

JUDICIAL PROFESSION ETHICS IN JUDICIAL INDEPENDENCE AND RESPONSIBILITY

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I. Background of Studies

Being a judge is not an ordinary profession. Judge is a title representing untouchable, free-of-gossips, smart, and noble persons who do not have bad track-records. And for this reason, they are titled *Your Honor*. The judge has the most vital position in judicature. It is on them all parties, both defendants and plaintiffs, put all their respects and hopes in courts. The fate of one's belongings, rights, obligations, credibility, and even one's life, is in the hands of a judge.¹

The independence of a judge on conducting his authority is regulated on the 1945 Constitution under Article 24 Paragraph (1) as amended by The Third Amendment of 2001, which says that "*The judicial power shall be independent and shall possess the power to organize the judicature in order to enforce law and justice.*"

The judicial independence is not something automatically granted by law or state; it is attached to judge. Judicial independence had existed before the modern law (the positive law) was born. In the beginning, a judge was given the mandatory of conducting trial based on his personal reputation, not on law or ethics qualification. After the positive law (the modern law) made it formally institutionalized, state and law then legalize and legitimate the title so the principles of judicial independence have a bounding power to judges and other parties. Thus, judicial independence is not something newly invented, which obligatorily entitled to judges by law or ethics, it is a *built-in* predicate. The strength of judicial independence particularly depends on the judge's personality. A morally flawed and incompetent judge is a fragile justice. A morally flawed judge is dependently tied by his defects. An incompetent judge has no firm belief and is easily influenced.

Judicial independence is not personally entitled to judges; it is for the sake of their people. It represents their responsibilities. A judge's decision in a trial does not only affect the case and

all the parties involved, but also social life, politic, moral, ethics, and the law itself. It is due to the fact that, when doing his duties, a judge is not in a vacuum chamber or complex social emptiness, regarding to both judicial and non judicial matters consisted of options and possibilities.

To avoid the abuse of judicial independence, a judge is firmly bound to profession ethics as a part of social ethics. The judicial profession ethics is not meant to limit a judge's independence, quite the contrary, it is to reinforce both his autonomy and responsibility. As regards to the previous description, this paper would discuss: firstly, what judicial profession ethics controls judges? And, secondly, would judicial profession ethics lead to liable judicial independence?

II. The Forms of Judicial Profession Ethics

Ethics is generally interpreted as a set of values, principles, and moral values to govern conduct, and the standard to assess man's moral and behavior in society, both individually and socially.² One of the parts of ethics is the social ethics which critically questions whether the institutions, the orders, the structures, the social relationship in our society, and the public policy made by the public officials agree with moral norms.³ One part of Social ethics is the judicial profession ethics which consists of (1) behaving fairly,⁴ (2) behaving truthfully,⁵ (3) behaving

²J. Sudarminta. 2013. *Etika Umum: Kajian tentang Beberapa Masalah Pokok dan Teori Etika Normatif*. Yogyakarta; and J. Sudarminta. 2016. *Bahan Ajar Mata Kuliah Etika*. Yogyakarta: STFD.

³J. Sudarminta. *Ibid*.

⁴Behaving fairly: being fair means to put things on their proper place and to give people their rights based on the principle of equality before the law. The basic demand of justice is, therefore, to provide equal treat and opportunity to every people (*equality and fairness*). Thus, one having duties or profession on judicature field and holding the responsibility of conducting fair law enforcement is required to always behave fairly and treat people equally.

⁵Behaving truthfully: truthfulness means being able and audacious to state that what is right is right, and what is wrong is wrong. Truthfulness encourages and shapes strong personality, and raises the awareness of the essence of right and wrong. Consequently, there would be impartial personality within a judge, both inside and outside the court.

¹Marzuki Suparman. 2014. *Harapan Komisi Yudisial terhadap Hakim Agung*. Jakarta: Mahkamah Pembekalan Calon Hakim Agung.

wisely and skillfully,⁶ (4) acting autonomously,⁷ (5) having high integrity,⁸ (6) having responsibility,⁹ (7) having respect to self esteem,¹⁰ (8) showing perfect discipline,¹¹ (9) behaving humbly,¹² (10) acting professionally.¹³

The above judicial profession ethics is the basic guideline for judges inside and outside the court. The ten principles of KE & PPH are basically concerning to integrity and competency of judges, however, as regards to judge competency, for the reason of maintaining judicial independence, the judicial profession ethics could do nothing to judges who are incapable of conducting their judicial authority appropriately which results in bad judicial decision. The principles are supported by Indonesian Supreme Court Decision on the Case of Material Examination Rights over Communal Decision of the Chairman of Indonesian Supreme Court and the

⁶Behaving wisely and skilfully means being able to act accordingly to the living norms in society, either the norms of law, the norms of religion, customs, traditions, or ethics based on the local condition and situation, and having the capability of calculating the risks of his actions.

⁷Acting autonomously means being able to act on his own free will, free from outside interference and influence. Autonomous behavior encourages judges to have tough, idealistic, committed-to-principle-and-faith personality based on moral demand and the prevailing law.

⁸Having high integrity: integrity means having solid, authoritative, truthful, and firm behavior and personality. High integrity is displayed on judges' loyalty and persistence on moral values or norms in conducting their duties. High integrity would shape good judges to always say no to misleading temptations and any intervention, and give top priority to their conscience to enforce truth and justice, and always strive to accomplish their duties appropriately to achieve the best goals.

⁹Having responsibility means the willingness of a judge to conduct all his authorities and duties appropriately, and consequently takes the risks after he has conducted them.

¹⁰Having respect to self esteem: self esteem means that man is attached to their honor and dignity which should be defended and respected. The principle of having respect to self esteem would encourage and shape up strong judge personalities, who always respect their honor and dignity as the apparatus of law court.

¹¹Showing perfect discipline: showing discipline denotes judge obedience to living norms and principles, which is believed to be the supreme call to carry out community mandate and trust to seek for justice. Perfect discipline would encourage judges to conduct their duties orderly, to serve their society sincerely, to strive to be a good model to their community, and not to neglect the trust given to them.

¹²Behaving humbly: being humble means being aware of limited self-capability, far from perfectness, and free of any forms of arrogance. Being humble would encourage judges to be realistic, to be open for knowledge, to respect other's opinion, to develop thoughtfulness, to generate modesty, and to run their duties sincerely and gratefully.

¹³Acting professionally: being professional is a moral attitude based on judge strong determination to perform their chosen occupation with all their hearts supported by their proficiency based on their knowledge, skill, and wide perspective. Professional attitude would encourage judges to maintain their work quality, and strive to improve knowledge and work performance so they could achieve the highest quality, efficiency, and effectiveness of work.

Chairman of Indonesian Judicial Commission No. 07/KMA/SKB/VI/2009 – No. 02/SKB/P.KY/IV/2009 on the Ethics Codes and Judicial Conduct Guidelines (SKB KE & PPH).¹⁴ The codes and guidelines are the adoption of *Bangalore Principles of Judicial Conduct*, which is constructed by some countries as the standard judicial ethics codes, which consists of 6 principles, they are as follows: (1) independence, (2) impartiality, (3) integrity, (4) propriety, (5) equality, and (6) competence and diligence.

Based on the Bangalore Principles of Judicial Conduct, the principles in SKB KE & PPH are then broadened to 10 principles of KE (Ethics Codes) & PPH (Judicial Conduct Guidelines), which should be applied to SKB KE & PPH that states the stipulation on articles 8.1, 8.2, 8.3, 8.4, and 10.1, 10.2, 10.3, and 10.4 about the principles of discipline relating to the inaccuracy of judge on examining a case is declared invalid.

III. Would Judicial Profession Ethics Lead to Liable Judicial Independence

Based on its nature, justice is independent, but there is great responsibility in it. How could justice be independent is clearly described by Kusnu Goesmadhie S.,¹⁵ that judicial independence exists in the mysterious nature of a judge's conscience and mind, which cannot be absolutely determined even by legislation. In the resolution process of a case by an independent judge, government would not have authority to correct any mistakes, errors, and disagreement caused by judicial acts in a court. Therefore, he should do his judicial duties independently, so there may not be any preventive nor repressive action which influences him on his duties except it is conducted through available legal procedure provided by law.

A judge is independent in examining and deciding a case (independence of judiciary). But his independence is not an absolute freedom, and he must be held accountable for his judicial decisions,¹⁶ due to his duty to enforce law and

¹⁴At first, there was no written version of ethics, and the conception of ethics was developed in the order of theory and abstraction. But, after the development of the idea of writing professional conduct standards, which was initially started by the writing of Medical Ethics in 1794, followed by Public Accountant Ethics in 1887, and American Bar Association (ABA) of Attorney Ethics in 1854. (see Jimly Asshiddiqie, *Dinamika Perkembangan Sistem Norma Menuju Terbentuknya Sistem Peradilan Etika*, Makalah Pembekalan Calon Hakim Agung, 9 March 2015, page 40).

¹⁵Kusnu Goesniadhie S., *Prinsip Pengawasan Independensi Hakim*, Journal of Law *Ius Quia Iustum*. Faculty of Law UII, Yogyakarta, Volume 14, No. 3, July 2007.

¹⁶Franz Magnis Suseno, *Etika Dasar Masalah-Masalah Pokok Filsafata Moral*, Jakarta: Kanisius, 2014, page 36, stated

justice based on Pancasila (the Five Principles) by interpreting the law and obtaining the relevant basis and principles on which he based his decision through the cases he is taking care of, so as to make decision representing justice to Indonesian people (The Explanation of Article 1 of Law No. 4 of 2014). It implies that judicial independence is limited by Pancasila (the Five Principles), law, the interest of both parties, and public order. In other words, a judge's judicial decision must not deviate from Pancasila and go against the interest of Indonesia and its people.

Judicial independence is influenced by the government system, politic, economy, and other aspects. A judge is also human who is not free from surrounding interests and influences, including personal's, and family's. It makes judges vulnerable and potential to generate conflicts of interests, which results in discrediting their honor, dignity, and conduct, take a partial judge for instance. In other words, judges should not be manipulated by their internal behavior which enables him to formulate partial and biased decisions as the result of the inability of their conscience and mind to speak the truth. To encounter such condition, it is compulsory for judges to have integrity, flawless personality, honesty, fairness, and professionalism.

The question is, "Would the ten points of judicial profession ethics stated in KE & PPH be an effective instrument to lead judicial independence to liable independence?" Before answering this question, there are two main problems relating to ethics a judge should deal with. *First*, ethics is bound to conscience which is not always right, but overall, conscience is inherently within human. Conscience is basically subjective feelings, and to make these subjective feelings comply with the truth, conscience should be objective.¹⁷ The ten principles judicial profession ethics are hoped to not significantly manipulate judge's conscience and control his judicial independence, so judges should read and comprehend them to make them their conscience. *Secondly*, the legalization of written judicial profession ethics. The fact that what is listed on the written principles does not cover all reality of the

living ethics will degrade the essence of judicial profession ethics as the moral values of judges to conduct their profession. The legalization may result in a condition in which judges would base their profession ethics more on the fear of sanction than moral consciousness.

IV. Conclusion

This judicial paper concludes that: *First*, judicial profession ethics is legally written on Communal Decision Letter of the Chairman Of Indonesian Supreme Court and the Chairman of Indonesian Judicial Commission No. 07/KMA/SKB/VI/2009 – No. 02/SKB/P.KY/IV/ 2009 on Ethics Codes and Judicial Conduct Guidelines consisted of ten principles. *Secondly*, written judicial profession ethics would not fully support judges to run their authorities freely and accountably since the written ethics does not represent the reality of living judicial profession ethics.

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that accountable independence is in fact to make accountability be open for demands, and the limitation of social independence is openly and frankly made. Nothing should be hidden. The society and all institutions in it, with their authority, have the power to limit man's independence and they should not be awkward to do it. They should openly express necessary regulations and prohibitions. By doing so, they have the rights to demand for accountability. If the regulations and the prohibitions are central, they should show it. And if they cannot show their vital roles, they should be discharged as they imply an act of cruelty

¹⁷Franz Magnis Suseno. *ibid*, pages 63-64.