges. Therefore, the supervision carried out by the Judicial Commission on judges only applies to their behavior, not to their judicial duties in deciding cases directly. Although the Judicial Commission can assess court decisions to find indications of violations of the Code of Ethics and the judge's behavior, the contents of these decisions do not fall within the authority of the Judicial Commission. The substance of the decision is entirely within the authority of the judges and courts under the Supreme Court, and can be tested through the review mechanism of the appellate institution. At its maximum, the Judicial Commission can analyze court decisions that have permanent legal force to recommend transfers of judges.

According to PH lane, the independence of judicial power in a country can be reflected in the recruitment pattern of Supreme Court Judges which is not political in nature (Alfred Haryanto, 2014). According to the author, this means that the recruitment process must be based on competence, performance, credibility and achievements which are evaluated in a transparent, valid and accountable manner, not just because of relationships or practices of corruption, collusion and nepotism. As stated in his title as Supreme Court Justice, the

membership requirements must truly meet the ideal qualifications appropriate for a judge to be used. Because these requirements are very complex, the process of recruiting Supreme Court Justices must be carried out carefully and selectively.

In this context, it is also important to note that the independence of the Judicial Commission does not mean freedom to act as it pleases, but it must still be done within the applicable legal framework. Therefore, it is necessary to ensure that there is a strong and compatible legal basis in realizing the independence of the Judicial Commission in order to achieve the goal of recruiting accountable and professional Supreme Court Judges.

### **Analysis of the Selection Procedure for Supreme Court Judge Candidates Based on the Provisions of the 1945 Constitution, Law no. 3 of 2009, and Law no. 18 of 2011**

Based on the 1945 Constitution before it was amended, the process of proposing, nominating and selecting candidates for Supreme Court Justices was only carried out by the President as Head of State. However, considering that the Supreme Court reflects the principle of legal sovereignty (*nomocracy*), Jimly Asshiddiqie emphasized that the nomination of members of the Supreme Court should not be carried out exclusively by one institution, because this could affect the independence of judicial power (Alfred Haryanto, 2014).

After the amendment to the 1945 Constitution, legal construction stipulated that the nomination of Supreme Court Justices to the People's Representative Council was the authority of the Judicial Commission, a state institution. Article 18 of the Judicial Commission Law confirms that for each vacancy for Supreme Court Justice, the Judicial Commission will determine and propose 3 (three) candidates for Supreme Court Justice to the People's Representative Council, with a copy sent to the President.

Article 15 paragraph (2) of Law Number 22 of 2004 clearly stipulates that the Supreme Court, the Government and the Community have the right to nominate candidates for Supreme Court Justices to the Judicial Commission (Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2004). From this provision, it can be seen that there are two groups of candidates for Supreme Court Justices, namely Career Judges and Non-Career Judges. Therefore, the opportunity to become a candidate for Supreme Court Justice without being based on a career system can be provided if needed.

The author is of the opinion that in Article 8 of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, there is a *contradiction in terminis* with the 1945 Constitution. The following reads Article 8 of Law No. 3 of 2009:

- (1) The Supreme Judge is appointed by the President from the names of candidates submitted by the House of Representatives.
- (2) Candidates for Supreme Court Justices as intended in paragraph (1) are selected by the People's Representative Council from the names of candidates proposed by the Judicial Commission.
- (3) Candidates for Supreme Court Justices proposed by the Judicial Commission as intended in paragraph (2) are selected by the People's Representative Council from 1 (one) person from 3 (three) names of candidates for each vacancy.
- (4) The selection of candidates for Supreme Court Justice as referred to in paragraph (3) shall be carried out no later than 30 (thirty) trial days from the date the names of the candidates are received by the House of Representatives (Undang-Undang Nomor 3 Tahun 2009 Tentang Perubahan Kedua Atas UNDANG-UNDANG NOMOR Undang-Undang Nomor 14 Tahun 1985 Tentang Mahkamah Agung, 2009).



The following reads Article 24A paragraph (3) of the 1945 Constitution:

*“Candidates for Supreme Court Justices are proposed by the Judicial Commission to the House of Representatives for approval and then appointed as Supreme Court Justices by the President.”* (MPR-RI, 2020)

The following is Article 24B paragraph (3) of the 1945 Constitution:

*“Members of the Judicial Commission are appointed and dismissed by the President with the approval of the House of Representatives.”* (MPR-RI, 2020)

Meanwhile, Article 18 paragraph (4) of Law no. 18 of 2011 states:

*“Within a maximum period of 15 (fifteen) days from the end of the eligibility test selection as intended in paragraph (1), the Judicial Commission determines and submits 3 (three) candidates for Supreme Court Justice to the DPR for every 1 (one) Supreme Court Justice vacancy with a copy was submitted to the President.”* (Undang-Undang Nomor 18 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2011)

In this way, the author is of the view: **First**, the phrase “selected” in Article 8 of Law no. 3 of 2009 creating procedures for selecting candidates for Supreme Court Justices by the People's Representative Council could have a negative impact on judicial independence, because it makes it possible for the People's Representative Council to reject candidates for Supreme Court Justices proposed by the Judicial Commission on the grounds that they do not meet the number required by the Law. Supreme Court Law and Judicial Commission Law. Apart from that, there is a risk that the People's Representative Council will select candidates for Supreme Court justices who support the interests of certain political parties, and there is also the possibility that the People's Representative Council will repeat the selection process carried out by the Judicial Commission. All of this has the potential to undermine judicial independence. In essence, the word “elected” can reduce the role of the Judicial Commission in the process of selecting Supreme Court Justices. However, in the constitution, this word is never used, neither in the rules governing the Judicial Commission nor the DPR. Therefore, the word “elected” is a political agreement by the DPR which is not in accordance with the spirit of the 1945 Constitution.

**Second**, in selecting candidates for Supreme Court Justices, the DPR seriously violates the constitution because the mechanism for appointing Supreme Court Justices involving the DPR is not in accordance with the provisions stipulated in Article 8 paragraph (2), paragraph (3), and paragraph (4) of the Supreme Court Law and Article 18 paragraph (4) of the Judicial Commission Law, which deviates from the provisions of Article 24A paragraph (3) of the 1945 Constitution and creates legal uncertainty.

**Third**, in 24A paragraph (3) of the 1945 Constitution the phrase “to obtain approval” can be interpreted as meaning that the DPR can approve or reject the proposal for a candidate for Supreme Court Justice submitted by the Judicial Commission and then appointed by the President as Supreme Judge. Approval can also be interpreted as an assessment process or mechanism that can be approved or disapproved by the DPR. This is the basis of the provision that the Judicial Commission nominates 3 (three) candidates for Supreme Court Justice for every vacancy for Supreme Court Judge and the DPR selects one person to be appointed as Supreme Judge. However, this mechanism can be complicated for the Judicial Commission to meet the number of candidates for Supreme Court Justices that must be submitted, which exceeds the number of Supreme Court Justices required, thereby disrupting the recruitment process for Supreme Court Justices itself.

**Fourth**, according to the 1945 Constitution, the DPR is indeed involved in the process of appointing Supreme Court Justices, but the DPR's involvement is limited to giving approval to candidates for Supreme Court Justices proposed by the Judicial Commission before the candidates are appointed by the President as Supreme Court Justices and is not included in the process of selecting candidates for Supreme Court Justices.



**Fifth**, highlighting Article 8 of Law no. 3 of 2009, that the nomination of candidates for Supreme Court Justices to the People's Representative Council has an impact on the Judicial Commission to nominate more than the required number of candidates for Supreme Court Justices. In this case, the Judicial Commission is required to nominate three candidates for Supreme Court Justices to the House of Representatives for each available Supreme Court Justice vacancy, in accordance with the provisions of Article 18 of the Judicial Commission Law.

**Sixth**, the Judicial Commission carries out a series of administrative selections and selections on quality and personality to find candidates for Supreme Court Judges who are qualified and have high integrity in carrying out their duties as enforcers of law and justice in Indonesia, as regulated in Articles 15 to 18 of Law no. 22 of 2004 concerning the Judicial Commission, which also involves the community. The task of the Judicial Commission in this matter is very heavy and crucial. The Judicial Commission carries out a very strict selection of candidates for Supreme Court Justices to select Supreme Court Justices with integrity and quality, in accordance with the mandate contained in the 1945 Constitution, especially Article 24A paragraph (2) which states that Supreme Court Justices must have integrity and a personality that is beyond reproach, fair, professional and experienced in the legal field.

**Seventh**, DPR participation is an important aspect in implementing the checks and balances mechanism which guarantees the independence of the judiciary and other branches of power. The concept of separation of powers between executive, legislative and judicial powers, including the concept of judicial independence, is also one of the functions of checks and balances in supervising the implementation of the independence of judicial power. The next question is, can giving the DPR the authority to elect Supreme Court Justices be part of the checks and balances mechanism? According to Constitutional Law theory, the check and balances mechanism consists of relationships between institutions that have equal positions (*vertical*) (BADAN PENGKAJIAN MPR RI, 2017). For example, if the selection of candidates for Supreme Court Justice is carried out by the government (president), then the president's authority must be checked or reassessed by the DPR, in order to maintain the principle of checks and balances. However, if the president is not involved in the selection, then there is no reason for the DPR to apply the principle of checks and balances in the process of selecting Supreme Court Justices. Apart from that, constitutionally, the Judicial Commission is a body specifically formed to select candidates for Supreme Court Justices. Therefore, it is not appropriate to give authority to the DPR to select candidates for Supreme Court Justices after going through selection at the Judicial Commission.

**Eighth**, according to the author's opinion above, the appointment of candidates for Supreme Court Justices requires a very selective and careful process, which is carried out by the Judicial Commission, in accordance with the provisions of Article 24A paragraph (2) of the 1945 Constitution, which requires Supreme Court Justices to have good integrity, fairness and professionalism., and sufficient experience in law. However, further regulations regarding the appointment process, namely Article 8 paragraph (2) of the Supreme Court Law, are not in line with Article 24A paragraph (3) of the 1945 Constitution. The DPR, as a political institution, no longer gives approval to candidates for Supreme Court Justices proposed by the Commission. Judicial, but chooses from a list of candidates proposed by the Judicial Commission and carries out a fit and proper test, including interviews to test the prospective Supreme Court Justice's knowledge of the law. However, this process still maintains the very strict and careful selection standards set by the Judicial Commission to find candidates for Supreme Court Justices who are qualified and have integrity.

Despite having an important role in maintaining the integrity of judges, the Judicial Commission has limited authority to influence the education and recruitment patterns of judges at all levels of justice. As a behavioral monitoring institution, the Judicial

Commission's duties are more focused on monitoring and evaluation, which is carried out with reference to constitutional provisions. As an external supervisor, the effectiveness of the Judicial Commission is highly dependent on good collaboration and communication with internal judicial supervisory institutions to achieve common goals.

Even though it has limitations in intervening in the education and recruitment patterns of judges, the Judicial Commission can develop innovations to build awareness of the values of honesty, morality, dedication and professional commitment of judges. As an external monitoring institution, the Judicial Commission must be more than just a “firefighter” in dealing with “problematic” judges. More importantly, the Judicial Commission must build connections with the entire network of judges who have not or have not had problems.

### **Strengthening the Authority of the Judicial Commission Institution**

Therefore, according to the author, it is necessary to strengthen the authority of the Judicial Commission. According to the provisions of Article 13 of Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, there are authorities possessed by the Judicial Commission, including:

- a. Proposing the appointment of Supreme Court Justices and ad hoc judges at the Supreme Court to the DPR for approval;
- b. Maintain and uphold the honor, dignity and behavior of judges;
- c. Establish a Code of Ethics and/or Code of Conduct for Judges together with the Supreme Court; And
- d. Maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges (Undang-Undang Nomor 18 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2011).

To execute its authority, the Judicial Commission is responsible for recommending candidates for ad hoc Supreme Court Justices to the DPR for approval. This task is carried out by the Judicial Commission in the exercise of its authority: a) Registering candidates for Supreme Court Justices; b) Selecting candidates for Supreme Court Justices; c) Determine candidates for Supreme Court Justices; and d) Proposing candidates for Supreme Court Justice to the DPR.

Furthermore, Article 20 of Law Number 18 of 2011 contains the following provisions:

- a. In order to maintain and uphold the honor, dignity and behavior of judges, the Judicial Commission has the following duties:
  - 1) Monitoring and supervising the Judge's behavior;
  - 2) Receive reports from the public regarding violations of the Judge's Code of Ethics and/or Code of Conduct;
  - 3) Verifying, clarifying and investigating reports of alleged violations of the Code of Ethics and/or Code of Conduct for Judges in private;
  - 4) Decide whether reports of alleged violations of the Code of Ethics and/or Code of Conduct for Judges are true or not; And
  - 5) Take legal action and/or other steps against individuals, groups of people, or legal entities that undermine the honor and dignity of Judges.
- b. Apart from the duties as intended in paragraph (1), the Judicial Commission also has the task of seeking to increase the capacity and welfare of Judges.
- c. In order to maintain and uphold the honor, dignity and behavior of judges as intended in paragraph (1) letter a, the Judicial Commission may request assistance from law enforcement officials to conduct wiretapping and record conversations in the event of alleged violations of the Code of Ethics and/or Judges' Code of Conduct. by the Judge.
- d. Law enforcement officials are obliged to follow up on requests from the Judicial Commission as intended in paragraph (3) (Undang-Undang Nomor 18 Tahun 2011

Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 2004 Tentang Komisi Yudisial, 2011).

In the author's opinion, the stipulation of this law aims to strengthen the role and duties of the Judicial Commission as an independent state institution responsible for carrying out checks and balances functions in the field of judicial power in order to achieve the goals of fair, clean, transparent and professional judicial power.

With the enactment of the new law, the public's expectations in maintaining and upholding the honor, dignity and behavior of judges have become increasingly stronger through the Judicial Commission as an independent institution that oversees the judiciary. Apart from that, this law also shows how important it is to increase the human and financial resources of the Judicial Commission organization to further strengthen it.

### **Analysis of the Mechanism and Process for Recruitment of Supreme Court Judge Candidates by an Accountable Judicial Commission**

The procedures for recruiting Supreme Court Judges through the process carried out by the Judicial Commission are as follows:

- a. The Judicial Commission made an open online announcement regarding the need for Supreme Court Justices, the requirements for registering as a candidate for Supreme Court Justice, and the schedule for selection of candidates for Supreme Court Justice;
- b. The Judicial Commission opens registration opportunities openly within a predetermined time period;
- c. The Judicial Commission will officially announce the names of those who have registered to take part in the selection of candidates for Supreme Court Justices;
- d. The Judicial Commission will receive suggestions, input and information regarding the profile and track record of applicants for Supreme Court Justices from the public through various channels, provided that the information provider must include a clear identity;
- e. It is The Judicial Commission will carry out a series of tests and selection examinations including health tests, psychological tests, competency tests, legal ability tests as well as examining track records and clarifying information and input from the public regarding the profiles of Supreme Court Justice candidates who register for selection;
- f. The Judicial Commission will determine and submit three names of candidates for Supreme Court Justice for each Supreme Court vacancy to the DPR with a copy delivered to the President;
- g. The DPR will determine the name of the Supreme Court Justice candidate selected to occupy the position of Chief Justice at the Supreme Court after receiving a proposal from the Judicial Commission.

In this context, the Judicial Commission must ensure that the recruitment process for Supreme Court Judges is carried out in a transparent, accountable manner and based on clear and objective criteria, so that approval from the DPR does not occur on the basis of intervention or certain political interests (Andriyan, 2020).

### **CONCLUSION**

Historically, the legislative ratio of the provisions of Article 24 A Paragraph (3) of the 1945 Constitution concerning the recruitment of Supreme Court judges went through a fairly long discussion process including: 1) In the first discussion, the recruitment pattern for Supreme Judges was carried out based on the proposal of the DPR, then they were appointed and dismissed by the MPR and needed to be evaluated. and enforcing procedural procedures and requirements for appointing Supreme Court justices, 2) Discussion of the second change, recruitment of Supreme Court justices must bebalance, openness and transparency, giving birth to a new nomenclature called the Judicial Commission as an independent institution, 3) Discussion of the third change occurred to eliminate interference by political interests,

including the authority of the DPR in carrying outfit and proper test and the selection process, as well as changing the DPR's authority to only approve proposals from the Judicial Commission. Then add the statement “validate” so that the President only validates it, unlike past experience. However, in recruiting Supreme Court justices, you must adhere to the principles checks and balances by involving other branches of state power, including the executive and legislative branches.

So the author concludes that in realizing accountable recruitment of Supreme Court Judges, looking at all the explanations above, the Judicial Commission can refer to a number of legal bases and doctrines in legal science that can guide the process. Some of the basic laws and doctrines include:

1. The 1945 Constitution and Legislation relating to the appointment of Supreme Court Judges, which give authority to the Judicial Commission and the DPR to carry out their duties independently.
2. Principles of accountability and transparency in determining criteria for recruitment of Supreme Court Justices, which can ensure that decisions taken are based on the quality and integrity of prospective Supreme Court Justices.
3. The doctrine of independence and independence of judicial power, which emphasizes the importance of maintaining the independence and integrity of judicial institutions from pressure or intervention from any power, including political power.

In carrying out its duties, the Judicial Commission needs to consider these factors carefully and thoroughly, so that the recruitment of Supreme Court Judges can ensure that the judiciary in Indonesia can run independently, transparently and accountably.

## SUGGESTION

In terms of recruitment of Supreme Court justices, it should be sufficient to go to the Judicial Commission together with the Supreme Court, without needing to obtain approval from the DPR. So the Judicial Commission will focus on assessing the integrity of Judges, while the Supreme Court will assess the quality and professionalism of Judges. This is more in line with the conception of the independence of judicial power which must be maintained within the judges themselves. Because it is within the jurisdiction of the judiciary. If the DPR intervenes, it would seem to place the DPR's position above the judiciary.

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