

JUDICIAL ETHICS VIOLATIONS: LEGAL ASPECT AND THE ROLE OF JUDICIAL SUPERVISION

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Abstract

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This research investigates judicial ethics violations in Indonesia and suggests remedies for the problem. It aims to understand the types and causes of these violations and inform potential legislative changes. The research methodology employed is a combination of qualitative and descriptive approaches. The study analyzes judicial commission court decisions on ethics violations by judges and conducts interviews with officers of the Judicial Commission of Indonesia. This approach allows for a thorough examination of the trends in ethical violations and the contributing factors. The main findings of the paper highlight the various forms of ethical violations, including lack of professionalism, discipline, fairness, honesty, and integrity. The research identifies factors such as intervention by court leaders, a culture emphasizing authority, lack of independence in family-related cases, and inadequate knowledge and culture of upholding professional principles as contributing to these violations. The conclusion emphasizes the need to strengthen external supervision by the Judicial Commission and to require the Supreme Court to obtain recommendations from the Judicial Commission before promoting judges. The paper highlights the relevance of its findings in informing potential amendments to legislation and promoting transparency, accountability, and ethical conduct among judges.

Keywords: Violation, Professional Ethics, Supervision, Judges

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1. INTRODUCTION

One of the serious problems in Indonesia's judiciary since its official establishment on 18 August 1945 is the widespread practice of judges violating the Code of Ethics and Code of Conduct for Judges. This is true notwithstanding a series of amendments to the 1945 Constitution and relevant legislation and the establishment of the Judicial Commission (Widjojanto, 2006), which subject judges to rules and procedures regarding judicial supervision, code of ethics, and conduct, as well as sanctions. Ethical violations keep on happening and do not seem to

cease anytime soon. Common ethics violations include bribery, gratification, meeting with one of the parties of a case, conflict of interest in the handling of a case, gambling, narcotics abuse, unlawfully putting off trials (Criminal Procedural Law No. 8, 1981, Article 154 paragraph (3), Article 203 paragraph (3) letter (C), and Article 223 paragraph (1) of), communicating with a litigant, and meeting the advocate of a party of a case. Such ethics violations by judges also take place in the Constitutional Court. Since its establishment in 2004, four judges have been found guilty of ethical breach. Two were arrested in action by

the Corruption Eradication Commission (CEC) for having received bribes in relation to ongoing proceedings such as the case of Muhammad Akil Mochtar and Patrialis Akbar (Dressel & Inoue, 2018; Hendrianto, 2016; Lailam, 2020). One was found guilty of ethical violations and resigned thereafter (Arsyad Sanusi case), and the other was found guilty, yet remains in the post as a judge of the Constitutional Court until today.

This begs a question: What causes such ethical violations? Can it be the independence of the judiciary from the executive (Article 11 Paragraph (1) of Law No. 14 of 1970 on Basic Provisions of Judicial Power) and the fact that the Supreme Court lies at the highest level of the judicial hierarchy, granting judges unlimited freedom in exercising their authority? Is it the non-transparent, non-accountable, and uncompetitive system of recruiting judges? Is it the internal and external supervisory institutions that do not function optimally? Or is it the sanctions that fail to produce deterrent effects? The same questions can be posed regarding the judiciary of the Constitutional Court. Why would a constitutional judge, supposedly a guardian of the Constitution and the state ideology, commit ethical violations? Is it caused by low salaries? Poor integrity on the part of judges? Nonexistent institutional control? A weak code of conduct? Or a flawed system of recruiting constitutional judges?

Until now, research specifically examining the causes of ethical violations by judges in Indonesia remains very limited. Although there have been several studies discussing this issue in general, no research has specifically explored the factors underlying judges' ethical violations. The limitations of this research create a need for more in-depth analysis to understand the root of this problem. This present study, in particular, aims to understand the forms of professional ethics violations by judges, identify their causative factors, and explore the roles of the Supreme Court, the Constitutional Court, and the Judicial Commission in exercising their roles in ethics enforcement and supervision of judges. The answers to these problems will provide us with a full picture of this legal catastrophe of ethics violations by judges. It is noteworthy that no research specifically studying the causes of violations of professional ethics by judges has ever been conducted until today.

The theoretical framework applied in this research relates to legal theory, professional ethics, and the principles of good governance. In identifying the factors that cause ethical violations by judges, the concepts of judicial independence, transparency, accountability, integrity, and effective supervision serve as relevant theoretical foundations. This research holds high relevance in the context of improving the justice system in Indonesia. By understanding the root causes of ethical violations by judges, this research can provide valuable insights for policymakers, legal practitioners, and supervisory institutions to formulate more effective strategies for preventing and addressing ethical violations in the judicial environment.

The structure of this paper is as follows. Section 2 reviews the relevant literature. Section 3 analyzes the methodology that has been used to conduct empirical research in this study. Section 4 explains the results of the research analysis and

discussion. Section 5 outlines the conclusions of the research findings as well as acknowledges the limitations of the study and suggests future research directions.

2. LITERATURE REVIEW

Humans have inherent moral values that they use as a guiding compass in running their lives as personal and social beings. Every individual has reasons that lead to acting responsibly in intellectual and social behavior. Humans desire to have so-called values and to reach the ultimate end of life and happiness (Hakim, 2010). They tend to approach the good and avoid the bad. With their inherent good character, a person — as a social being — has the capacity to do good toward other humans and nature, and to act well in carrying out their roles and responsibilities in various aspects of social life. It is for this reason that humans would naturally respond negatively, verbally, or physically, to bad conduct by another human. Kindness thus becomes the norm or rule imposing limits, assessing, and determining the merits of all aspects of human actions. Therefore, some consider ethics as the principle of the world governed by moral imperatives (Marwiyah, 2015), which validate, guide, and limit professional behavior. It speaks about what humans should do, what is right, what is good, and what is correct (Prasetyo & Tanya, 2011).

Ethics is a branch of philosophy or a part of philosophical study. Ethics and the professional ethics of judges can be considered both a science and a system of value (Birhane, 2021). If ethics is understood as a professional code of ethics applied in a certain profession, it can thus be considered a system of value. If ethics is learned and analyzed in a systematic, methodological, and objective manner to find the rationales behind the moral reasons of the system of value in question, ethics is — in this respect — a discipline or a part of the science of philosophy (Carrillo, 2020; Shidarta, 2009). Ethics can be divided into two categories, namely general ethics and specific ethics (Marzuki, 2017; Suseno, 1991). The former deals with moral principles, definitions, and the function of ethics, freedom, responsibility, and conscience (Roszkowska & Melé, 2021). The latter deals with the interplay between such moral principles and personal or interpersonal life. The core question of specific ethics is, how should I act in a certain context? Or how should a certain context be organized to help individuals achieve their ultimate goodness?

Legal professionals are categorized as normative ethics, not descriptive ethics, which are analytical in nature and merely serve to depict one's behavior or action without giving judgment (Shidarta, 2009; Wendel, 2019). Normative ethics affirms a clear distinction between good and not good, then passes judgment on certain behaviors or actions of a person having the (legal) profession. A legal professional should not only have an argumentative conscience regarding the moral principles of their profession but should also have the courage to act on such principles, as instructed by the code of ethics established by the organization of the profession (Bernacchio, 2019). A legal professional offers services through knowledge, experience, and technical competence in law; and

possesses a unique character reflected by the dominant and authoritative position relative to society. It is this dominant and authoritative position that renders a moral framework necessary as a tool to control the conduct of legal professionals, to build trust on the part of society, and to exercise enforcement measures against organizations belonging to a legal profession. The integrity of a legal professional is the biggest factor in whether they would exercise their dominant and authoritative position in the right manner. A good exercise of such power will necessarily benefit the client, and a bad exercise of this power will do exactly the opposite.

The above assertion proves the urgency of establishing professional ethics, despite the already existing moral, cultural, religious, and belief systems in society. In defending the same, Suseno (1991) argued for the following reasons: 1) we live in an increasingly pluralistic world, including regarding moral standards, such that we naturally become confused about which direction to follow; 2) modernization has brought significant changes to the structure of needs and societal values, which eventually challenges traditional moral perspectives; 3) various forms of ideology with different teachings come into existence and offer different ways or guidance for life; 4) ethics are an absolute necessity for the religious community to strengthen its foundation of faith and enable it to participate in the changing community life without fears and a sense of self-isolation.

The professional code of ethics for judges serves as guidelines for judges to exercise their authority in examining, hearing, and deciding on cases in a manner that upholds objectivity and justice. The code of professional ethics for judges can be considered universal, as judges of all countries are generally subject to similar ethics provisions (López Jiménez et al., 2021; Marzuki, 2020). The powers entrusted to judges are strictly linked to the values of justice, truth, and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition for confidence in the administration of justice (Kiršienė & Gruodytė, 2019; Šimonis, 2017).

The Bangalore Principles of Judicial Conduct mention six values and principles a judge should uphold, both in their personal and professional life, namely: Independence, Impartiality, Integrity, Propriety, Equality, Competence, and Diligence (Dingake, 2020). Similarly, the Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region affirms the importance of independence and objectivity as fundamental principles for judges and courts (Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region as amended at Manila, 28 August 1997). These six values and principles for judges, found in the Bangalore Principles of Judicial Conduct, became the foundation of Indonesia's Code of Ethics and Code of Conduct for Judges (Nurudin, 2020). They are then translated into ten points: 1) to behave fairly, 2) to behave honestly, 3) to behave wisely, 4) to behave independently, 5) to have high integrity, 6) to be responsible, 7) to uphold one's dignity, 8) to have high discipline, 9) to behave humbly, and 10) to behave professionally. This is enshrined in the Joint Regulation between

the Supreme Court and the Judicial Commission No. 047/KMA/SKB/IV/2009-2/SKB/P.KY/IV/2009 and its implemented regulations were enacted in Joint Regulation No. 02/PB/MA/IX/2012 02/PB/P.KY/2012 on the Guidelines for the Enforcement of the Code of Ethics and Code of Conduct for Judges.

The ten points of the Code of Ethics and Code of Conduct for Judges constitute obligations for judges personally and professionally, which they must abide by as moral virtues while they exercise their professional responsibilities and participate in social relations outside their official duty (Saptoomo, 2019). As human beings, judges have moral obligations in interactions within the community and are bound by ethical norms and customs applicable to the social system. However, to ensure the independence and impartiality of courts, it is necessary to provide adequate facilities and infrastructure for judges in their roles as law enforcers and citizens. Therefore, the state and the people have responsibilities to guarantee the security of judges and tribunals, their welfare, as well as the adequacy of facilities and finances. Although judges' welfare has shown improvement since 2012, the legal community in general, and judges in particular, have yet to consider ethics as an ideology that needs to be deeply embedded in one's cognition, affection, and psychomotor awareness. Ethics has not become the culture of the judicial institution, resulting in judges lacking sensitivity to moral ethics and its underlying quality, namely ethics (Wisesa, 2011). As a result, there is frequent occurrence of ethics violations, many of which are not sanctioned or processed, or even intentionally covered up (Shidarta, 2009).

3. RESEARCH METHODOLOGY

This research exclusively relies on an extensive review and in-depth analysis of a comprehensive collection of judicial commission court decisions regarding violations of professional ethics by judges. Additionally, interviews were conducted with officers from the Judicial Commission of Indonesia to gather valuable insights and perspectives. Furthermore, this research carries out statistical analysis of historical data regarding the number and types of ethical violations committed by judges, to identify possible trends and patterns and gain a deeper understanding of the factors that influence them. The data collected through these rigorous methods were subjected to meticulous examination employing a descriptive-qualitative approach, guided by ethical and legal frameworks. This approach allows for a comprehensive exploration of the forms and underlying causes of professional ethics violations committed by judges. The primary objective of this analysis is to provide a nuanced understanding of these violations, serving as a valuable lesson for government officials and policymakers. The findings of this study are intended to inform potential amendments to legislation related to the judiciary. Specifically, this research advocates for a reconsideration of Law No. 18 of 2011 on the Judicial Commission and Law No. 3 of 2009 on the Supreme Court. These legislative revisions are prompted by the Constitutional Court's decision No. 27/PUU-XI/2013, which

invalidated the provision concerning the 1:3 ratio of judge candidates selected by the Judicial Commission for presentation to the House of Representatives. Furthermore, this study incorporates a comparative approach, drawing insights from the roles and functions of judicial commissions in other countries tasked with overseeing and adjudicating ethical violations by judges. By examining these international models, this research seeks to enrich the understanding of the Judicial Commission's responsibilities and its role in addressing ethical breaches within the judiciary.

The literature review is based on related studies, reports, and theoretical sources relevant to the research topic, namely ethical violations by judges in Indonesia. These sources are selected based on their relevance to the research topic, accuracy of the information, and contribution to the understanding of the problem under study. Researchers apply benchmarks that consider the credibility, relevance, and theoretical contribution of each selected literature source. In addition to the literature that highlights the main narrative about the problem of ethical violations by judges, researchers also consider alternative discourses or different points of view. This is done to gain a more holistic and in-depth understanding of the various factors that might influence the occurrence of ethical violations by judges, as well as various approaches to handling them.

4. RESULTS AND DISCUSSION

4.1. Violation of professional ethics by judges: Understanding the forms and finding the causing factors

Electronic government system at the local level, professional ethics violations by judges are physical or verbal acts by a judge in their capacity within and beyond the duration of the exercise of professional duties (Joint Regulation of the Chief of the Supreme Court and the Chief of the Judicial Commission No. 02/PB/MA/IX/2012 02/PB/P.KY/09/2012 on Guidelines for the Enforcement of the Code of Ethics and Code of Conducts for Judges, 2021, Article 1, paragraph (5)). Violation is a physical and verbal act of a judge that is contrary to the norms contained in the Code of Conduct and Code of Behavior for Judges (Joint Regulation of the Chief of the Supreme Court and the Chief of the Judicial Commission No. 02/PB/MA/IX/2012 02/PB/P.KY/09/2012 on Guidelines for the Enforcement of the Code of Ethics and Code of Conducts for Judges, 2012, Article 1, paragraph (6)). Based on these definitions, ethical violation includes physical and verbal acts of a judge that are contrary to the Code of Conduct and Code of Behavior for Judges.

It is important to note that from 2016 to 2019, the most commonly conducted violations were of the principle of professionalism (35.32%), lack of discipline (21.10%), unfair behavior (13.35%), dishonesty (10.81%), and lack of integrity (7.46%). This tendency is not much different from the data in 2005-2013, which are (Marzuki, 2015): lack of professionalism (36.32%), lack of discipline (22.10%), unfairness (12.72%), dishonesty (10.72%), and lack of integrity (7.44%) (Indonesia, 2019). Based on

the author's analysis of the data from the Judicial Commission's, the Supreme Court's, and the Honorary Panel of Judges' decisions from 2017 to 2021, it is found that qualifications of judges' behaviors in the category of violations against the principle of professionalism include manipulating legal considerations by not considering witness testimony in the verdict submitted by the plaintiff and ignoring expert testimony whose judicial value and expertise are crucial for the plaintiff's legal interests.

Types of violations by judges that exhibit a lack of discipline include unreasonable postponement of trials, causing cases to drag on, judges who hear cases with personal conflicts of interest with one of the parties, and neglect to enforce procedural law by failing to hold a trial open to the public as determined by Article 195 of the Criminal Procedure Code. Violations on the point of judges behaving unfairly include instances where judges do not uphold the principle of impartiality. Such cases include judges meeting up and having talks with one of the parties in the case, not providing equal opportunities to both parties (plaintiff and defendant, public prosecutor and defendant, or defendant's attorney), conducting examinations in a raised voice, and cornering witnesses, and denying the presence of the plaintiff's expert to be examined as an expert witness even though it has been decided and scheduled in the previous trial. Meanwhile, dishonest behaviors are more personal violations such as gambling, drug abuse, cheating, bribery, and receiving gifts from parties who are involved in litigation. Lack of integrity includes taking advantage of the position as judge and/or as chairman of the court for the benefit of the family business and postponing executions that are legally binding without reason.

According to data from the Judicial Commission's investigation throughout the 15 years 2005-2020 and the researcher's interviews with Judicial Commission officers, several factors cause the violation of professional ethics by judges. First, the court's leader intervenes in cases handled by judges. Second, a culture within the office that considers superiors as the holders of authority significantly impacts the professional paths of subordinates, preventing judges from exercising their independence to review, determine, and resolve matters if the chief justice intervenes. Third, judges are frequently less independent and impartial in cases involving family issues due to familial influence. Fourth, there has not been a culture or knowledge of conducting the profession in a way that upholds and maintains its principles. Fifth, judges have a poor internal and external supervision system. Sixth, judges receive very little take-home pay each month (Nurdin & Turdiev, 2021).

The following are additional factors that contribute to the authority of an independent judiciary. The first is the definition of standards brought about by the third amendment, which primarily emphasizes institutional independence and ignores judges' individual independence. Instead of focusing on the personalities of the judges, independence is stressed more in the design of judicial institutions. This has ramifications for the structural posts that represent judicial power in person, such as the Chief Justice of the Supreme Court, the Chief Justice of the High

Court, the Chief Justice of the District Court, and their executors, as well as representatives of those positions. An administrative superior-subordinate connection that obscures the judge's independence exists in such a partnership. The Supreme Court Circular Letter No. 10 of 2005 concerning Guidance of Court Leaders towards Judges/Panels of Judges in Handling Cases strengthens the practice of independence, placing greater emphasis on institutional than personal considerations. In the SEMA, it is assumed that the judiciary is subordinate to the judge. The Supreme Court's incapacity to establish an open and equitable system for the selection, advancement, and oversight of justices through a single point of contact is the second factor. The Supreme Court's leadership chooses which candidates are appointed as judges, where they are stationed, and whether they will be promoted. The third factor relates to ineffective case management, resource management (both human and financial), and internal oversight. The fourth factor is related to the situation of judges who are still subject to dualism, designated as state officials on the one hand but still bound to their role as civil servants on the other.

4.2. Violation of professional ethics by the judges and its supervision in some countries: A comparative study

The Judicial Standards Commission in the State of New Mexico, the USA, is an organization that monitors judges' conduct, including their conduct in their personal lives and the performance of their official duties in courts. It hears public complaints, conducts hearings and investigations, takes corrective action, and recommends sanctions or disciplinary action against judges found to have engaged in unethical activity. For the following reasons, the New Mexico Judicial Standards Commission has the authority to impose sanctions or recommend a judge's dismissal to the state's Supreme Court: 1) deliberate misconduct in court; 2) lack or inability to fulfill the duties of a judge; 3) habitual lack of self-control. These principles also govern how judges should behave when exercising their judicial authority, including not misusing their authority, making legal errors, or taking advantage of the adversary process. When managing cases, judges must carefully handle personal offenses and those that fall within their purview of responsibility and power. If it is determined to be only a breach of conduct, the New Mexico Judicial Standards Commission will have jurisdiction, while judicial technical flaws (legal mistakes) fall within the domain of higher courts.

The Arkansas Judicial Commission distinguishes between misconduct and legal errors (judicial technicalities). The regulation of the code of ethics of conduct serves as the foundation for breaches of behavior. The Judicial Commission conducts investigations and examinations using this rule. Based on that, judges under examination are already aware of the boundaries between improper behavior and judicial technical infractions. The Judicial Commission does not have the authority to construe mistakes in interpretation as conduct offenses when they are inadvertent. However, if it can be demonstrated that there is

a motive for corruption or ill faith, judicial technical errors can transform into behavioral infractions that are referred to and handled by the Judicial Commission rather than through the appellate court (Greenstein, 2017).

The Alaska Commission on Judicial Conduct distinguishes between legal technicalities and behavioral violations. If criticism of the judgment — while incorrect — pertains to a judicial technicality and the conduct or personal life of the judge, it falls under the purview of ethics. Examples of actions that can fall into both categories (judicial technical errors and behavioral violations) include: 1) the judge fails to recuse themselves from a case despite the possibility of a conflict of interest; 2) the judge abuses their power to hold someone in contempt of court; 3) the judge engages in private communication with one of the litigants without the other party's knowledge, not recorded in the Case Investigation Minutes; 4) the judge fails to follow proper procedural protocols in the minutes. Additionally, 5) the judge violates an extraordinary procedural law, such as failing to verify the parties' attendance or ensuring the minutes reflect the hearing's natural flow; 6) the judge exhibits bias toward one party or the other, or is unable to control the trial's progress due to inappropriate comments or conduct by the judge or the parties during the hearing (Greenstein, 2017).

The Alaska Judicial Commission can determine if the report contains judicial irregularities or conduct breaches in numerous ways. First, it establishes whether the complaint pertains to the judge's ruling in a specific instance. If so, the complaint falls into the category of legal nuances. Second, it verifies whether there is a conflict of interest alleged in the judge's decision and whether the judge should recuse themselves from the case. If so, this information may involve legal nuances or conduct irregularities. Third, it ensures that the judge's stated decision incorporates language that disregards gender, color, and religion. Fourth, it checks if a higher court can review the decision. If so, the Judicial Commission postpones examining the complaint until after the outcome of the higher court's investigation. The severity of the behavior violation will be further examined if a higher court determines that there was both an ethical violation and a judicial technical error.

The Alaska Judicial Commission also imposes requirements for categorizing judicial technical errors as conduct violations; specifically, acts must be repeated enough times to establish a pattern. The Commission must also assess whether the judge's errors were intentional or accidental, and if they constitute deliberate mistakes. If a violation occurs up to four times a year and Commission members are generally confident that it forms a pattern, then the pattern is recognized to exist (Greenstein, 2017). The distinction between judicial technical errors (legal errors) and misconduct is made by the French Judicial Commission (*Conseil Supérieur de la Magistrature* or CSM). Technical judicial matters are handled by the Supreme Court and the Court of Appeals, while conduct violations fall under the jurisdiction of the Judicial Commission and the State Council. The Court of Cassation never decides on a judge's behavior or

disciplinary issues. Examples of behavioral infractions in France include judges repeatedly being intoxicated while performing duties, acting rudely on a regular basis, having dubious connections to organized crime, or engaging in bribery or corruption (Greenstein, 2017).

According to the Judicial Commission of New South Wales, judges' actions involving the improper application of legal doctrines or relevant laws to a case, as well as the improper interpretation of available legal evidence, are outside the commission's purview. If someone feels wronged, they may file an appeal or seek more severe legal redress. Such judicial technicalities do not conduct violations; therefore, if the Judicial Commission receives a complaint regarding them, it will be rejected. However, the Commission's authority comes into play if judges consistently commit these infractions to establish a behavioral pattern.

4.3. The role of the Supreme Court, the Constitutional Court, and the Judicial Commission in Ethics Enforcement and Supervision of the Judges

The authority of the Judicial Commission in imposing sanctions is limited to making recommendations to the Supreme Court. The Judicial Commission does not have the authority to impose final and binding sanctions. Although juridically the proposals for sanctions by the Judicial Commission are considered "automatic", in reality, the Supreme Court's response to the Judicial Commission's recommendations often differs. While the Supreme Court may accept the recommendations, they are not always implemented due to judicial technicalities (sanction recommendations for judges who manipulate decisions, especially legal considerations, are almost always rejected by the Supreme Court on the grounds of judicial technicalities or the jurisdiction of judicial independence).

In addition to the serious sanctions imposed by the Judicial Commission and the Supreme Court through the Honorary Council of Judges mechanism, serious sanctions can also be imposed directly by the Supreme Court. In 2019 alone, 31 district court and high court level judges were given serious sanctions ranging from being declared inactive for one to two years to being dishonorably dismissed. The Supreme Court's action to impose serious sanctions without going through the mechanism of the Honorary Council of Judges and the Judicial Commission violates joint laws and regulations, namely Law No. 49 of 2009 on General Courts, Law No. 50 of 2009 on Religious Courts, Law No. 51 of 2009 on State Administrative Courts, Law No. 3 of 2009 on State Administrative Courts, Law No. 18 of 2011 on the Judicial Commission, as well as the Joint Regulation of the Supreme Court-Judicial Commission No. 04/PB/MA/IX/2012 04/PB/P.KY/09/2012 on Guidelines for Enforcement of the Code of Ethics and Joint Regulations No. 02/PB/MA/IX/2012 02/PB/P.KY/09/2012.

The violation of joint laws and regulations by the Supreme Court demonstrates the weak commitment of the highest judicial institution to the norms, ethics, and morality of law enforcement, including the right of the concerned judge to defend himself against misconduct. How could the highest judicial institution (the Supreme Court) deny judges

the right to self-defense when facing serious sanctions? Is the right to defend oneself against misconduct, not a universal right that must be granted? It is also unfortunate that the Judicial Commission did not investigate or prevent these violations from occurring.

In addition, supervision of the executors of judicial power is built upon the perception that judicial power is an independent authority that places judges as the sole and vast power holders in the courtroom when examining, hearing, and deciding cases. The magnitude of the judge's power is not only generated because it is normatively protected by statutory regulations, but also philosophically judges must be free, independent, silent, and impervious to any influence from any source while exercising their authority to uphold law and justice for concrete legal events confronted before them. If judges lack freedom and independence in exercising their authority, it not only deprives judicial power of its essence and purpose as an institution enforcing truth and justice but also jeopardizes the rights of the litigating parties and threatens the stability of the state.

At the forefront, the judge engages in an internal dialogue with himself, navigating between dimensions of cognition and affection, common sense, and conscience. This is followed by a second dialogue (deliberation) with other judges in the panel to ascertain the truth of a legal event, ensuring a just legal stance, and rendering decisions based on divine justice. Judges have full authority to evaluate the evidence presented before the court, accept or reject testimonies of witnesses and experts, and include witness or expert statements in the consideration of the verdict. They are fully authorized to impose a verdict or decision on a case.

A judge's decision or verdict undoubtedly carries legal consequences that may benefit one party while disadvantaging the other. In a civil case, for example, there are parties with rights and others burdened with obligations. In a criminal case, someone may be acquitted or sentenced to punishment, which may range from imprisonment for a certain time to life imprisonment or even the death penalty. There are three duties of judges when examining a case: 1) to determine the factual occurrence of legal events submitted by the parties, assessing whether the proposed legal events occurred; 2) to assess the legal significance of events that are deemed to have occurred, determining their relevance to prevailing laws and regulations; 3) to render a decision or judgment based on the law, thereby resolving the case for the parties involved.

Through their decisions, judges can transfer someone's ownership rights, deprive citizens of their liberty, declare arbitrary acts by the government against society, or even order the derogation of one's right to life (Djanggih & Hipan, 2018). However, despite the authority vested in them, the image of the court has not improved. The court seems to have turned into a marketplace where decisions are traded, tarnishing their own dignity too often, and, together with corruptors, becoming parasites in the country (judicial corruption). The Supreme Court and its lower courts have faced resilient public scrutiny and dissatisfaction with their decisions as well as the behavior of court

officials (Ridwan & Tahir, 2015). Therefore, such great authority cannot be exercised without supervision, as no matter how small the power and authority are, they have the potential to be misused, as abuse of authority can occur if there is an opportunity intention, or desire present at the same instance. Therefore, supervision is part of the execution of power and authority to close the gap for abuse.

In the modern power system, supervision becomes a subsystem in the power system to create balances in power. Supervision is also a managerial activity to ensure work is carried out following the established plan and/or desired results (Sarwoto, 1991). Henry Fayol stated that supervision is a test to determine whether everything goes according to a predetermined plan with the instructions that have been laid out, aiming to identify weaknesses and mistakes to prevent their recurrence (Situmorang & Juhir, 1994). Supervision is a form of mindset and pattern of action to provide understanding and awareness to someone or several people who are assigned duties to be carried out using various available resources properly and correctly, to prevent errors and deviations that can create damage to the institution or organization concerned (Makmur, 2011). Supervision is intended as a management endeavor to achieve objectives, using benchmarks as references for success, matching achieved results with predetermined benchmarks, preventing misconduct, showing the right path and purpose, and making improvements if the results achieved are not under the established benchmarks (Fachruddin, 2004).

Judges are not perfect human beings and are very likely to commit errors; therefore, the independence of judges must be accompanied by accountability (Falaakh, 2009). Citizens have been granted the power to uphold and enforce the law, and in return, they expect accountability. They expect power holders to explain and give reasons to the public on how they exercise power, and to make corrections when there is an error in the use of that power. The formal instrument of a democratic government is the need to safeguard vital accountability between citizens and power holders. Accountability goes beyond the mere ability or possibility that someone or something can be responsible or accountable for. In a simpler sense, it may be understood that the government's accountability is the fundamental element of a responsibility format. Accountability focuses on how power is exercised (Frank, 1963) to determine who can be responsible and who must explain.

Based on constitutionalism, the court becomes the primary vehicle for protecting fundamental civil and political rights (Motala & Ramaphosa, 2002), underpinning the role of the judiciary as the stronghold in defending the rudimentary values of the constitution (Motala & Ramaphosa, 2002), as well as preventing the power from being abused to oppress or act arbitrarily (Barendt, 1998). Separation of powers is an organizational principle whose implementation must ensure that all powers in the state can be described and tested/examined (Schmitt, 2008). Farber and Sherry (2009) asserted that:

“Giving discretion to judges does not mean that they are free to decide as they wish. There are limits

on both the factors they can consider and the reasoning they can use... We as a society apparently are comfortable with these amorphous limits in the context of agency discretion, and there is every reason to believe that judges are at least as capable of following them as are agencies” (p. 1).

Supervision, as the embodiment of the notion of accountability, is a pursuit to assess whether the actions carried out are under predetermined benchmarks (Muchsana, 1992). Supervision or monitoring contains a dimension of control, which is related to instructions (directive) (Manan, 2001), preventing absolutism of power, arbitrariness, and abuse of power (Usfunan & Komisi Yudisial, 2006). Supervision can take the form of preliminary supervision, supervision in conjunction with the implementation of actions or measures, and feedback supervision. Preliminary supervision aims to resolve issues or deviations from the standards or objectives and allows amendments to be made before a particular measure is completed. Supervision carried out in line with the implementation of a measure serves as a double-check to further guarantee the stipulation of the measure's implementation. Meanwhile, feedback supervision assesses the results of certain completed actions or measures.

Laws and regulations regulate two supervisory mechanisms for judges in Indonesia, namely internal supervision and external supervision. Internal supervision is regulated in Article 39 paragraph (3) of Law No. 48 of 2009 on Judicial Power; Article 32A paragraph (1), Article 13A paragraph (1) of Law No. 49 of 2009 on General Courts; Article 12A paragraph (1) Law No. 50 of 2009 on Religious Courts and in Article 13A paragraph (1) of Law No. 51 of 2009 on State Administrative Courts which state that internal supervision on the behaviors of judges is carried out by the Supreme Court. Unfortunately, internal supervision by the Supreme Court is not effective due to various weaknesses within its system, including:

1) The deeply rooted spirit of defending the corps renders the process and results of supervision lacking in transparency and accountability to the public while tending to be protective of the offenders and the institutions. Certain offenders are even promoted.

2) It lacks public participation, although the Supreme Court has channels such as the Surveillance Information System of the Supreme Court application on the official website of the Supreme Court; short messages service; electronic mail (e-mail); facsimile; telephone; complaints desk; letter; and/or complaint box.

3) The complexity of the bureaucracy must be satisfied to report or complain about deviant judge behavior.

Some criticisms argue that the weakness of internal supervision within the Supreme Court is caused by: 1) inadequate quality and integrity of supervisors; 2) a non-transparent disciplinary examination process; 3) no easy way for the injured community to submit complaints, monitor the process, and see the results; 4) the spirit of defending fellow corps (*esprit de corps*) which results in the imposition of punishment that is contradictory to the offenses; 5) lack of willpower from the superiors of law enforcement agencies to

follow up on the results of the supervision (Alamsyah, 2010). Hence, internal supervision by the Supreme Court would instead potentially and factually cause distortions in the honor, nobility, dignity, and behavior of judges (Indrayana, 2007). Meanwhile, external supervision, as regulated under Law No. 48 of 2009 on Judicial Power, Law No. 49 of 2009 on General Courts, Law No. 3 of 2009 on the Supreme Court, Law No. 50 of 2009 on Religious Courts, and Law No. 51 on State Administrative Courts, essentially regulates that “to maintain and uphold the honor, dignity, and behavior of judges, external supervision of the behavior of judges is carried out by the Judicial Commission”.

The authority for external supervision by the Judicial Commission is neither explicitly stated in the 1945 Constitution of the Republic of Indonesia nor Law No. 22 of 2004 as amended by Law No. 18 of 2011 on the Judicial Commission. What is mentioned in Article 24B paragraph (1) of the 1945 Constitution of the Republic of Indonesia is that “The Judicial Commission is independent and has the authority to propose the appointment of supreme judges and has other powers in order to maintain and uphold the honor, dignity, and behavior of judges”. The concept of “other powers in the framework of safeguarding and upholding the honor, dignity, and behavior of judges” as mentioned in Article 24B paragraph (1) becomes the legal basis for such external supervision.

In exercising the said supervision, the Judicial Commission possesses the duty to supervise the behavior of judges based on the Judge’s Code of Ethics and Code of Conduct (Article 40 paragraph (1) and paragraph (2) of Law No. 48 of 2009 on Judicial Power), whose authorities include (Article 13D paragraph (2)):

- a. Receiving and following up public complaints and/or information about suspected violations of the Judge’s Code of Ethics and Code of Conduct.
- b. Examining and deciding on the alleged violations of the Judge’s Code of Ethics and Code of Conduct.
- c. Being able to attend court proceedings.
- d. Receiving and following up complaints from the Supreme Court and judicial bodies under the Supreme Court regarding alleged violations of the Judge’s Code of Ethics and Code of Conduct.
- e. Verifying public complaints.
- f. Requesting information or data from the Supreme Court and/or courts.
- g. Summoning and requesting information from judges suspected of violating the Judge’s Code of Ethics and Code of Conduct for the purpose of examination; and/or
- h. Making decisions based on the results of the examination, as well as
- i. Analyzing court decisions that have permanent legal force as the basis for recommendations for mutating judges (Article 42 of Law No. 48 of 2009 on Judicial Power).
- j. Requesting assistance from law enforcement officials to create wiretaps and record conversations in the event of an alleged violation of the Judge’s Code of Ethics and/or Code of Conduct by Judges (Article 20 paragraph (3) of Law No. 18 of 2011 on the Judicial Commission).

In essence, these powers cover three aspects, namely:

1) Following up on reports (such as reports regarding the offense of accepting bribes, meeting and talking with one of the parties, taking sides with one of the parties in the trial, gambling, drugs, drunkenness, having an affair, or reports on judges’ decisions with frail legal considerations, among others, ignoring proven evidence at trial) or findings of violations by the judge and then examining the judge concerned. If proven, sanctions are applied.

2) Monitoring proceedings where deviations are suspected (potential deviations based on convincing preliminary information, which could be because the panel of judges hearing the case has an atrocious track record, one or both parties in the case have indicated for being “flirtatious” with the judge, or there is pressure from internal or external judicial powers).

3) Analyzing the decision as the basis for the recommendation for the mutation of judges.

The main issue with the Judicial Commission’s authority to conduct investigations and impose sanctions is the nature of the said sanctions in the form of recommendations to the Supreme Court (Article 22D paragraph (1) of Law No. 18 of 2011 on the Judicial Commission). Whether the recommended sanction will be carried out by the Supreme Court or not entirely depends on the Supreme Court. Recommended sanctions against judges who accept bribes, gamble, abuse drugs, get drunk, or commit domestic violence, for instance, the Supreme Court is quite responsive, accepting the recommended sanctions from the Judicial Commission, although it takes longer than the provisions of the law, namely 60 days (Article 22D paragraph (3) of Law No. 18 of 2011 on the Judicial Commission). Some of the sanctions handed down by the Supreme Court were lighter than those proposed by the Judicial Commission. However, the Supreme Court does not implement the mechanism provided by law to address the alteration in the sanctions. The Supreme Court has never been transparent in conveying the sanctions they imposed until the Judicial Commission learned from another party that the Supreme Court’s version of the sanctions had been carried out by the judge concerned.

Article 22E paragraph (2) states that in the event of disagreement between the Judicial Commission and the Supreme Court regarding the Judicial Commission’s recommendation on the imposition of light sanctions, moderate sanctions, and serious sanctions other than those referred to in Article 22D paragraph (2) point c numbers 4 and 5, a joint examination is to be conducted between the Judicial Commission and the Supreme Court on the judge concerned. As for the recommendation on imposing sanctions due to legal considerations that overlooked procedural law and professional ethics, especially neglecting supposedly crucial evidence due to the influence of bribery or promises of giving something to judges, it was outright rejected by the Supreme Court on judicial technical grounds and judicial independence, even though over 70 percent of public reports submitted to the Judicial Commission are related to the judge’s decision (Usman, 2020).

Some instances in which judges’ decisions were reported and found to have been dubious by the Judicial Commission include: assessing evidence that was never filed before the court, considering a counterclaim that was never filed, and considering Mr. X’s statement, who has not been on file and had

never been examined before the court. A number of prospective Supreme Court judges whom the author inquired about during the interview confirmed that the reasons for manipulating the considerations in the decision were due to bribery or a certain promise to the judge who decided the case. After examining the panel of judges who decided upon such cases, some admitted that they were negligent, some admitted to copying and pasting other decisions, some were made by the Registrar without getting proofreads, and some pretended that they just knew that there was a problem in their decision. Meanwhile, the authority to analyze court decisions that have acquired legal force, which remains the basis for recommendations to mutate judges, is left unused since the Supreme Court has never requested the Judicial Commission to examine the decisions of the judges to be mutated. Hence, all mutated judges never make use of their decisions as a consideration, whereas it is of high importance to know the professional aspects of the judge concerned, such as the quality of consideration, thoroughness, independence, and impartiality of the judges concerned.

5. CONCLUSION

This research highlights violations of professional ethics committed by judges in Indonesia. The study identified various forms of ethical violations, including lack of professionalism, discipline, fairness, honesty, and integrity. These violations were found to be influenced by factors such as interference by court leadership, lack of independence in family-related cases, and a lack of knowledge and culture in upholding professional

principles. The main findings of this research have significant implications for the justice system in Indonesia. This highlights the urgent need to revise laws and regulations related to judicial power, particularly Law No. 18 of 2011 on the Judicial Commission and Law No. 3 of 2009 on the Supreme Court, to strengthen external supervision and provide direct sanctions to judges who violate ethics. This research also emphasizes the role of judicial commissions in other countries as a model in dealing with ethical violations committed by judges.

There are several limitations to this study. First, relying solely on Judicial Commission court decisions and interviews with officials may miss some examples of violations due to potential underreporting or incomplete data. Additionally, these studies primarily focus on identifying violations rather than investigating their root causes or examining broader social impacts. Additionally, this research does not explore regional variations in ethical standards or consider the perspectives of judges themselves. Future studies could expand data sources beyond Judicial Commission records and interviews to include surveys or case studies to gain a more holistic understanding of ethical violations. Additionally, assessing the effectiveness of proposed legislative amendments and external monitoring mechanisms in curbing legal violations requires exploration. Additionally, investigating the impact of ethical violations on public trust in the justice system provides interesting avenues for future inquiry. These efforts are very important to improve the integrity of the judiciary and foster public trust in Indonesia's legal framework.

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