

# THE POSITION OF THE POLICE CODE OF ETHICS COMMISSION IN THE JUDICIAL POWER SYSTEM IN INDONESIA

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## Abstract

The Police Code of Ethics Commission has the authority to advocate violations of the Police Code of Ethics. The presence of the National Police Code of Ethics Commission gave rise to serious conceptual debates. As a rule of law with an independent judicial power as its main element, theoretically, judicial power can only be owned by state institutions that are constitutionally recognized in the 1945 Constitution, namely the Supreme Court and the Constitutional Court, but in its development, the function of Judicial power is not only exercised by the courts. This study aims to determine the position of the Polri Code of Ethics Commission and the relationship between the Polri Code of Ethics Commission and the judicial power system in Indonesia. The method used is normative research, with a conceptual approach and laws and regulations. The results of the study found that the position of the Polri Code of Ethics Commission in the judicial power system has been accommodated in the Judicial Power Law, and the relationship that is built between the Code of Ethics Commission and the Supreme Court is a functional relationship.

**Keywords:** Position, Code of Ethics Commission, Police, Judiciary, Indonesia

## Introduction

The State of Indonesia is a state of law, and Pancasila is a way of life and basic ideology that, until now, is still adhered to by the State of Indonesia without any exceptions at all in carrying out the process of daily life. In the wheel of human life in Indonesia, social interactions between fellow human beings will always be based on a norm, rule, or legal order that exists in the midst of society.<sup>1</sup> In law enforcement, it is often not found that enforcers do not reflect the purpose of the law itself. If we borrow the theory of the legal system put forward by Lawrence Friedman, the causes of failure in law enforcement can stem from weaknesses in legal substance, legal structure, or legal culture.<sup>2</sup>

The legal structure component is one of the most influential components in weak law enforcement, especially in Indonesia. Today, the rampant corrupt behavior of law enforcement officials has led to public apathy toward the law enforcement process. Therefore, the legal structure is the component of the legal system that needs improvement the most. Unfortunately, all this time, we have been trapped in the understanding that improving the legal structure can only be done by improving the structure and authority of the institution. We forget that in a law enforcement agency, there are individuals who carry out law enforcement functions whose behavior is controlled by a set of norms, including ethics.<sup>3</sup>

Awareness of upholding ethics in the context of state life is no longer taboo, and is even widely recognized by the public. And this has been practiced by various countries in the world. Such awareness originated with an order from the United Nations (UN) which recommended UN member states to build an ethical infrastructure in the life of the nation and state, including Indonesia.<sup>4</sup>

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<sup>1</sup> Hartono Hartono, "Penerapan Sanksi Hukum bagi Para Advokat Pelaku Tindak Pidana Suap dalam Sistem Hukum Positif di Indonesia," *JCH (Jurnal Cendekia Hukum)* 5, no. 1 (2019): 77, <https://doi.org/10.33760/jch.v5i1.181>.

<sup>2</sup> Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer," *Paper Knowledge . Toward a Media History of Documents* 1, no. 2 (2021): 107–15.

<sup>3</sup> Fauziah Angraini, "Pro Kontra Penegakan Etik secara Internal dan Eksternal," *Jurnal Konstitusi & Demokrasi* 1, no. 1 (2021): 37–63, <https://scholarhub.ui.ac.id/jurnalkonsdem/vol1/iss1/3>.

<sup>4</sup> Harmoko M.Said, "Menggagas Peradilan Etik Penyelenggara Negara di Indonesia," *Sasi* 27, no. 1 (2021): 24, <https://doi.org/10.47268/sasi.v27i1.266>.

Almost all state institutions in Indonesia have formed a code of ethics enforcement agencies, including the police institution, as stipulated in Police Regulation Number 7 of 2022 concerning the code of ethics and the Police Code of Conduct Commission. The National Police of the Republic of Indonesia (hereinafter referred to as Polri) is a state institution that is authorized to maintain security, order, and law enforcement in society. In carrying out their duties as law enforcers, the police not only have to comply with applicable laws as an external aspect but they are also equipped with police ethics as an aspect of policing. Police ethics are norms regarding police behavior that are used as guidelines in realizing the implementation of good duties for law enforcement, public order, and public security.<sup>5</sup>

The Indonesian National Police Code of Ethics Commission, hereinafter abbreviated as KKEP, is a commission formed within the Police to enforce KEPP. KKEP carries out functions such as judicial power to decide cases of ethical violations in courts. However, this institution is not a judicial institution as it should be. The presence of an institution *like* this raises problems regarding its institutional status due to the thought of a comprehensive constitutional system.<sup>6</sup> However, this should be followed by the formulation of a comprehensive interpretation and future projections regarding the Indonesian constitutional system, which is an important matter in the framework of realizing a state administration system as is currently happening. New post-reform institutions such as the Election Organizer Ethics Council (DKPP), the Judicial Commission (KY), and the National Police's Code of Ethics Commission. In addition, ethical enforcement is also carried out by professional organizations, including the Honorary Council of Medical Ethics (MKEK), the Honorary Council of Advocate Organizations, and the Honorary Council of the Indonesian Notary Association (INI). Ethics enforcement agencies have different forms and powers. This institution can be an organ

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<sup>5</sup> Rama Ridial Allif Ramdan, "Implementasi Keprofesionalitas Polri dalam Profesi Polri" 20, no. September (2022).

<sup>6</sup> Anwar Usman, "The Role of Indonesian Constitutional Court in Strengthening Welfare State and the Rule of Law," *Lex Publica* 7, no. 1 (2020), <https://doi.org/10.58829/lp.7.1.2020.11-27>.

attached to the organization/institution it supervises (internal) or stands alone as a separate institution (external).<sup>7</sup>

The existence of these institutions raises serious conceptual debates. As a constitutional state with an independent judicial power as its main element, theoretically, judicial power can only be owned by state institutions that are constitutionally recognized in the 1945 Constitution, namely the Supreme Court and the Constitutional Court. However, on the other hand, the development of the life of the nation and state, which is so complex due to the influence of globalization and democratization, has resulted in some matters of life no longer being able to be resolved by a general institution, but special expertise is needed to resolve the legal problems at hand. That then led to the birth of the institutions mentioned above, which are not actually included in the scope of judicial power but carry out the functions of judicial power, such as the power to decide cases that have the same power as court decisions.<sup>8</sup>

This conflict is a serious problem, according to the author, because it relates to the existence of a judicial power institution that has been well built in the constitution where there are only two judicial power institutions, namely the Supreme Court with four courts under it and the Constitutional court. In addition, the existence of semi-judicial institutions is actually in a vulnerable position to be subject to judicial review by justice seekers at the Constitutional Court.

Based on the description above, the author raised the title in this study "Position of the Police Ethics Commission in the Judicial Power System in Indonesia" with the aim of knowing the position of the Indonesian National Police code of ethics commission in the judicial power system in Indonesia and to find out the relationship between the Supreme Court and the Police Code of Ethics Commission so that realizing justice and legal certainty.

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<sup>7</sup> Angraini, "Pro Kontra Penegakan Etik secara Internal dan Eksternal."

<sup>8</sup> Muh Risnain, "Eksistensi Lembaga Quasi Judisial dalam Sistem Kekuasaan Kehakiman di Indonesia : Kajian Terhadap Komisi Pengawas Persaingan Usaha," *Jurnal Hukum dan Peradilan* 3, no. 1 (2018): 49, <https://doi.org/10.25216/jhp.3.1.2014.49-58>.

## Research Method

The normative juridical research method is guided by the rule of law in order to answer existing problems and uses the applicable and conceptual statutory approach regarding the issues to be discussed. This study used primary and secondary legal materials. Primary legal materials in the form of the 1945 Constitution, Law Number 48 of 2009 concerning Judicial Powers, Law Number 2 of 2002 concerning Polri, Police Regulation Number 7 of 2022 concerning the Polri Code of Ethics and the Polri Code Commission and other regulations that related to this research. The secondary legal material in this research consists of books, scientific journals, and scientific articles that can provide an explanation of the position of the Polri Code of Ethics Commission in the judicial power system. Collection of legal materials using library research and documentation and analysis of legal materials is carried out systematically using argumentation.

## Results and Discussion

In the development of the modern state, the concept of state institutions has encouraged the formation of new state institutions that have specific tasks and functions according to the background of their formation. This is what has been made in many countries in the world to begin to find solutions to address legal issues related to certain fields that previously had not been resolved or were not optimally resolved by existing principal state institutions.

Structuring state institutions is an issue that has no end and continues to be relevant for discussion in various countries, both countries that have been established for a long time and countries that have recently become independent, both countries that have recently experienced democratization and countries whose democracies have matured. The cause of the issue of restructuring state institutions continues to be discussed because of the dynamic complexity of state management, including affairs managed by the state itself. Therefore, the doctrine regarding state institutions continues to develop from classical doctrines such as Montesquieu's "trias politica,"<sup>9</sup> which seeks to describe the separation of state power into three branches of legislative, executive, and judicial power, to more contemporary

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<sup>9</sup> David W. Carrithers, *Charles-Louis de Secondat, Baron de Montesquieu*, Charles-Louis de Secondat, Baron de Montesquieu, 2017, <https://doi.org/10.4324/9781315095813>.

doctrines such as "the new separation of powers" from Bruce Ackerman, which responds more to the complexities of modern state management by taking into account the presence of various institutions outside the three classical branches of power. According <sup>10</sup>to Bruce Ackerman, that state power, as the classical Montesquieu doctrine, cannot capture the development of independent institutions that play an important role in the administration of a modern state.

Peter L. Strauss referred to these independent institutions as the "headless fourth branch of government." <sup>11</sup>The term "*headless*" indicates that these state institutions are independent and are not responsible for any branch of power, while the term "fourth branch" is to indicate the difference from the separation of the three classical branches of power.

The United States and France are examples of established democracies and many of the growth of new state institutions. <sup>12</sup>These new state institutions are not the main state institutions, which, in general, must be based on only one branch of power. The term nomenclature given to these new state institutions is commonly referred to as *state auxiliary organs* or *auxiliary institutions* as supporting state institutions. <sup>13</sup> *state auxiliary organs* or independent state institutions are state institutions that carry out mixed functions of the functions of branches of state power, such as executive, legislative, and judicial powers. Based on the special characteristics of independent state institutions that carry out mixed functions, this allows independent state institutions to have functions that are outside the norms of the main state institutions.

Jellineck divided state institutions into two major groups, first, *unmittelbare organizations* (direct state equipment) and. secondly, *the mittelbare organ* (indirect state equipment). This division is based on the

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<sup>10</sup> Bruce Ackerman, "The New Separation of Powers," *Harvard Law Review* 114, no. 3 (2000), <https://doi.org/10.2307/1342286>.

<sup>11</sup> Peter L. Strauss, "The Place of Agencies in Government: Separation of Powers and the Fourth Branch," *Columbia Law Review* 84, no. 3 (1984), <https://doi.org/10.2307/1122501>.

<sup>12</sup> Eki Furqon, "Kedudukan Lembaga Negara Independen Berfungsi Quasi Peradilan dalam Sistem Ketatanegaraan Indonesia," *Nurani Hukum* 3, no. 1 (2020): 77, <https://doi.org/10.51825/nhk.v3i1.8523>.

<sup>13</sup> Jimly Asshiddiqie, "Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi," *Sekretaris Jenderal & Kepaniteraan Mahkamah Konstitusi RI*, 2006, 226.

source of the arrangement in the constitution. <sup>14</sup>The organs directly determine the existence of the state, and without them, the state would not exist. Meanwhile, state organs indirectly depend on direct organs. The birth of independent state institutions as organs for implementing state power is intended to uphold constitutional democracy. The formation of these institutions is part of efforts to increase public participation in state administration. Therefore, within the framework of democratic transformation, its presence is often referred to as the rate of increase in participatory democracy and devolutive democracy. The emergence of these institutions is intended both as an effort to *checks and balances*, as well as steps to fulfill citizens' constitutional rights, with forms of service and various guarantees from the state to its citizens, as well as efforts to control the possibility of tyranny resulting from authoritarian government. <sup>15</sup>

The formation of supporting state organizations is a new trend in state life and state practice in Indonesia after the amendments to the 1945 Constitution. Supporting state organs are state organizations that exercise state power which are not necessarily included in the category of one of the branches of power according to the classic Trias Politica Montesquieu *doctrine*. <sup>16</sup>In Indonesia, state organizations formed after the amendments to the 1945 Constitution can be divided into 2 (two) categories. First is the main state organ (*main organ*). The main state organs (*main state organs*) consist of (1) MPR, (2) DPR, (3) DPD, (4) President, (5) Supreme Court, (6) Constitutional Court and (7) Audit Board. Second, the supporting state organs (*auxiliary state organs*), which Jimly Asshiddiqie called the second layer of state organs. <sup>17</sup>Supporting state organs derive authority from the 1945 Constitution, lower laws and regulations. There are second-tier state organs that derive their authority from the 1945 Constitution, laws, presidential regulations and regulations under them.

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<sup>14</sup>Asshiddiqie. *Ibid*

<sup>15</sup>Zainal Arifin Mochtar, *Lembaga Negara Indenpenden: Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi*, Rajawali Pers, 2016.

<sup>16</sup>"Government and Politics in Western Europe: Britain, France, Italy, West Germany," *Choice Reviews Online* 28, no. 07 (1991), <https://doi.org/10.5860/choice.28-4121>.

<sup>17</sup>Asshiddiqie, "Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi."

### **1. The position of the National Police Code of Ethics Commission in the Judicial Power System in Indonesia.**

To see the position of the Police Code of Ethics Commission in the judicial power system, we will first explain the position of the Police in the criminal justice system. The criminal justice system is a crime control system consisting of police agencies, prosecutors, courts, advocates and correctional institutions.<sup>18</sup>

In the criminal justice system, the status or existence of the police has been recognized internationally; this can be seen in the report of the 5th UN Congress/1975 (concerning "The Prevention of Crime and the Treatment of Offenders, especially in discussing the issue of "the emerging role of the police and other law enforcement agencies") which confirms It was recognized that the police were a component of the larger system of criminal justice which operated against criminality.<sup>19</sup>

Then it can be seen also in various regulations legislation in Indonesia, Article 16 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia and Article 6 of the Criminal Procedure Code states that one part of the main task of the Police is to enforce the law which is an important part of the criminal justice system. In Indonesia, in enforcing criminal law, the position of the police as law enforcers includes at least two general positions, namely investigators and investigators.<sup>20</sup> So based on the description above, the position of the Police in the criminal justice system is one of the leading subsystems for tackling crime.

In carrying out its duties and authority, the National Police is required to work professionally and uphold the law and ethics. For this reason, an internal apparatus within the police was formed, called the

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<sup>18</sup> Mardjono Reksodiputr, *Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan dan Penegakan Hukum Dalam Batas-Batas Toleransi)*, Fakultas Hukum Universitas Indonesia, 1993.

<sup>19</sup> "The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders," *United Nations*, vol. 1 (New York, 1990), <https://doi.org/10.1007/BF01098179>.

<sup>20</sup> Geofani Milthree Saragih, "Analisis Yuridis Peranan Penegak Hukum dalam Hal Autopsi Forensik dalam Tindak Pidana Pembunuhan," *Jurnal Ilmu Hukum* 11, no. 2 (2022): 1, <https://doi.org/10.30652/jih.v11i2.8306>.



Police Code of Ethics Commission, which is tasked with maintaining and enforcing the Police code of ethics.<sup>21</sup>

Returning to the main problem of this research regarding the position of the Police Code of Ethics Commission in the judicial power system in Indonesia, we will begin with a theoretical discussion of quasi-judicial institutions in the judicial power system in Indonesia and the existence of quasi-judicial institutions in the judicial power system in Indonesia.

The development of the modern state has encouraged the formation of new state institutions or supporting organs which have special duties and functions in accordance with the background of their formation. This development has been experienced by many countries in the world and they are starting to look for solutions to overcome legal problems related to certain fields that previously had not been resolved optimally by the existing main state institutions. The nomenclature of these new state institutions is usually called council, commission, committee, board or authority. These new institutions are usually referred to as state auxiliary organs, or auxiliary institutions as supporting state institutions. Among these institutions, there are sometimes what are called self-regulatory agencies, independent supervisory bodies, or institutions that carry out mixed functions between regulatory, administrative and punitive functions which are usually separated but in fact, it was carried out simultaneously by these new institutions. There are even institutions that are referred to as quasi non-governmental organizations.<sup>22</sup>

According to Ahmad Basarah that *Auxiliary state bodies* are part of the constitutional structure in the form of part of the existing functions of state power (legislative, executive and judicial) or formed outside of the functions of the state power. While the nature of the power of these auxiliary institutions is quasi or semi-governmental, and is given a single function or sometimes a mixed function, such as on the one hand as a regulator, but also punishing such as the judiciary which is mixed with the legislature. And these institutions are permanent and non-

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<sup>21</sup> Niru Anita Sinaga Dekan, "Kode Etik sebagai Pedoman Pelaksanaan Profesi Hukum yang Baik," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020): 1–34, <https://doi.org/10.35968/jh.v10i2.460>.

<sup>22</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Sekretaris Jenderal & Kepaniteraan Mahkamah Konstitusi RI, 2006).

permanent (*ad hoc*). The source of the law for its formation comes from the constitution or law.<sup>23</sup>

Almost all democratic countries including Indonesia have formed visiting state institutions with various names and forms such as commissions, committees, councils or other designations whose functions are quasi in nature, and are given a single function or sometimes mixed functions. To see the position will be seen based on the constitution and laws.<sup>24</sup>

Of the 1945 Constitution confirms that the judicial power is an independent power to administer justice in order to uphold law and justice. Further explanation of judicial power can be found in Law no. 48 of 2009 that what is meant by judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution, for the sake of the implementation of the legal state of the republic of Indonesia .

According to Bagir Manan and Kuntana Magnar,<sup>25</sup> the existence of judicial power is inseparable from the concept of separation of powers put forward by Montesquieu, namely the existence of branches of legislative, executive and judicial powers. The separation of powers is meant to prevent the accumulation of power in one organ of power. Such accumulation can lead to abuse of power because there is no mechanism of mutual control and balance between state institutions. Therefore, in a country that claims in its constitution to be a rule of law state like Indonesia, the existence of an independent judiciary is a prerequisite for the birth of a democratic rule of law state. According to Bagir Manan and Kuntana Magnar, the independence attached to the judiciary is not only to ensure the independence of institutions and judges in carrying out their duties, but what is even greater is that with such independence the judicial power can serve as a shield against intervention attacks from the executive and legislature.<sup>26</sup>

Among the three branches of power that are most vulnerable to intervention by other branches of power is the judicial power, because

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<sup>23</sup>Ahmad Basarah, "Kajian Teoritis Terhadap Auxiliary State's," *Masalah-Masalah Hukum* Vol. 43, no. 1 (2014): 1–8.

<sup>24</sup>Asshiddiqie, "Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi."

<sup>25</sup> Bagir Manan dan Kuntana Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia Karya, Alumni*, vol. 1, 1993.

<sup>26</sup>*Ibid.*

the judiciary does not have other powers that can put pressure on other state institutions, for example to put pressure on the executive, the legislature power can use budgetary rights, oversight and legislation so that the executive wants to submit on the will of the legislature. While the judicial power does not have such power. The only judicial power is that there are decisions as institutional crowns and judge crowns. However, if these two institutions are in dispute, the two institutions must comply with the court's decision. In a modern legal state, independent judicial power is exercised by the judiciary as a state institution designated by the constitution.

Article 18 of Law No. 48 of 2009 which exercises judicial power is the Supreme Court and the judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court. In addition to the judicial structure as mentioned above, there are also other special courts in Indonesia, such as; Juvenile Justice, Commercial Court, Human Rights Court, Tax Court.<sup>27</sup> The function of the judicial power is also besides the Supreme Court and judicial bodies under it and the Constitutional Court, there are other bodies whose functions are related to judicial power. The explanatory part of Article 38 Paragraph (1) explains that the functions related to judicial power as referred to include: investigation and investigation, prosecution, implementation of decisions, provision of legal services, and dispute resolution outside the court.

The agency that carries out the function of judicial power in the aspect of inquiry and investigation is the function carried out by the Police. Therefore, it can be said that the police are part of the judiciary, including the police code of ethics commission. This is also in line with the opinion of Muh. Risnain said that the existence of a quasi-judicial institution is recognized for its position in the judicial power system as the executor of judicial power. Even though the regulation is in Law no. 48 of 2009 is still limited in existence, but in fact and has legality in the Indonesian judiciary.<sup>28</sup>

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<sup>27</sup>Rachamani Puspitadewi, "Sekelumit Catatan Tentang Perkembangan Kekuasaan Kehakiman di Indonesia," *Hukum Pro Justitia*, 2006.

<sup>28</sup>Muh . Risnain, "Eksistensi Lembaga Quasi Judisial dalam Sistem Kekuasaan Kehakiman di Indonesia : Kajian Terhadap Komisi Pengawas Persaingan Usaha."

Besides that, referring to the terms used in Article 24 paragraphs (1) and (2) of the 1945 Constitution and the Judicial Powers Law, the term used is judiciary. The judiciary referred to besides being a process is also an institution. Article 24 paragraph (1) states that "The judicial power is an independent power to administer justice in order to uphold law and justice".

The term judiciary in paragraph (1) refers to the process of upholding law and justice. Whereas in paragraph (2) "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court." The judiciary in paragraph (2) refers to an institution that has the authority to conduct judicial proceedings, namely the Supreme Court with four courts under it and the Constitutional Court.

The above is in line with Sudikno Mertokusumo's opinion stating that the term judiciary cannot be separated from court. The court is not only an institutional matter, but in the abstract, it provides justice. Rochmat Soemitro put forward three terms to describe judicial power, namely, judiciary, court and court body. The judiciary refers to the process, the court is the method, while the judiciary refers to the court institution.<sup>29</sup> According to Sjachran Basah, the term court refers to an institution that provides justice, while the judiciary refers to the process of providing justice in order to uphold the law.<sup>30</sup>

The above description, if related to the Police Code of Ethics Commission as stipulated in Police Regulation Number 7 of 2022 concerning the code of ethics and the Police Code of ethics Commission, that the authority of the commission is to prosecute violations of the Police Professional Code of Ethics. The Polri Professional Code of Ethics are norms or moral rules, both written and unwritten, which guide the attitudes, behavior and actions of Polri

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<sup>29</sup>Rustian Mushawirya, "The Tax Dispute Settlement According To Justice And Court System In Indonesia," *Nurani Hukum* 2, no. 2 (2020), <https://doi.org/10.51825/nhk.v2i2.6549>.

<sup>30</sup> Umar Dani, "Memahami Kedudukan Pengadilan Tata Usaha Negara Di Indonesia: Sistem Unity of Jurisdiction Atau Duality of Jurisdiction? Sebuah Studi Tentang Struktur Dan Karakteristiknya / Understanding Administrative Court in Indonesia: Unity of Jurisdiction or Duality," *Jurnal Hukum dan Peradilan* 7, no. 3 (2018): 405, <https://doi.org/10.25216/jhp.7.3.2018.405-424>.

officials in carrying out their duties, authorities and responsibilities in daily life. In Article 1 of Police Regulation Number 7 of 2022 concerning the code of ethics and the Police Code of Conduct Commission, there are 4 (four) types of Polri ethics, namely; a. State Ethics, b. Institutional Ethics, c. Social Ethics; and d. Personality Ethics.

The process of enforcing the police code of ethics is carried out in a simple, fast and straightforward manner. The practice of administering justice as such is a form of applying the principles of simple, fast and low cost is a practice based on universal principles. The demand for the implementation of the principle of simple, fast and low-cost justice is solely to realize efficient human rights, especially in the segmentation of justice in bureaucratic services.<sup>31</sup>

In court we generally know the terms first level trial, second level of appeal, and third level of cassation. The same thing also applies to the National Police's code of ethics commission. In the Police Code of Ethics Commission hearing there are 4 (four) levels as follows: first, the first level of the Police Code of Ethics Commission is a hearing to carry out enforcement of the Police Code of Ethics Commission against violations committed by Polri officers. The second level of appeal to the Police Code of Ethics Commission is an effort made by the perpetrator or wife/husband, child or parent of the offender who objects to the decision of the Police Code of Ethics Commission hearing by submitting an appeal request through the Secretariat of the Police Code of Ethics Commission. Third, the level of review (PK) of the decision of the Police Code of Ethics Commission which was formed within the police to review the decision of the Police Code of Ethics Commission or the Appeal of the Police Code of Ethics Commission which is final and binding.

The provisions in the Police Regulations above clearly illustrate that the Police Code of Ethics Commission's function is to prosecute alleged ethical violations committed by the Police. Such a task belongs only to the judiciary. This raises the question whether the Police Code of Ethics Commission is a judicial institution or an administrative institution. Regarding the institutional status of the Polri Code of Ethics Commission in the justice system in Indonesia, it is interesting to quote

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<sup>31</sup> Susana Andi Meyrina, "Perlindungan Hak Asasi Manusia bagi Masyarakat Miskin atas Penerapan Asas Peradilan Sederhana Cepat dan Biaya Ringan," *Jurnal HAM* 8, no. 1 (2017), <https://doi.org/10.30641/ham.2017.8.25-38>.

Jimly Assidique's opinion that the institution that carries out the function of adjudicating ethics in a broad sense is the judiciary, or at least it can be called a semi-judicial institution.<sup>32</sup>

In Law Number 2 of 2002 concerning the Police and the Police Number 7 of 2022 concerning the code of ethics and the Polri Code of Ethics Commission institutionally. The Polri code of ethics Commission is an internal part of the police. Because the presence is internal to the Police, if analyzed Article 38 Paragraph (1) of Law no. 48 of 2009 concerning judicial power that indirectly the existence of a commission on the Polri code of ethics is part of a semi-judicial judiciary.

Theoretically, to see the position or position of the Police Code of Ethics Commission in judicial power, this research will review several expert opinions regarding the boundaries of the judiciary. According to Sudikno Mertokusumo, justice is everything related to the duties of a judge in deciding cases, both civil cases and criminal cases, to maintain or guarantee compliance with the law. Rochmat Soemitro an institution is said to be a judiciary if it has the following elements; a. The existence of an abstract general binding rule that can be applied to a problem, b. There is a concrete legal dispute, c. There are at least two parties, and d. The existence of a judicial apparatus authorized to decide disputes.

Meanwhile, Sjachran Basah, the elements of justice presented by Rochmat Soemitro above need to be added with another element, namely the existence of formal law in the context of applying the law (*rechtstoepassing*) and finding law (*rechtsvinding*) *in concreto* to guarantee compliance with law materials. So, the additional element of justice to Rochmat Soemitro's opinion above Sjachran Basah gives the definition of justice is "everything related to the task of deciding cases by applying the law, finding the law "in concreto" in maintaining and guaranteeing compliance with material *law* by using the procedures set by law formal."<sup>33</sup>

Another aspect that is considered relevant for understanding the existence of Police Code of Ethics Commission within the judiciary in Indonesia is understanding quasi-judicial institutions. The term quasi-

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<sup>32</sup>Jimly Asshidique, "Memperkenalkan Peradilan Etika," *Jurnal Konstitusi Dan Demokrasi* 1, no. 1 (2021).

<sup>33</sup>Puspitadewi, "Sekelumit Catatan tentang Perkembangan Kekuasaan Kehakiman di Indonesia."

judicial institutions in Indonesia was introduced by Jimly Asshidique. According to him, the development of judicial power in Indonesia in the reform era, in addition to the growth and development of special courts, also developed quasi-court or semi-court institutions. The term quasi-court refers to institutions that have the authority to advocate and decide a case but are not actually courts.<sup>34</sup> The power of a quasi-court institution's decision is the same as a court's decision, and there are even decisions by these institutions whose decisions are *final and binding*, the same as court decisions that are *"inkracht" in nature*. With such broad authority, the existence of a quasi-judicial institution raises concerns that there will be overlap in authority with the court which has jurisdiction in the field of justice (*judicial power*).

When analyzed in depth the provisions regarding quasi-judicial institutions in Law no. 48 of 2009 above shows that this arrangement is a repetition of the provisions of Article 24 paragraph (3) of the Constitution of the Republic of Indonesia which were previously very vague. Significant developments related to the regulation of quasi-judicial institutions are listed in Article 38 paragraph (2) which regulates the criteria for an institution to become a quasi-judicial institution, namely if it has investigative and investigative powers, the prosecution. Implementation of decisions, provision of legal services and settlement of legal services outside the court. The above description shows that the existence of a quasi-judicial institution is recognized for its position in the judicial power system as the executor of judicial power. Although the arrangements are still vague in the constitution and Law Number 48 of 2009 constitutionally the existence of a quasi-judicial institution is a reality and has legality within the Indonesian judiciary.

## **2. The relationship between the Police Code of Ethics Commission and the Supreme Court in the judiciary in Indonesia**

The criminal justice system in Indonesia includes various institutions that play a role in law enforcement, including the police and the Supreme Court. The police have the main function as law enforcers, security guards and community protectors, while the Supreme Court is the highest judicial institution tasked with supervising the course of the judicial process at all levels. The relationship between the Police Code

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<sup>34</sup> Jimly Asshidique, "Memperkenalkan Peradilan Etika."

of Ethics Commission and the Supreme Court is important because these two institutions have a direct contribution to a fair judicial process.

Even though there are differences in the scope and scope of the code of ethics for judges and the National Police. However, in general, in law enforcement, both the National Police and judges as part of the criminal justice system, there is a Fair Law Enforcement Ethics which is regulated in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VI/MPR/2001 concerning the Ethics of National Life which regulates that the Ethics of Law Enforcement Fairness is a necessity for law enforcers to carry out law enforcement fairly, treat every citizen equally and not discriminate before the law, and avoid wrongful use of law as a tool of power and other forms of legal manipulation. Then the code of ethics in each professional institution is specifically regulated internally by each institution/profession. It must be recognized that each state institution and/or profession has a different code of ethics and scope. However, there are also similarities as explained in the table below.

**Table 1. Similarity in the Code of Ethics for Judges and Police**

| Number | Basic principles of the Code of Ethics and Code of Conduct for Judges | Principles of the Police Code of Ethics |
|--------|---|---|
| 1      | Behave Fairly   | Professional                            |
| 2      | Behave Honestly   | Exemplary                               |
| 3      | Behave wisely and wisely,   | Honest                                  |
| 4      | Independent   | Discipline                              |
| 5      | High Integrity  | Integrity                               |
| 6      | responsible   | Fair law enforcement                    |
| 7      | Upholding Self-Esteem   |   |
| 8      | High Discipline   |   |
| 9      | Behave Humbly   |   |
| 10     | Professional  |   |

**Sumber:** Republic of Indonesia State Police Regulation Number 7 of 2022 concerning Professional Code of Ethics and Commission Code of Ethics for the State Police of the Republic of Indonesia and Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number: 004/KMA/SKB/IV/2009-02/SKB/P.KY/ IV/2009 dated April 8 2009 concerning the code of ethics and behavioral guidelines for judges.



To see in depth the relationship pattern of the Police Code of Ethics Commission in the Judicial Power System in Indonesia, of course it must be seen from a functional aspect. If you look at the pattern of power relations between the Code of Ethics Commission and other judicial power institutions vertically and horizontally, of course they will never meet.

Institutionally, as previously explained, the exercise of judicial power is clearly regulated in the 1945 Constitution and the Judicial Power Law. So, if analyzed institutionally between the Police Code of Ethics Commission and the Supreme Court there is no institutional relationship. Because in the 1945 Constitution, Article 24 and Article 38 of Law no. 48 of 2009 concerning judicial power that apart from the Supreme Court and the judiciary under it and the Constitutional Court, there are other bodies whose functions are related to judicial power. Then the other agencies referred to are explained Explicitly in the elucidation section of Article 38 Paragraph (1) that What is meant by "other agencies" includes the police, prosecutors, advocates, and correctional institutions.

In the statutory regulations, it is expressly and officially stated that the Police Code of Ethics Commission carries out the function of enforcing violations of the police code of ethics. So, if you look at the function of the police code of ethics commission, it has the authority and working mechanism which is also adjudicating like a judiciary. Based on the provisions of the law, these institutions are given the authority to examine and decide on a dispute or case of violation of ethics with a decision that is final and binding *as* a court decision that is "*inkracht*" in general. All of this is intended to provide justice for parties who are harmed by a system of decision making in the name of state power.

In the 1945 Constitution, judicial power is an independent judicial power to administer justice in order to uphold law and justice. Meanwhile in Law no. 48 of 2009 concerning judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution, for the sake of the implementation of the Republic of Indonesia. And functions related to judicial powers are functions that carry out the functions of investigation and investigation, prosecution, implementation of

decisions, provision of legal services, and settlement of disputes outside the court.

The phenomenon of the proliferation of quasi-judicial institutions in the Indonesian constitutional system is something new, so the theoretical building on this matter is still very minimal. By citing the considerations of the Texas Court's decision in the case of *Perdue, Brackett, Flores, Utt & Burns versus Linebarger, Goggan, Blair* as cited by Jimly Assidique in his paper, the author takes several criteria for an institution that is categorized as quasi-judicial, namely: The power to exercise judgement and discretion;<sup>35</sup>

- 1) The power to hear and determine or to ascertain facts and decide;
- 2) The power to make binding orders and judgements;
- 3) The power to affect the personal or property rights of private persons;
- 4) The power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and
- 5) The power to enforce decisions or impose penalties.

According to Muh. Risnain, the position of quasi-judicial institutions in the judicial power system is constitutionally part of judicial power in Indonesia as regulated in Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Law Number 48 of 2009 concerning Judicial Power which recognizes that quasi-judicial institutions are institutions. the executor of judicial power, even though he carries out the function of judicial power, is quasi-judicial but does not have an institutional hierarchical relationship with the Supreme Court, only a functional relationship.<sup>36</sup>

Based on the description above, the relationship that is built between Police Code of Ethics Commission and the Supreme Court is a functional relationship. This is in line with Rochmat Soemitro's opinion that an institution is said to be a judiciary if it has elements. First, there is an abstract general binding rule that can be applied to a problem. Second, there is a concrete legal dispute. Third, there are at

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<sup>35</sup> Jimly Asshiddiqie, "Fungsi Campuran KPPU sebagai Lembaga Quasi-Peradilan," in *Prosiding Seminar Penegakan Ketentuan Hukum*, 2010.

<sup>36</sup> Risnain, "Eksistensi Lembaga Quasi Judisial Dalam Sistem Kekuasaan Kehakiman Di Indonesia : Kajian Terhadap Komisi Pengawas Persaingan Usaha."

least two parties. Fourth, the existence of a judicial apparatus authorized to decide disputes. The relationship between the Police Code of Ethics Commission and the Supreme Court in the judicial context can be seen from the following aspects:

**First**, Coordination in Law Enforcement. The relationship between these two institutions collaborates through their respective roles in ensuring that law enforcement is carried out fairly and transparently. When there is an ethical violation by a member of the police that has an impact on the judicial process, the results of the Code of Ethics Commission's decision can be used as a reference in the legal process decided by the court. **Second**, monitoring the integrity of the judicial process the Supreme Court as the highest supervisor in justice often refers to evidence and information collected by police officers. Therefore, the integrity of the police greatly influences the credibility of court decisions. This relationship creates an obligation to maintain high ethical standards at both institutions.

**Third**, Synergy in Legal Reform. That in an effort to improve the justice system, the Police Code of Ethics Commission and the Supreme Court can collaborate through joint coaching programs or exchange of information related to ethical violations. This step is important to build a judiciary that is free from the practices of corruption, collusion and nepotism (KKN). **Fourth**, Criticism and Challenges. The relationship between the police and the Supreme Court also faces challenges, especially in terms of the independence of each institution. There is a potential conflict of interest if one party is deemed not to carry out its functions neutrally. In addition, public perception of the integrity of these institutions is often a major challenge in building public trust.

So the relationship between the Police Code of Ethics Commission and the Supreme Court plays a vital role in maintaining the integrity of the justice system in Indonesia. Both must coordinate by prioritizing the principles of transparency, professionalism and accountability. This synergy not only strengthens the legal foundation but also has a positive impact on public trust in law enforcement institutions in Indonesia.

Based on the description above, the additional elements of justice to Rochmat Soemitro's opinion above, Sjachran Basah provides a definition of justice as "everything related to the task of deciding cases by applying the law, finding the law "in concreto" in defending *and*

guaranteeing the observance of material law by using procedural means established by formal law. So functionally the relationship between the police code of ethics commission and the Supreme Court is related to the function of the police code of ethics commission which adjudicates ethical violations.

## Conclusion

Based on the description of the discussion above, it can be concluded that the position of the Police Code of Ethics Commission in the judicial power system is constitutionally part of the judicial power in Indonesia as stipulated in Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 38 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power has acknowledged that those who carry out the function of judicial power are not only the courts but other bodies that carry out the function of judicial power such as the National Police in which there is a Police Code of Ethics Commission which carries out the function of adjudicating Polri ethical violations.

Even though the police code of ethics commission has been recognized as carrying out the function of judicial power, however, the police code of ethics commission does not have an institutionally hierarchical relationship with the Supreme Court. However, the relationship that is built between the two is a functional relationship. Therefore, this research recommends that in the future it is necessary to think about the existence of ethical institutions established like the judiciary in general, so that their position and relationship with the Supreme Court get clear juridical recognition.

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