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Violation of the Professional Code of Ethics for Judges and its Consequences for Judicial Administration

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Abstract

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The phenomenon of violation of the judge's code of ethics in the practice of the judiciary is a serious problem. The purpose of this research is to find out if there is a violation of the professional code of ethics of the judge, and its impact on the administration of justice. The method used in this writing is normative juridical. The result of the discussion in this paper is that violations of the professional code of ethics owned by judges have led to practices of collusion, corruption and nepotism. All of these things are caused because there are gaps for actors to make offers, provide opportunities and weak supervision. The suggestion given by the author is that there are efforts to improve the judge's internal self and external improvements, namely in the form of increased supervision of judges through the judicial commission.



A. Introduction

One of the parameters a rule of law success is the existence of a law enforcement agency that is able to carry out its function in the existing legal rules in a country as a form of legal certainty and ensures protection for all legal subjects as a point of unbiased legal justice. The functioning of law enforcement depends on the good or bad of legal professionals who carry out their profession.¹

Indonesia as one of the law states that has law enforcement agencies consisting judiciary. Judiciary is one of the implementing agencies for the law enforcement function organized by legal professionals (judges) that are responsible for mandates on basic ideas regarding institution establishment. Judicial power as a judicial institution is implemented by the Supreme Court alongside the Constitutional Court as mandated in Article 24 of the 1945 Constitution. Judicial power is an independent institution from all interference with political power, which is implemented in Law No. 48/ 2009 on Judicial Power. The implementation of this power is carried out by a judge and his staff, a judge is not only required to have intelligence from a scientific perspective and to interpret laws and regulations, but judges are required to have integrity and good personality, be honest, fair and professional in carrying out their duties.

Problem occurs if a judge is unable to carry out this function, which has become his duty which is more due to a decrease in the morality of the judges themselves (violation of the judicial code of ethics). A number of legal rules were made and added by a supervisory agency for violations ethical code and enforcer behavior. Law is expected to reduce corrupt behavior in this country. However, the law needs to be assisted by law enforcers' morality increase. Supervision based on *ruhiyah* (spiritual) is very necessary in the administration of justice, because the legal and judicial systems that does not acknowledge God causes actions with no considerations between good-bad, right-wrong and haram.²

Several cases resulting from judges' moral degradation are currently rampant, and this has a negative effect on public confidence in the clean judiciary process as proven by the high number of public dissatisfaction and distrust of judges' performances. The face of the judiciary is very much determined by the attitude and behavior of the judge, if the judge's decision does not reflect justice then the judge will be affected and if it does reflects justice then the judge will likely receive praise.³

In 2013, it was revealed that 86 percent of Indonesian respondents rated law enforcement agencies as the most corrupt institution.⁴ Meanwhile, the results of other surveys conducted by Kompas R & D showed that 68.7 percent of judges were not independent in deciding a case.⁵

The facts above illustrate poor performance of law enforcers in general, especially judges because there is a correlation between efforts to enforce a clean judiciary with the extent of a

¹John Kenedi, "Profesi Hukum Dan Kode Etik Profesi," *El-Afkar: Jurnal Pemikiran Keislaman Dan Tafsir Hadis*, vol. 5, June 27, 2016, <https://doi.org/10.29300/JPKTH.V5I1.1120>.

²Saharuddin Daming, "Peluang Dan Tantangan Perwujudan Sistem Peradilan Yang Bersih Dan Berkualitas," *YUSTISI* 3, no. 2 (September 1, 2016): 39, <http://150.107.142.43/index.php/YUSTISI/article/view/1104>.

³Samud Fakultas et al., "Kode Etik Profesi Hakim Menurut Hukum Islam," *Mahkamah : Jurnal Kajian Hukum Islam*, vol. 9, March 31, 2015, <https://doi.org/10.24235/MAHKAMAH.V9I1.422>.

⁴Yustinus Paat, 27 Juli 2015, ICW : Praktik Suap Masih Marak di Sistem Peradilan Indonesia, <https://www.beritasatu.com/nasional/294107-icw-praktik-suap-masih-marak-di-sistem-peradilan-indonesia> dikutip tanggal 11 Juni 2020.

⁵KOMPAS, 19 April 2016, Jajak Pendapat Kompas : Reformasi Hukum berjalan Setengah Hati, <https://nasional.kompas.com/read/2016/04/19/09043131/Jajak.Pendapat.Kompas.Reformasi.Hukum.Berjalan.Setengah.Hati.?page=all> dikutip tanggal 11 Juni 2020.

judge's morality. Law enforcers who should be able to solve people's problems are even dragged into issues.

A strong law enforcement agency will be meaningless if it is not balanced with great quality human resources that are superior in professionalism and morality because these two variables determine the extent to which legal justice can be achieved. Judges who are respected are the ones who hold their integrity and quality in the rule of the law, as democracy's conditions to grow and develop based on the 1945 Constitution.⁶

B. Discussion

I. Ethical Code of Judge Profession

Professional code of ethics is an ethical product that is produced based on the application of ethical thinking to a profession. Professional code of ethics has flexibility in accordance with the development of science and technology. Professional code of ethics only applies to the profession itself and binds its members. Judge code of ethics as the initial goal for judges in carrying out their duties within the scope of the judiciary. In principle, the judge's code of ethics contains moral values which serve as guidelines for professional judge behavior, namely freedom, justice and honesty which become a single unit that is in accordance with ethical values.⁷ Therefore, the code of ethics is not only written but also reflected in the attitudes and behavior of the judges. The attitude and behavior of judges required in professional development is a trustworthy character or person because trust is an absolute requirement for a member of the profession.⁸

Soepardan stated that the code of ethics is a reflection of moral decisions and is used as a standard in deciding and taking professional actions.⁹ Meanwhile, Sumaryono said that a code of ethics must be formulated in writing with the aim of being a means of social control, preventing interference from other parties and preventing misunderstandings and conflicts.¹⁰ In the ethics of a profession, there are general principles that apply to a profession which consists of three things, namely (1) the form of responsibility for the results of the work and the consequences of the results and benefits of the work that has been done; (2) justice, the principle that asks us to give what is due to someone; (3) Autonomy, which is to give freedom to run the wheels of professional organizations properly.¹¹ Suhrawadi K. Lubis expressed his opinion that legal profession ethics aims to ensure that law enforcers have critical abilities, namely:¹²

- 1) Ethical sensibility, highlights on law professionals' ability to decide conditions or situations that have ethical interests
- 2) Ethical reasoning, highlights on the ability to think regarding related utensils that are the entirety of ethical profession education.
- 3) Ethical conduct, highlights on behaviour of law professions in making fair and wise decisions.

⁶Ismail Rumadan, "Membangun Hubungan Harmonis Dalam Pelaksanaan Fungsi Pengawasan Hakim Oleh Mahkamah Agung Dan Komisi Yudisial Dalam Rangka Menegakkan Kehormatan, Keluhuran Dan Martabat Hakim," *Jurnal Hukum Dan Peradilan* 5, no. 2 (April 16, 2018): 209, <https://doi.org/10.25216/jhp.5.2.2016.209-226>.

⁷MH. Aunur Rohim Faqih, "Kode Etik Dan Pedoman Perilaku Hakim," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 3, no. 1 (March 27, 2017), <http://202.0.92.5/syariah/inright/article/view/1261>.

⁸Suhri Hanafi, "Problematika Penegakan Hukum Dan Etika Profesi Di Indonesia: Analisis Dengan Pendekatan Nilai-Nilai Ajaran Islam," *HUNafa: Jurnal Studia Islamika* 6, no. 2 (August 15, 2015): 233, <https://doi.org/10.24239/jsi.v6i2.136.233->

⁹Nuraini Nuraini, "Etika Pustakawan Dengan Organisasi Profesi Pada Kantor Perpustakaan Daerah Kabupaten Sleman," *JUPI (Jurnal Ilmu Perpustakaan Dan Informasi)* 3, no. 2 (November 1, 2018): 249-56, <https://doi.org/10.30829/jipi.v3i2.3042>.

¹⁰ Abdulkadir Muhammad, *Etika Profesi Hukum*, Bandung: Citra Aditya Bakti, (2001), pg.77.

¹¹ R. Rizal Isnanto, *Etika Profesi*, Semarang: Fakultas Teknik Universitas Diponegoro, (2009), pg.11-12.

¹²Suhrawadi K. Lubis, *Etika Profesi Hukum*, Jakarta: Sinar Grafika, (1994), pg.14-15

4) Ethical leadership, highlights professionals' behaviour in applying their leadership.

The same provisions was also expressed by Melfa Deu. With code of ethics, legal professionals are expected to have self-quality as a reference for judgment and moral attitudes in their duties, which is honesty.¹³ In 2009, the Supreme Court of the Republic of Indonesia alongside with the Judicial Commission issued a code of ethics and guidelines for judge behavior in a joint regulation.¹⁴ According to the Law on the State Civil Apparatus or *Aparatur Sipil Negara* (ASN), judges are ASN as state officials in the scope of all judicial bodies. The judge's code of honor covers three types of ethical functions, first, ethics as a civil servant; second, ethics as functional law enforcement official, and third, ethics as a member of society.¹⁵ Therefore, judges in carrying out their duties must uphold professional and professional ethics, because professionals without ethics are illustrated as "free wings" (without control) and vice versa. Ethics without professionalism paralyze the wings (no progress).¹⁶ Judges have the basic principles of a code of ethics and guidelines for judge behavior which are implemented in ten rules, namely: fairness, honesty, wisdom, independence, integrity, responsibility, dignity, discipline, humility and professionalism.¹⁷

In carrying out their duties and positions, the judge takes a professional oath called *Tri Prasetya Hakim*. As a judge, they must uphold dignity and code of ethics in respect of their professions as judges, as are willing to accept sanctions if they violate their oath. Judges are the main actors in the judicial process who must maintain integrity, conscientious, moral and professional sensitivity in upholding law and justice.¹⁸

2. The Practice of Judicial Administration in Indonesia

Judiciary in Indonesia is an implementation or concrete manifestation of judicial power implementation in the Republic of Indonesia. Theoretically and practically, the judiciary in Indonesia is bound by two legal norms at the same time in its application which are positive legal norms in Indonesia which are positive norms that regulate the existence of Indonesia's court and unwritten legal norms in the society as source of value for judiciary's existence in Indonesia that was born from the politic-legal struggles in Indonesia.¹⁹ As stated in Article 4 Paragraph (2) of Law No. 48/2009 2009, the judiciary in Indonesia is conducted in a simple, fast and low cost.

There are four principles applied for the judiciary to be respected and trusted by the community. These principles are integrity and independence, compliance, respect for law, and impartiality. If these four principles are not implemented, it is almost impossible for the public to respect or trust the judiciary.²⁰ Sjachran Basah argues that judiciary is everything related to the task of deciding cases in which the application of legal discovery must be in

¹³Melfa Deu, "Kode Etik Hakim Dan Komisi Yudisial Di Indonesia 1 Oleh: Melfa Deu 2," *LEX ET SOCIETATIS*, vol. 3, February 13, 2015, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/7069>.

¹⁴ Peraturan Bersama Mahkamah Agung Republik Indonesia dan Komisi Yudisial Republik Indonesia Nomor 02//PB/MA/IX/2012 dan 02/PB/P.KY/09/2012 tentang Panduan Penegakan Kode Etik dan Pedoman Perilaku Hakim.

¹⁵Abdulkadir Muhammad,...*op.cit.*, pg.101.

¹⁶Eman Suparman, "Menolak Mafia Peradilan: Menjaga Integritas Hakim-Menyelaraskan Perbuatan Dan Nuraninya," *Jurnal Hukum & Pembangunan* 47, no. 1 (March 31, 2017): 61, <https://doi.org/10.21143/jhp.vol47.no1.135>.

¹⁷ Keputusan Bersama Ketua Mahkamah Agung RI dan Ketua Komisi Yudisial RI Nomor 047/KMA/SKB/IV/2009 dan 02/SKB/P.KY/IV/2009 tentang Kode Etik dan Pedoman Perilaku Hakim.

¹⁸Aztri Fithrayani Alam, "Efektivitas Pelaksanaan Tugas Komisi Yudisial Indonesia Penghubung Dalam Mewujudkan Peradilan Bersih," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 5, no. 1 (2018): 216, <https://doi.org/10.24252/jurisprudentie.v5i2.5813>.

¹⁹ A. Mukti Arto, "Redefinisi fungsi pengadilan sebagai penegak hukum dan keadilan", *Majalah Varia Peradilan* (Nomor 267, 2008), pg.27.

²⁰Ridarson Galinggng, "Peran Komisi Yudisial Dalam Membangun Peradilan Yang Bersih Dan Berwibawa," *ADIL: Jurnal Hukum*, vol. 7, 2016, <https://doi.org/10.33476/AJL.V7I1.329>.

accordance with the rules of material and formal law.²¹ In order to answer the question of how the court's main duties and functions are ideal, it turns out that there is not yet a single systematic collection available to explain it, but the values must be reviewed in several laws and regulations of the Republic of Indonesia. These sources are then compiled and systematized into a theoretical paradigm of justice that is philosophical and ideal, but must remain pragmatic, which is easy to practice and enjoyable.

This discussion begins with the provisions of Article 24 Paragraph (1) of the 1945 Constitution that the main task of judicial power is law enforcement and justice and other functions as legal justice services as well as a deterrent function and peacemaker for the parties in dispute. Regarding these two functions, it needs special attention.

Judicial institutions have three functions in resolving cases submitted, (1) to function as law enforcement and justice, (2) as servants of law and justice and as mediators, (3) and restorers of peace. The three functions above are the functions of the religious court as a whole (holistically) which must be carried out simultaneously and in balance. Law enforcement and justice are the functions of the court as a judicial institution. The role of the judiciary is very important, because it determines the continuity, progress, benefit, advantages for an organizational judicial power which, according to Montesquieu, has 1/3 (one third) of the weight of influential power in the state.²² Law enforcement and justice which are the functions of courts in Indonesia must be based on applicable law.

The judiciary guarantees human rights based on Pancasila, including:

- 1) Courts adjudications must be based on law and not discriminatory.
- 2) Simple, fast, and low cost justice.
- 3) No one can be brought before a court other than those prescribed by law.
- 4) A person who is convicted of a crime must be proven before the court by means of proof which is valid according to law, has the assurance that someone who is deemed to be responsible has been guilty of the acts they are accused of.
- 5) Arrest, detention, search, and confiscation, must be assisted with a written order by a legal authority in matters and prosecution under the regulated by law.
- 6) In the event that a person is suspected, arrested, detained, prosecuted, and /or before a court, they must be presumed innocent before a court decision has permanent legal force.

3. Violation againts Judge Profession's Ethical Code Value Impact towards Judicial Administation

Judges are the last door of a justice product. A long judicial process related to the search for justice will end in a judge's decision. This decision binds all parties not only to the case but also those with an interest in the case. Good judgments are a reflection of justice and truth, which can benefit all elements.²³

In a judge's individuality, the hope of justice is expected by seekers of justice (justiciable) as the main task and function of the judge. According to R. Bastuti Ridwan's opinion, legal justice is the main goal of justice seekers and the main breath of the judge.²⁴ Based on this hope, enforcement of the judge's professional code of ethics is a milestone for

²¹ Sjachran Basah, *Mengenal Peradilan di Indonesia*, Jakarta: Raja Grafindo Persada, (1995), pg .9.

²² Tim Redaksi, "Kepemimpinan Pengadilan", *Majalah Varia Peradilan* (Nomor 267, 2008), pg.51.

²³ Apriyanto and W Ajadan, "Eksaminasi Publik Dalam Rangka Peradilan, Mewujudkan Bersih, Yang Bertanggung, Dan Dalam, Jawab Dan, Memeriksa Perkara, Memutuskan," *Lex Et Societatis*, vol. 7, July 30, 2019, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/24727>.

²⁴ Judicial Watch Indonesia, Oktober 2007, Dideklarasikan Korupsi Hukum Masalah, <http://www.kompas.com/> dikutip 20 Mei 2020.

justice that must be upheld. Currently, the conditions of our judicial administration are not considered a clean process.²⁵

The role of judges in the search for justice is balanced with the consequences if the performance of their duties is not in accordance with the applicable code of ethics and regulations, because great power is always followed by great responsibility. Violation of judges' ethical code in a judicial process in Indonesia is a common image for every trial process in court. According to Siti Zulaikha's opinion, there are many violations of the professional code of ethics of judges because so far the judges have not lived up to and implemented the professional code of ethics in their profession and the values contained in the code of ethics cannot be applied.²⁶

One of the judge's professional code of ethics' provision is related to the independence of judges. This is the most important thing for a judge, especially in carrying out their function as a law enforcer. In the ethics of performing the duties of a judge, it is stated that a judge when carrying out his duties as a law enforcer must be free from any influence, including from any influence outside themselves that can affect his decision.²⁷ However, at the implementation stage it is not an easy thing to ignore the execution of a judge's duties from external influences. Although in principle they have freedom, the freedom of judges is not absolute because in carrying out their profession it is limited by Pancasila, laws, statutory regulations, the will of the parties, public order, morality, government systems, political systems and economic systems.²⁸

There are many regulations of judge's legal positions that is determined by the political process, this can affect the judge's decision, if the judge is in a case that is related to the political interests of a certain ruler.²⁹ If the judge has lost his independence as a result of political pressure related to his position as a judge, the resulting justice will be far from objective but tends to be political. The judicial power must be independent from political power so that the implementation of a clean and fair trial motivates he judiciary to oversee all government actions.³⁰ Not to mention that judges must be able to maintain their independence as a result of leadership intervention and many more are involved through other extra-judicial proceedings, all of which can affect the independence of the judge's decision.

The damage judicial process' image that has occurred so far is also the result of judges' disobedience to the ethics of justice seeking services. In such ethic,s it is explicitly stated that judges must not take sides, have no sympathy nor antipathy to the parties in a case.³¹ This is something that happens very often in a judicial process, it is said most often because this violation is related to both parties, namely the litigant and the judge himself. The practices of corruption, collusion and nepotism are variants caused by the existence of offers, weak supervision and also the disobedience of judges to the code of ethics. This has become a cultural thing in amidst of society. Some people think that justice in the context of court decisions can be made with the power of money. If this practice is also entrenched in the

²⁵ Judicial Watch Indonesia, Oktober 2007, Dideklarasikan Korupsi Hukum Masalah, <http://www.kompas.com/> dikutip 20 Mei 2020.

²⁶ Siti Zulaikha, "Etika Profesi Hakim Dalam Perspektif Hukum Islam," *AL-'ADALAH* 12, no. 1 (2014): 89–102, <https://doi.org/10.24042/ADALAH.V12I1.177>.

²⁷ Abdulkadir Muhammad,...*op.cit.*, pg.102.

²⁸ Dewi Margareth Kalalo, "Eksistensi Komisi Yudisial Terhadap Pelaksanaan Kode Etik Profesi Hakim," *LEX CRIMEN*, vol. 3, February 19, 2014, <http://lawriflaksana.blogspot.com/2010/06/etika->.

²⁹ R. Bastuti Ridwan,...*op.cit.*, pg.38.

³⁰ Fontian Munzil, Imas Rosidawati Wr, and dan Sukendar, "Kesebandingan Pidana Uang Pengganti Dan Pengganti Pidana Uang Pengganti Dalam Rangka Melindungi Hak Ekonomis Negara Dan Kepastian Hukum 1," *Jurnal Hukum IUS QUIA IUSTUM*, vol. 22 (Kesebandingan Pidana, 2015), <https://journal.uui.ac.id/IUSTUM/article/view/4606>.

³¹ Abdulkadir Muhammad,...*Op.cit.*, pg.103.

profession of judges, then the independence of the judges will disappear and their decisions certainly do not reflect justice but only injustice.

The practice of violations in the form of collusion or nepotism is a challenge as well as an opportunity for judges to prove themselves professionally. Judges are required to be able to change the cultural paradigm of the people who recognize court as something that can be intervene. Public legal awareness will only arise if the practice of court administration, especially judges, can provide a lesson that leads the community to believe in the emergence of justice through the judicial process.

The number of violations of judges ethical code in the administration of the judiciary not only injures the image of the court as a holy institution but also the image of the judge itself. According to Sahlan Said, a judge at the Magelang District Court, judges are the only job that represents God, because the authority given is not only imprisoning someone but also taking someone's life.³²

Dependence and low integrity of judges results in litigating parties in seeking justice to suffer losses. As long as the judicial process runs well, a fair and wise judge's decision will be obtained. The judge's decision will be felt differently by justice seekers because one party's dissatisfaction will arise. Therefore the decision is something that is felt relative to one of the parties. But whatever the circumstances, moral integrity, objectivity and professional attitude are things that must be in the person of the judge.³³

The enforcement of the professional ethics of judges is intended to ensure that the administration of justice reflects noble values and is far from bad values. Failure to adhere to the judge's code of ethics results in a very corrupt judicial process. Improvement of the justice system must be carried out gradually, because the people do not know about the legal system, especially the current justice system.³⁴ Judicial reform of improved and clean judiciary must begin with upholding the judges' code of ethics as those who know the law well. This is also due to the fact that improving the justice system also lies not in its regulation but in its implementation. Implementation is the beginning of a virtue carried out in the duties of a judge. Judges as real humans also need supervision in upholding professional ethics. With the enforcement of the professional code of ethics for judges, it must have an impact on public awareness and obedience to the law.

C. Conclusion

Based on the above discussion, it can be concluded that due to violation the judge professions ethical code's implementation, it lead to practices of corruption, collusion and nepotism. In addition to these effects, the violation of the code of ethics carried out by the judges raises the presence of offers from parties who wish to violate the law, and could become an opportunity for the perpetrators. One of the factors is the lack of supervision for judges who have not lived up to and implemented a professional ethical code. The enforcement of judge professional ethics is intended so that the administration of the judiciary reflects noble values and is far from values that can damage the judicial system. Failure to adhere to the judge's code of ethics results in a very corrupt judicial process. If this practice becomes entrenched amidst of the judge's profession, then the independence of the judge will disappear and the decision certainly does not reflect justice but only injustice. The practice of

³² R. Bastuti Ridwan,...*Loc. Cit.*, pg.38.

³³ *Ibid.*, pg.39.

³⁴ Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan Dalam UUD 45*, Yogyakarta : FH UII Press, (2003), pg.215.

violation in the form of collusion or nepotism is a proof challenge for judges to prove themselves professionally in order to change the paradigm of society.

As for the suggestions that can be given in relation to this research, it is necessary to make two improvements for judges, namely internal improvements, which are a process of self-awareness of judges of their noble duties. Therefore, the code of ethics can function properly. External improvements regarding the supervision carried out on judges so that a clean judiciary does not become a mere slogan.

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