


JUDICIAL CORRUPTION AS A VIOLATION OF PROFESSIONAL ETHICS

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ARTICLE INFO	ABSTRACT
<p>Article history:</p> <p>Received 21 November 2022</p> <p>Accepted 16 February 2023</p>	<p>Purpose: The purpose of this study is to present some ethical issues facing the Indonesian judiciary by exploring the usefulness of judicial codes of ethics. The ethical crisis of judges occurred at a time when judicial independence was strong post the amendment of the 1945 Constitution. The judicial crises triggered uncertainty and pessimism about judicial accountability</p>
<p>Keywords:</p> <p>Judicial Independence; Judicial Accountability; Judges' Code of Ethics; Judicial Impartiality; Judicial Corruption.</p>	<p>Theoretical framework: Legal literature states that fair, honest, and impartial legal processes cannot be separated from that of an independent judiciary [Shugermann, 2010: 1061]. The independence and impartiality of the court as one of the ten minimum conditions for creating a constitutional society.</p> <p>Design/methodology/approach: In this study, the author conducted normative legal research. This method helps examine the juridical standards contained in laws and court decisions. Furthermore, library research was conducted to obtain data from primary, secondary, and tertiary legal materials.</p> <p>Findings: Despite the judiciary gaining strong independence following the amendments of the 1945 Constitution in 2001–2002, unfortunately, the judiciary suffers from an accountability crisis, as seen through the arrests of several judges for bribery.</p> <p>Research, Practical & Social implications: We hope that this research can bring awareness and increase adherence to the code of ethics of the judicial profession.</p> <p>Originality/value: It is hoped that the ideas and issues raised in this paper will help the judiciary recognize the importance of developing, maintaining, and, most importantly, honouring a code of ethics in keeping with the ethical obligations of the judicial office.</p>
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CORRUPÇÃO JUDICIAL COMO UMA VIOLAÇÃO DA ÉTICA PROFISSIONAL

RESUMO

Objetivo: O objetivo deste estudo é apresentar algumas questões éticas enfrentadas pelo Judiciário indonésio, explorando a utilidade dos códigos de ética judiciais. A crise ética dos juízes ocorreu numa época em que a independência do Judiciário era forte após a emenda da Constituição de 1945. As crises judiciais desencadearam incerteza e pessimismo sobre a responsabilidade judicial.

Estrutura teórica: A literatura jurídica afirma que processos jurídicos justos, honestos e imparciais não podem ser separados dos de um judiciário independente [Shugermann, 2010: 1061]. A independência e imparcialidade do tribunal como uma das dez condições mínimas para a criação de uma sociedade constitucional.

Design/metodologia/abordagem: Neste estudo, o autor realizou uma pesquisa jurídica normativa. Este método ajuda a examinar as normas jurídicas contidas nas leis e decisões judiciais. Além disso, a pesquisa da biblioteca foi conduzida para obter dados de materiais jurídicos primários, secundários e terciários.

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Conclusões: Apesar da forte independência do Judiciário após as emendas da Constituição de 1945 em 2001-2002, infelizmente, o Judiciário sofre de uma crise de responsabilização, como visto através das prisões de vários juízes por suborno.

Pesquisa, implicações práticas e sociais: Esperamos que esta pesquisa possa trazer consciência e aumentar a aderência ao código de ética da profissão judicial.

Originalidade/valor: Espera-se que as idéias e questões levantadas neste documento ajudem o judiciário a reconhecer a importância de desenvolver, manter e, o mais importante, honrar um código de ética de acordo com as obrigações éticas do poder judiciário.

Palavras-chave: Independência Judicial, Responsabilidade Judicial, Código de Ética dos Juízes, Imparcialidade Judicial, Corrupção Judicial.

LA CORRUPCIÓN JUDICIAL COMO VIOLACIÓN DE LA DEONTOLOGÍA PROFESIONAL

RESUMEN

Objetivo: El objetivo de este estudio es presentar algunos problemas éticos a los que se enfrenta la judicatura indonesia explorando la utilidad de los códigos deontológicos judiciales. La crisis ética de los jueces se produjo en un momento en que la independencia del poder judicial era fuerte tras la enmienda de la Constitución de 1945. Las crisis judiciales desencadenaron incertidumbre y pesimismo sobre la responsabilidad judicial.

Marco teórico: La literatura jurídica afirma que los procesos judiciales justos, honestos e imparciales no pueden separarse de los de un poder judicial independiente [Shugermann, 2010: 1061]. La independencia e imparcialidad del tribunal como una de las diez condiciones mínimas para la creación de una sociedad constitucional.

Diseño/metodología/enfoque: En este estudio, el autor llevó a cabo una investigación jurídica normativa. Este método ayuda a examinar las normas jurídicas contenidas en leyes y decisiones judiciales. Además, se llevó a cabo una investigación bibliotecaria para obtener datos de materiales jurídicos primarios, secundarios y terciarios.

Conclusiones: A pesar de la fuerte independencia del poder judicial tras las enmiendas de la Constitución de 1945 en 2001-2002, lamentablemente, el poder judicial sufre una crisis de rendición de cuentas, como se ha visto a través de las detenciones de varios jueces por soborno.

Investigación, implicaciones prácticas y sociales: Esperamos que esta investigación pueda concienciar y aumentar la adhesión al código deontológico de la profesión judicial.

Originalidad/valor: Se espera que las ideas y cuestiones planteadas en este trabajo ayuden a la judicatura a reconocer la importancia de elaborar, mantener y, lo que es más importante, respetar un código deontológico acorde con las obligaciones éticas de la judicatura.

Palabras clave: Independencia Judicial, Responsabilidad Judicial, Código Ético de los Jueces, Imparcialidad Judicial, Corrupción Judicial.

INTRODUCTION

It took the Indonesian judiciary years of struggle, starting from Sukarno's era of Guided Democracy (1959–1966) until Suharto's New Order era (1966–1998), finally gain judicial independence by amending the 1945 constitution (1999–2002). However, ironically, after becoming independent, the judiciary has been struggling with an accountability crisis due to serious ethical violations by some of its judges. After the constitutional amendment, a new institution called the Judicial Commission was created to supervise judges' professional ethics. Furthermore, in addition to the Supreme Court and other judicial bodies, the Constitutional Court was given judicial power. This court is authorized to examine the constitutionality of laws, disputes between state institutions, and election disputes, and try the president and/or vice president for violating the law.

However, as mentioned above, the judiciary gained independence, and several judges and court officials were found guilty of committing serious ethical violations, such as accepting bribes from litigants in court. Bribes are considered a gross violation of professional ethics. According to Isaac Tandoh, *et.al* that “Adherence to professional ethics is the background for success stories in every professional field (Tandoh, et.al., 2022, 7.2: 9). From the perspective of judicial history, the problems in the Indonesian judiciary have now shifted from an independence crisis to an accountability crisis. Prominent instances driving this shift include the arrests of (1) some Judicial Commission members, who were in charge of supervising judges’ ethical conduct, and (2) the Chief Justice of the Constitutional Court, having the status of a statesman, both for accepting bribes. Such instances have severely dented the public image of judges as state officials with high moral standards, making the judicial process seem hopeless rather than honorable and dignified.

The current crisis of accountability in the courts contrasts with the long history of struggles by previous judges to uphold the independence of the judiciary from the executive’s interference through legislation and government policies.

When drafting the constitution, the founding fathers identified the pros and cons of including a clause guaranteeing judicial independence in constitutional articles and ultimately decided against such a guarantee. For instance, Mohamad Hatta and Muhammad Yamin wanted the guarantee of judicial power to be explicitly stated in the constitution, while Sukarno and Supomo stated that the constitution did not need to regulate such a guarantee by the integralist state theory. This theory holds that the state is the father of all citizens, and represents the children in a family. Accordingly, after the constitution’s ratification in 1945, the guarantee of the independence of the judiciary was then regulated by the Elucidation of the Constitution.

LITERATURE REVIEW

A fair, honest, and impartial discussion of legal processes cannot be separated from that of an independent judiciary. Ismail Suny considered the independence and impartiality of the court as one of the ten minimum conditions for creating a constitutional society. (Suny, 1982: 262). In a constitutional democracy, judicial independence is guided by three principles: (1) the judiciary’s primary responsibility is to maintain the rule of law; (2) only the laws that follow the terms of constitutional legitimacy should be upheld, and the court should be able to interpret whether the laws are constitutional or unconstitutional; and (3) to maintain democratic checks and balances, the courts must have sufficient autonomy to resist the influence of economic or political power holders.

The independence of the judiciary is reflected in the degree of freedom the judges enjoy. This is because the judges' independence is not a privilege but an inherent right (or an indispensable right) that guarantees the fulfillment of the citizens' right to a free and fair trial. Therefore, the judge should be independent and impartial while meeting the demands of justice seekers.

The existence of an incorruptible court is at the heart of the justice system and guarantees complete human rights. The country's constitution, laws, and guidelines must ensure that the legal system is truly independent of other branches of the state. In addition, judges (as well as lawyers and prosecutors) should have the liberty to perform their professional duties without political interference, and such freedom must be protected through legal guarantees and in practice (The International Commission of Jurists, 2004: 2-3).

An independent judicial process is defined as the absence of influence from third parties or other institutions outside the power of the judiciary. However, a judge's decision is solely based on the relationship between the facts that appear in a trial and the applicable law (A.V. Christopher M. Larkin, 1996, 44: 608). The neutrality of third parties in the judicial process is important for two reasons. First, this principle helps judges make court decisions in a relatively bias-free manner. For example, when judges do not have any conflicting interests in the case and are not biased towards one of the litigants, regardless of differences in their economic background, the neutrality principle allows them to place the parties in an equal position before the law and protect both their rights. Therefore, an independent judge can rule on a case following objective legal principles rather than based on the social or political position of the litigants. This approach prevents those with a strong position in society from manipulating the law in their interest.

Second, an independent judiciary becomes very important when the government is involved in a legal case because the impartiality of the court is tested while handling such disputes. When the court is trustworthy, judges examining the dispute will not be biased toward the interests of the government. Therefore, the judges' positions are free from government influence. Furthermore, judges need to be protected from all forms of threats, interventions, and manipulations that encourage them to issue decisions in favor of the authorities rather than focusing on the merits of each party's case. When the judiciary is not fully independent, rule of law becomes difficult to implement, especially if the enforcement agency consists of judges who are afraid to challenge the government's interests or tend to justify the government's actions (Lotulung, 2003).

Additionally, an independent judiciary is free from executive and legislative intervention. Paulus E Lotulung stated that judicial independence implies as law enforcers, judges are free from influences and directions originating from (1) Institutions outside judicial bodies, both executive and legislative; (2) internal institutions within the judiciary; (3) litigants; (4) pressures of the national and international community, and; (5) the effects of a "trial by the press."

In Indonesia, the judiciary's independence is reflected in the freedom of judges, both personally and while hearing cases, as stated in the Decision of the Constitutional Court of the Republic of Indonesia Number 05/PUU-III/2006. However, in Decision Number 1–2/PUU-XIV/2014, the Constitutional Court stated that Article 24, paragraph (1) of the 1945 constitution expressly presented the judiciary as an independent power that administers justice and enforces the law. In the 1945 constitution, there was no single provision that limited its freedom. Importantly, this freedom is not a privilege of judicial power but conforms with the spirit of the rule of law. Sandra Day O'Connor

Linking judicial independence to elections, Jed Handelsman Shugerman distinguished it into relative and absolute independence (Shugermann: 2010, 123: 1061). "Relative independence" is defined as "independence from whom," while "absolute independence" emphasizes "how much independence from political pressure." (Sandra Day O'Connor: 2008, 86:2). Sandra Day O'Connor stated that the judiciary and judges must take judicial actions while performing legal functions and the scope of their authority is protected from improper interference by the other two branches of the government. Judicial independence includes both individual and institutional aspects.

In his paper "Independent Judges, Dependent Judiciary, Explaining Judicial Independence," Ferejohn also expressed the same opinion, stating that the judiciary has the scope of personal and institutional independence (Ferejohn, 1999, 72: 353).

According to Shetreet, the modern conception of judicial power cannot be separated from the independence of individual judges and encompasses the personal and substantially independent spirit, collective nature, and internal independence of the judiciary (Shetreet, 1985: 590-681). This opinion was later influenced by the formulation of various international instruments.

Judicial independence is one of the prerequisites for a universally recognized rule of law, as various international and regional legal instruments govern its freedom. An independent and impartial judiciary includes a person's right to be brought before a court of law, which is regulated in Article 10 of the Universal Declaration of Human Rights and Article 14 of the

International Convention on Civil and Political Rights, respectively. Therefore, the state is obliged to ensure an independent and impartial judicial authority.

The independence of the judiciary is reflected in judges' freedom. Judges' independence is considered their inherent right to guarantee citizens the human right to obtain a free and fair trial. Therefore, reciprocally, they are obligated to be independent and impartial to fulfill the human rights demands of justice seekers. (The Constitutional Court of the Republic of Indonesia, 2006: 05/PUU-IV/2006).

The United Nation's "Basic Principles on the Independence of Judiciary" contains seven principles of judicial independence and thirteen other principles that support this independence, including *freedom of expression and association, qualifications (selection and training), conditions of service and tenure, professional secrecy and immunity, and discipline (suspension and removal)*.

The seven principles of independence of the judiciary are as follows: (1) The independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country. All governmental and other institutions are duty-bound to respect and observe the independence of the judiciary. (2) The judiciary shall decide matters before them impartially, based on facts and by the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any party or for any reason. (3) The judiciary shall have jurisdiction over all judicial issues and shall have exclusive authority to decide whether they are competent to rule on an issue submitted for its decision, as defined by law. (4) There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle does not affect judicial review or mitigation or commutation by competent authorities of sentences imposed by the judiciary, by the law. (5) Everyone shall have the right to be tried by ordinary courts or tribunals. (6) The principle of judicial independence requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. (7) Each member state (of the United Nations) is duty-bound to provide adequate resources to enable the judiciary to perform its functions properly.

Detailed descriptions of the principles of judicial independence have been provided in Mt. Scopus International Standards of Judicial Independence (2008), *the Bangalore Principles of Judicial Conduct* (2002), New Delhi Minimum Standards on Judicial Independence/International BAR Association (1982), the *Montréal Universal Declaration on the Independence of Justice* (1983); *International Bar Association Code of Minimum Standards*

of *Judicial Independence* (1982), and Beijing Statement of Principles of the Independence of Judiciary in the Law Asia Region (1995).

According to these various international instruments, judicial independence fundamentally implies:

- (1) An independent and impartial judiciary is an institution of the highest degree in every society and an important pillar of the rule of law.
- (2) An independent and impartial judiciary is a right for everyone (Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Convention on Civil and Political Rights).
- (3) The state must guarantee the independence of the judiciary through constitutional provisions or an appropriate law as the state is responsible for providing adequate resources that allow the judiciary to perform its functions. (Principle 1 and Principle 7 of the Basic Principles on the Independence of the Judiciary).
- (4) The state should not control the independence of judicial power. The judiciary is not only free from executive intervention or other state powers but is also independent of socioeconomic and external influences.
- (5) The independence of judicial power includes individual (substance and personal), collective, and internal freedom.

(5.1) *Individual freedom:*

Individual freedom comprises the following components.

- Substantive independence enables a judge to serve justice by the law and orders of conscience, without the intervention of executive power. (International Bar Association, 1982: article 1).
- Personal independence implies that the terms and conditions of judicial services are adequately secured to ensure that individual judges are not subjected to executive control.

(5.2) *Collective independence*

The judiciary should enjoy autonomy and collective independence vis-à-vis the executive as it is not dependent on or controlled by the government authority.

(5.3) *Internal Independence*

Internal freedom is determined by the following conditions:

- In the decision-making process, a judge should be independent vis-à-vis their judicial colleagues and superiors.

- Differences in hierarchical position including grade or rank should not interfere with the right of judges to pronounce their judgments freely.

The independence of judicial power must be supported by judges' impartiality, professionalism, and morality (integrity), which should be reflected in their decisions. Again, as Shaman said, "Judges resolve disputes between people and interpret and apply the law by which we live. (...) They define our rights and responsibilities, determine the distribution of vast amounts of public and private resources, and direct the actions of officials in other branches of government."(MacKay, 1995)

The legal dogma dictates that the judges' decisions must be considered true and cannot be monitored and corrected unless through judicial action according to the applicable procedural provisions. The independence of the judiciary is limited by the general principles of good litigation and legal provisions, which are both procedural and substantial. (Mt. Scopus Standards of Judicial Independence, 2008: article 6.1) Hence, judicial independence must be balanced with judicial accountability. Consequently, the freedom of judges as law enforcers requires adherence to the following principles: (1) accountability, (2) moral and ethical integrity, (3) transparency, (4) supervision (control), and (5) professionalism and impartiality.

Many theories have examined justice accountability in terms of judicial independence. However, there appear to be contradictions because the judiciary's independence and accountability are difficult to reconcile with each other. For O'Connor, accountability should be considered protection rather than a threat to the judiciary. (O'Connor, 2008:1).

In O'Connor's view, the main element of judicial accountability is avoiding the abuse of power. The independence of individual judges can be protected in two ways. First, protecting the judges are protected from external threats or threats of retaliation so that their decision-making is not rooted in fear. Second, ensuring that the method of selecting judges and the ethical principles imposed on them are constructed to minimize the risk of corruption and outside influence. This goal aims to ensure that judicial power is not abused, which is a major concern for judicial accountability.

In his writing "Who Watches the Watchmen?" A Comparative Study on Judicial Responsibility," Cappelletti argues that there are several models of accountability for judicial power: (Cappelletti, 1983, Vol.31, Number 1: 557):

- (1) *Political accountability*: Judges, are responsible for conducting themselves as per the procedures outlined by constitutions and political institutions either individually, collectively, or institutionally.

(2) *Societal or public accountability*: Judges can be controlled by the public through the mass media, examination of judges' decisions, and criticism of and dissenting opinions against published decisions. These are also a form of professional accountability as the public expects judges to operate with fairness.

In this context, it is necessary to remember the provisions of Article 6.1 of Mt. Scopus International Standards of Judicial Independence (2008), which determine that judicial independence does not render judges free from public accountability; however, the media and other institutions should show respect for judicial independence and exercise restraint criticizing judicial decisions.

Similarly, Article 10 of the European Convention on Human Rights states the following:

(1) Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive, receive, and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting television or cinema enterprises.

(2) The exercise of this freedom, since it carries with its duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties as prescribed by law and is necessary for a democratic society, in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) *Legal (various) accountability of the state*: The state is responsible for errors in the judge's decision; the state can ask the judge to share their responsibility with the state. Therefore, judicial processes and procedural law must include control mechanisms to minimize errors in judicial decisions.

(4) *Legal (personal) accountability of the judge*: Judges are accountable for the crimes and unlawful activities they have committed in a personal capacity and as state officials.

MATERIAL AND METHODOLOGY

In general, legal research is understood as “the process of identifying a law that governs activities in human society.” (Cohen and Olson, 1992: 1). Legal research involves the use of various printed and electronic sources, printed sources include court decisions, statutes, administrative documents, and scholarly commentaries, whereas electronic sources include materials from a computer database.

In this study, I conducted normative legal research based on the nature of the problem in focus and data sources. (Soekanto and Mamudji, 1985: 11-13). As understood in the legal literature, this method helps examine the juridical standards contained in laws and court decisions. Furthermore, library research was conducted to obtain data from primary, secondary, and tertiary legal materials such as concepts, statutory methods, and legislation.

Legal literature broadly falls under two categories (Cohen and Olson, 1992: 3–4): (a) primary sources and (b) secondary materials. The primary sources include records of official rules or laws enforced by the state, which may be found in decisions of appellate courts, the statutes passed by legislators, executive decrees, and the rules and regulations of administrative agencies. In common-law countries such as the United States, judicial decisions form the first major category of primary sources, while in civil-law countries, product legislation is the key primary source.

Secondary materials include treaties, hornbooks, practice manuals, and legal writing in law journals. Secondary sources can help analyze a problem and provide research references to both primary sources and other secondary materials.

RESULT AND DISCUSSION

Judges must be accountable for their profession as judges (Phillips, 2010: 126); therefore, they must demonstrate diligence and apply professional ethics in their work. A violation of professional ethics will lead to failure to provide justice to justice-seekers. Judges' deviations from professional ethics also contradict the value of accountability that must be implemented in the judicial process.

The code of ethics for judges guides the behavior of judges both inside and outside the court. The role of judges in society has been historically well-respected and recognized (MacKay, 1995). Jeffrey M. Shaman from the United States-based Centre for Judicial Conduct, describes the power of judges in society, saying, "Judges are important public officials whose authority reaches every corner of society."

In particular, the Code of Ethics for Judges regulates two important aspects: prohibiting judges communication with litigants or parties expected to have litigation in court, and the judge's obligation to act impartially in court. In a trial, judges can only decide on cases based on facts. Accepting bribes or gifts is the most frequent violation by judges. However, violations of professional ethics are not committed by judges alone but involve third parties, especially lawyers.

In Indonesia, the Supreme Court and the Judicial Commission jointly created the last version of the Code of Ethics for Judges in 2012. The Supreme Court represents judges as an organization exercising judicial power with the Constitutional Court, as stipulated in Article 24 of the 1945 Constitution. The Judicial Commission is a state organ entrusted with the task of supervising the ethical behavior of judges and selecting candidates for Supreme Court justices based on Article 24B of the 1945 Constitution.

Experience from Indonesia shows that professional ethical violations by judges are often concurrent with criminal acts. For example, accepting bribes is both a violation of professional ethics and a crime. The Corruption Eradication Commission (KPK) is generally in charge of investigating judges accepting bribes from litigants. If found culpable, the judge concerned is immediately subjected to suspension or is temporarily dismissed. Another example is when a decision in a case does not match the facts that have emerged in a trial. For example, the defendant should have been sentenced because the evidence in the trial supported the prosecutor's accusation, whereas the panel of judges acquitted the defendant. In such cases, the judge concerned is usually examined by the Judicial Commission. If proven guilty of violating professional ethics by accepting bribes to give an incorrect verdict, the judge is temporarily dismissed. Thereafter, the KPK examines the criminal aspects of a judge's actions. In terms of the judicial process, bribery is a form of judicial corruption.

In the United States, there have also been several violations of professional ethics by judges, including Judge Martin T. Manton, who was known to the public as a judge of integrity and dedication. (Borkin, 1962: 25-27). His professional ethical violation was later covered in a well-known book titled, "The Corrupt Judge, An Inquiry into Bribery and Other High Crimes and Misdemeanours in The Federal Courts."

Judge Manton's achievements are as follows: He began his career in 1916 at the age of thirty-six and was the youngest federal judge in United States history. His peak achievement was in January 1939, when he became a tenth-ranking justice in the United States. During his ten-year career as a judge, he examined 2000 cases and wrote opinions, a record that only a few judges could achieve.

As an alumnus of the prominent Columbia University Law School, Judge Manton was frequently invited to provide graduation addresses at several universities. Because of his outstanding achievements as a judge, he was awarded honorary degrees by New York University, Fordham University, and the University of Vermont. He was honored by the New York Bar and American Bar Association. However, despite all his outstanding work, his reputation, and the respect that he earned, Judge Manton lost the respect of the public after

allegations of judicial corruption” by a young New York prosecutor named Thomas E. Dewey in January 1939.

Manton was indicted in six cases indicating improper activities, namely: employing a fixer, approaching litigants for loans, engaging in corrupt bankruptcy practices, and “performing a host of improper activities tantamount to the sale of his judicial office.” Although he pleaded not guilty, he submitted a letter of resignation as a judge to the president on January 30, 1939.

Another story of judicial corruption in the United States occurred in 1971 by Supreme Court Justice Mitchell D. Schweitzer in New York. (Whitney North Seymour, 1973: 39). Chief Justice Schweitzer was accused of several improper acts involving the litigants he examined, including the release of an organized crime figure from prison after the convicted criminals paid a fee to influence dealer Nathan Voloshen. Chief Justice Schweitzer resigned a day before he was charged with the trial.

On April 20, 1973, Judge Otto Kerner of the United States Court of Appeals for the Seventh Circuit was sentenced to three years in prison after the grand jury found him guilty of bribery, conspiracy, mail fraud, and income tax evasion.

Deviations from the professional ethics of judges also occur in Indonesia. One case that greatly shocked the Indonesian public was when the KPK arrested the Chief Justice of the Constitutional Court, Akil Mochtar, on October 3, 2013, shortly after he received a bribe from litigants in a dispute over the Regional Head Election of Gunung Mas Regency at the Constitution Court. The Special Corruption Tribunal sentenced Mochtar to life in prison for several bribery cases during 2012–2013.

India also has stories of judges committing professional ethical violations, not only at the lower judicial level but also at the Supreme Court level. A report said, “Ever since four senior Supreme Court judges held an unprecedented press conference to criticize then-Chief Justice of India Dipak Misra in January 2018, the Indian judiciary has been embroiled in a series of controversies — with the issues ranging from corruption in the higher judiciary, transparency in the appointment of judges, allegations of bench-fixing and judicial overreach.”

In Indonesia, this crisis of judicial accountability because of “judicial corruption” came to light after judicial independence was strengthened with amendments to the 1945 Constitution. When a judge’s decision is influenced by a bribe from a litigant, the judge no longer decides on cases based on the facts of the trial: they fulfill the request of the bribe-giver. The following subsections discuss some prominent bribery cases involving highly placed judges.

Table 1: List of Case

No	Time and Location	Name of Judge	Bribery Cases	Court Decision
1	August 17, 2012, Semarang	Syarifuddin, Central Jakarta Court	100 million rupiahs (6,900 US dollars)	13 years
2	August 17, 2012, Semarang	Imas Dianasari, Bandung Industrial Relation Court	100 million rupiahs (6,900 US dollars)	6 years
3	December 9, 2010, Jakarta	Muhtadi Asnun, Tangerang District court	40,000 US dollars	2 years
4	August 2, 2010, Jakarta	Ibrahim, judge at the Jakarta administrative court	300 million rupiahs (20,690 US dollars)	6 years
5	July 1, 2014	Akil Mochtar, Chief of the Republic of Indonesia Constitutional Court	57 billion rupiahs (4.7 million US dollars)	life imprisonment sentence

Source: Prepared by the authors (2022)

The preamble of The United Nations Conventions against Corruption was quoted by Maha Farooq Ezzat Al-rubaye as saying that “indicating the seriousness of corruption as a phenomenon that significantly impacts all human societies.... with the problems and dangers of corruption on the stability and security of communities, which endangers the institutions and values of democracy, morality, and justice, and threatens sustainable development” (Al-rubaye, 2022, 7.5: 3). Overall, judicial corruption can be considered a crisis of accountability and a violation of judicial ethics.

CONCLUSION

This paper attempted to present some ethical issues facing the Indonesian judiciary by exploring the usefulness of judicial codes of ethics as an answer to uncertainty about judicial accountability and increased public scrutiny. A wide range of sanctions increases the importance of having an express standard of conduct. Judges facing various penalties must be aware of the types of behaviors that could result in sanctions.

Efforts to ensure a fair trial require a long-term struggle, close collaboration between the Supreme Court and the Judicial Commission, and advocate organizations. In Indonesia, these associations have established a cooperation to uphold the "Code of Ethics and Conduct for Judges," especially when encountering a violation of professional ethics. However, it is not uncommon for the Judicial Commission to encounter communication issues with the Supreme Court when investigating judges who have violated the code of ethics when their recommendations are followed. These challenges arise because the jurisdiction of the Judicial Commission is limited to providing recommendations for actions against judges who have violated the code of ethics. It is also important to consider the concept of revision of Law No. 18 of 2011 concerning the amendment of Law No. 22 of 2004 to the Judicial Commission.

Additionally, the "nature of the recommendation" became the "final verdict" following the Justice Commission's work after a joint investigation of the Supreme Court against judges who violated ethical codes in an honorary panel session.

Finally, it is important to have committed advocate organizations participating in building the "dignity of judges" through a firm attitude towards its members involved in the "justice mafia" activities. When judges risk losing respect and gaining sanctions due to gross violations of ethical codes, advocate organizations should act as firmly as possible against judges engaging in "judicial corruption," by bribing judges and officials.

The judicial process and court officials involved in corruption cases examined in this study showed that there is something wrong with the perception of "violation of the code of ethics," which leads to corruption cases. For example, there exists a permissive attitude towards bribery; if a perpetrator is exposed to legal snares, then the events of the hands are considered bad. Accordingly, the Judicial Commission must work diligently to select Supreme Court Justices and conduct oversight to identify the potential for corrupt judicial practices. The commission should also collaborate with the Corruption Eradication Commission and the Financial Transaction Analysis Centre to conduct wiretapping and examine the wealth profile of judges and judicial officials who are suspected of engaging in corruption cases as players of the "justice mafia."

The possibility of a fair and impartial judicial process is also influenced by the extent to which the judiciary's independence can be upheld. The history of the Indonesian judiciary shows that judicial independence can be strengthened when the struggle comes from within, leading toward a fair and impartial judicial process. It is hoped that the ideas and issues raised in this paper will help the judiciary recognize the importance of developing, maintaining, and, most importantly, honoring a code of ethics in keeping with the ethical obligations of the judicial office.

REFERENCES

- Ackerman, B. (2000). The New Separation of Powers. *The Harvard Law Review*.
- Al-Rubaye, M., F., E. (2022). Administrative Corruption: Causes And Solutions Special Reference To Iraq. *International Journal of Professional Business Review*, 7(5), e01015. <https://doi.org/10.26668/businessreview/2022.v7i5.e1015>
- Asshiddiqie, J. (2006). *Pengantar Ilmu Hukum Tata Negara (Introduction to Constitutional Law)*. The Secretariat General of Constitutional Court.

- Beijing Statement of Principles of the Independence of Judiciary in the Law Asia Region, (1995).
- Cappellati, M. (1983). Who Watches the Watchmen? A Comparative Study on Judicial Responsibility. *American Journal Comparative*, 31(1).
- Consolidating the Code of Ethics and Code of Conduct for Judges, (2014).
- Cohen, Morris, L. and Olson, K., C. (1992). *Legal Research, in a Nutshell*. St. Paul West Publishing Co.
- Ferejohn, J. (1999). Independent Judges, Dependent Judiciary: Explaining Judicial Independence. *Southern California Law Review*, 72(353).
- Halim, H. (2014). Historic Sentence Akil. *The Jakarta Post*. <https://www.thejakartapost.com/news/2014/07/01/historic-sentence-akil.html>
- Harman, B., K. (1997). *Konfigurasi Politik dan Kekuasaan Kehakiman di Indonesia (Political Configuration and Judicial Power in Indonesia)*. Elsam.
- International Bar Association Code of Minimum Standards of Judicial Independence, (1982).
- International Principles on the Independence and Accountability of Judges, Lawyers, and Prosecutors: A Practitioner's Guide, (2004).
- Kelsen, H. (1961). *General Theory of Law and State*. Russell & Russell.
- Kelsen, H. (1961). *Pure Theory of Law*. University of California Press.
- Kompas.com. (2013). Kronologi Penangkapan Akil Mochtar. *Kompas Nasional*. <https://nasional.kompas.com/read/2013/10/03/1837456/Kronologi.Penangkapan.Akil.Mochtar>
- Larkins, C., M. (1996). Judicial Independence and Democratization: A Theoretical and Conceptual Analysis. *The American Journal of Comparative Law*.
- Locke, J. (1985). *Two Treaties (Fifth)*. Steven and Sons.
- MacKay, A., W. (1995). *Judicial Ethics: Exploring Misconduct and Accountability for Judges*. Commonwealth Judicial Education Institute Publications.
- Mahmodin, M., M. (1999). *Pergumulan Politik dan Hukum Di Indonesia, (Political and Legal Struggles in Indonesia)*. Gama Media.
- Montesquieu, B., D. (1949). *The Spirit of the Laws*. Hafner Press.
- Mt. Scopus Standards, (2008).
- New Delhi Minimum Standards on Judicial Independence/International BAR Association, (1982).
- O'Connor, S., D. (2008). Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction. *Denver Law Review*, 86(1).

- Shetreet, S. and Forsyth, C. (2012). *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges*. Martinus Nijhoff Publishers.
- Shetreet, S. (1985). *Judicial Independence: The Contemporary Debate (with J. Deschenes, as consulting editor)*. Martinus Nijhoff.
- Strong, C., F. (2004). *Konstitusi-Konstitusi Politik Modern (Modern Political Constitutions)*.
- Suny, I. (1982). *Mencari Keadilan, sebuah Otobiografi (Looking for Justice, an Autobiography)*. Ghalia Indonesia. Nuansa dan Nusamedia.
- Suny, I. (1986). *Pergeseran Kekuasaan Eksekutif, (Executive Power Shift)*. Aksara Baru.
- Tandoh, I. (2022). Corporate Governance, Corporate Social Responsibility and Corporate Sustainability: The Moderating Role Of Top Management Commitment. *International Journal of Professional Business Review*, 7(2), e0309. <https://doi.org/10.26668/businessreview/2022.v7i2.309>
- The 1945 State Constitution of the Republic of Indonesia.
- The Bangalore Principles of Judicial Conduct, (2002).
- The Constitutional Court Decision of No. 5/PUU-III/2006.
- The International Covenant on Civil and Political Rights, (1966).
- The Montréal Universal Declaration on the Independence of Justice, (1983).
- The Universal Declaration of Human Rights, (1948).
- Thohari, A, A. (2004). *Komisi Yudisial dan Reformasi Peradilan (Judicial Commission and Judicial Reform)*. Elsam.