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THE IDEA OF INDEPENDENT JUDICIAL ETHICS COURTS IN INDONESIA

Gagasan Pengadilan Etik Kehakiman Independen Di Indonesia

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Abstract

This research was conducted to conceptually explore the urgency of the establishment and institutional pattern of the special ethical judicial institution of judicial power. This is driven by the growing global interest in state ethical practices, driven by the ineffectiveness of the law in maintaining public trust. Therefore, fostering and controlling the ideal behavior of judges is considered better through an ethical system, with the law as a last resort. This concept is reinforced by the idea of constitutional ethics, which is equivalent to constitutional law. Normative juridical research methods with legal and conceptual approaches are used in this study. The results of the analysis show that its development leads to the stage of functional ethics, namely the codification and positivization of ethics with the support of institutional infrastructure for its enforcement. The idea of a judicial ethics court strongly supports the strengthening of ethical institutions to build integrity in judges' behavior. The institutional construction of the ethics court must be in accordance with judicial principles in general and structurally the same as the Supreme Court and the Constitutional Court. However, it is possible that establishing an ethics court also has challenges that must also be considered.

Keywords: Court of Ethics, Judicial Ethics, Institutional Pattern, Independent.

Abstrak

Penelitian ini dilakukan dengan tujuan untuk mengeksplorasi secara konseptual pola urgensi pendirian dan pola kelembagaan peradilan etik khusus kekuasaan kehakiman. Hal tersebut terdorong dari minat global terhadap praktik etika bernegara yang semakin meningkat, didorong oleh ketidakefektifan hukum dalam menjaga kepercayaan publik. Oleh karena itu, membina dan mengendalikan perilaku ideal hakim dinilai lebih baik melalui sistem etika, dengan hukum sebagai upaya terakhir. Konsep ini diperkuat oleh gagasan etika konstitusional, yang setara dengan hukum konstitusional. Metode penelitian yuridis normatif dengan pendekatan hukum dan konseptual digunakan dalam penelitian ini. Hasil analisis menunjukkan bahwa perkembangannya mengarah pada tahap etika fungsional, yaitu kodifikasi dan positivisasi etika dengan dukungan infrastruktur kelembagaan penegakannya. Gagasan pengadilan etik yudisial sangat mendukung penguatan kelembagaan etika untuk membangun perilaku hakim yang berintegritas. Konstruksi kelembagaan pengadilan etik harus sesuai dengan prinsip-prinsip peradilan secara umum dan secara struktural sama dengan Mahkamah Agung dan Mahkamah Konstitusi. Namun demikian, tidak menutup kemungkinan bahwa pembentukan pengadilan etik juga memiliki tantangan yang juga harus diperhatikan.

Kata kunci: *Pengadilan Etik, Etika Kehakiman, Pola Kelembagaan, Independen.*

Table of Contents

Abstract	65
Table of Contents	67
Introduction	68
Background	68
Problem Formulation	70
Method	71
Discussion	71
Institutional Patterns of Ethics Court	71
Construction of an Ethics Judiciary: Challenges and Opportunities	75
Conclusion	79
Bibliography	80



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I. INTRODUCTION

A. Background

Judicial ethics is an important pillar in a country's legal system. In Indonesia, judicial ethics has become an important and relevant topic in legal and policy discussions.¹ Judicial ethics refers to a set of values and norms that judges and other legal officials should follow in carrying out their duties. These values include integrity, independence, impartiality, professionalism and transparency.²

In Indonesia's constitutional system, the existence of institutions tasked with enforcing the code of ethics of public office has shown significant development.³ In the judiciary, there is the Judicial Commission and the Judges' Honour Council (MKH) in the Supreme Court. A similar mechanism, MKMK, also exists in the Constitutional Court. The world of press and journalism also has the Press Council as the guardian of the code of ethics. In the legislative realm, both the House of Representatives (DPR) and the Regional Representatives Council (DPD) have an Honour Board which was later changed to the Council Honour Court (MKD) for the DPR and the DPD Honour Board, as stipulated in the MPR, DPR, DPR and DPRD Act.⁴

While there are several code of ethics enforcement bodies in place, the effectiveness and transparency of these bodies varies.⁵ Most of these institutions are still pro-forma, with performance that seems closed and less than optimal.⁶ In some cases, these institutions do not perform their duties at all during their term of office. This is due to several factors, one of which is the lack of independence and transparency in their working mechanisms. The reason often cited is ethical issues relating to personal matters that should not be made public.

Constitutional Court Decision Number 90/PUU-XXI/2023 on the age limit for presidential candidacy read by Anwar Usman is considered to violate the principles

¹ Jimly Asshiddiqie, *Peradilan Etik Dan Etika Konstitusi: Perspektif Baru Tentang Rule of Law and Rule of Ethics Dan Constitutional Law and Constitutional Ethics (Edisi Revisi)* (Jakarta: Sinar Grafika, 2017).

² Beni Kurnia Illahi and Feri Amsari, "Benang Kusut Peradilan Etik Penyelenggara Pemilu," *Jurnal Bawaslu Provinsi Kepulauan Riau* 4, no. 1 (2022), <https://doi.org/10.55108/jbk.v4i1.105>.

³ Fradhana Putra Disantara, "PERSPEKTIF KEADILAN BERMARTABAT DALAM PARADOKS ETIKA DAN HUKUM," *LITIGASI* 22, no. 2 (2021), <https://doi.org/10.23969/litigasi.v22i2.4211>.

⁴ Elfid Nurfitra Mubarak and Alwi Al Hadad, "PENGAWASAN TERHADAP HAKIM MAHKAMAH KONSTITUSI: PERSPEKTIF TEORI CHECKS AND BALANCES DALAM SISTEM KETATANEGARAAN," *Khazanah Hukum* 3, no. 1 (2021): 8-19, <https://doi.org/10.15575/kh.v3i1>.

⁵ Mikhael Wisnumurti C. S and Tomy Michael, "Kedudukan Lembaga Serta Tindak Lanjut Mengenai Putusan Dewan Kehormatan Penyelenggara Pemilu," *File:///C:/Users/Aslim/Downloads/Jurnal%20MK/278-Article%20Text-341-1-10-20230129%20(1).Pdf* 3, no. 2 (2023).

⁶ Asshiddiqie, *Peradilan Etik Dan Etika Konstitusi: Perspektif Baru Tentang Rule of Law and Rule of Ethics Dan Constitutional Law and Constitutional Ethics (Edisi Revisi)*.

of judicial impartiality and independence.⁷ A key principle in judicial power is that courts should be free from executive and legislative influence.⁸ This action was highlighted as a violation of the judicial code of ethics and the principle of "Nemo Judex In Causa Sua", which asserts that a judge should not decide cases involving himself or herself.⁹

It shows that in this modern era of disruption, the ethics of public officials are still considered weak.¹⁰ This assumption is based on the fact that ethics is not considered a law.¹¹ Law is considered different from ethics. Therefore, a new thought is needed that is relevant to the status quo, where the ethics of public officials must be enforced.¹² Effective law enforcement requires adequate substance, structure, and legal culture. Hopefully, the ideas in this research can answer the ethical problems of the nation and state as referred to above.¹³

In this research, there are several previous studies that have formulated an idea in the form of journal articles with discussions related to ethical judicial institutions, including: *First*, a study entitled "Checks and Balances in the Ethics Court System" written by Mega Ayu Werdiningsih.¹⁴ Shortly, the study examines the application of the principle of checks and balances in the ethics justice system, especially in the ethics justice system which still applies closed ethics trials, namely in the DPR Honorary Council (MKD), the Judges' Honorary Council (MKH) and the Constitutional Court Honorary Council (MKMK).¹⁵

⁷ Rizal Setyo Nugroho Erwina Rachmi Puspapertiwi, "Anwar Usman Dipecat Dari Ketua MK, Ini Daftar Kode Etik Yang Dilanggar," *Kompas.com*, 2023.

⁸ Hafizatul Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan," *Unizar Law Review* 6, no. 2 (2023), <https://doi.org/10.36679/ulr.v6i2.60>.

⁹ Edo Maranata Tambunan et al., "ANALISIS EKSISTENSI ETIKA HAKIM MAHKAMAH KONSTITUSI DALAM MEWUJUDKAN PERADILAN BERINTEGRITAS DAN AKUNTABEL (PUTUSAN MK NO. 90/PUU-XXI/2023)," *IBLAM LAW REVIEW* 4, no. 2 (May 31, 2024): 50-61, <https://doi.org/10.52249/ilr.v4i2.406>.

¹⁰ Muchlisin, "Konsep Independent Regulatory Agencies Dalam Kewenangan DKPP Sebagai Lembaga Peradilan Etik," *As-Shahifah: Journal of Constitutional Law and Governance* 1, no. 1 (2022), <https://doi.org/10.19105/asshahifah.v1i1.5883>.

¹¹ Abdullah Al Ghifari, "Etika Profesi Hakim Dalam Perspektif Peradilan Islam," *Bandung Conference Series: Islamic Family Law* 2, no. 2 (2022), <https://doi.org/10.29313/bcsifl.v2i2.2697>.

¹² Imran Imran, "PELANGGARAN KODE ETIK DAN PEDOMAN PERILAKU HAKIM," *Jurnal Yudisial* 12, no. 1 (2019): 1, <https://doi.org/10.29123/jy.v12i1.379>.

¹³ Liem Tony Dwi Soelistyo, "PERKEMBANGAN BARU TENTANG KONSTITUSI DAN KONSTITUSIONALISME DALAM TEORI DAN PRAKTIK," *Mimbar Keadilan* 12, no. 2 (2019), <https://doi.org/10.30996/mk.v12i2.2389>.

¹⁴ Mega Ayu Werdiningsih, "Check and Balances Dalam Sistem Peradilan Etik," *Jurnal Konstitusi Dan Demokrasi* 1, no. 1 (June 25, 2021): 53-79, <https://doi.org/10.7454/JKD.v1i1.1104>.

¹⁵ Ernawati Huroiroh and Wahidur Roychan, "Quo Vadis Eksistensi Komisi Yudisial Sebagai Majelis Kehormatan Mahkamah Kostitusi Pasca Putusan Mahkamah Konstitusi

Second, research written by Harmoko M Said with the title "Initiating an Ethical Court for State Organizers in Indonesia".¹⁶ In short, the normative juridical research examines the urgency of establishing an ethics court with the method of establishing a special ethics court law or by making the fifth amendment to the 1945 Constitution of the Republic of Indonesia.¹⁷ This is motivated by several factors, namely philosophical, juridical, and sociological factors.

The third study, written by Mukhtar and Tanto Lailam entitled "Ethical Problems of State Officials and the Idea of an Independent and Impartial Ethics Court".¹⁸ It can be concluded that the article examines the ethics of state officials that are increasingly mushrooming and the urgency of establishing an independent and impartial ethics court. The article formulates ethical courts in Indonesia in parliamentary and judicial institutions.

Originality in this research lies in the difference with the aforementioned research in terms of the title of analysis and research construction. The previous studies mentioned from the first to the third studies only discussed the urgency of establishing an ethics court, the principle of checks and balances and ethics courts in a broad context (covering the legislature and judiciary). The three studies did not comprehensively and in-depth discuss ethical courts in the field of justice or the judiciary, which in fact today, judges in Indonesia have proven to be vulnerable to violating the code of ethics in the form of conflict of interest.

The idea formulated in this research is to reconstruct the ethical judicial institution of the judiciary. This ethical judicial institution must apply modern judicial principles, such as transparency, independence and impartiality. Comparatively, DKPP has pioneered this step, with the aim of building a strong constitutional system with a functional rule of law and rule of ethics.¹⁹

B. Problem Formulation

Therefore, this research was conducted to answer two constructive questions, namely: 1) How is the institutional pattern of special ethics judiciary institution of judicial power or judiciary?; and 2) What are the static steps and strategic steps in

No. 56/PUU-XX/2022," *Sosio Yustisia Jurnal Hukum Dan Perubahan Sosial* 3, no. 2 (2023), <https://doi.org/10.15642/sosyus.v3i2.363>.

¹⁶ Harmoko M. Said, "Menggagas Peradilan Etik Penyelenggara Negara Di Indonesia," *SASI* 27, no. 1 (March 25, 2021): 24, <https://doi.org/10.47268/sasi.v27i1.266>.

¹⁷ A Ghani, "Code of Ethics as Justice Enforcement for Professional Judges Kode Etik Profesi Hukum Sebagai Penegakan Hukum Yang Berkeadilan Bagi Profesi Hakim," *JCIC - Jurnal CIC Lembaga Riset Dan Konsultan Sosial*, 2020.

¹⁸ Tanto Lailam Mukhtar, "PROBLEM ETIKA PEJABAT NEGARA DAN GAGASAN PERADILAN ETIK YANG INDEPENDEN DAN IMPARSIAL," *Masalah-Masalah Hukum* 50, no. 3 (July 2021): 265-78, <https://ejournal.undip.ac.id/index.php/mmh/article/view/33084/19849>.

¹⁹ M. Lutfi Chakim, "Desain Institusional Dewan Kehormatan Penyelenggara Pemilu (DKPP) Sebagai Peradilan Etik," *Jurnal Konstitusi* 11, no. 2 (May 20, 2016): 393, <https://doi.org/10.31078/jk11210>.

establishing a special ethics court institution for the judiciary? These two questions become the basis for the author in analyzing the institutional problems of the judicial code of ethics in Indonesia.

C. Method

This research uses normative juridical methods with legal and conceptual approaches. The legal approach is carried out to examine the laws and regulations that govern the code of ethics for judges, including an analysis of the relationship between law and ethics in the Indonesian judicial system.²⁰ The conceptual approach is used to explore ideas and theories about strengthening ethical institutions, especially through the establishment of ethical courts based on judicial principles.²¹

The data used is sourced from literature studies, including legal regulations and other relevant documents. The analysis was carried out qualitatively to compile a systematic view of codification, positivization, and institutional infrastructure of ethics enforcement. The results of this research are expected to make a theoretical and practical contribution in developing ethical courts in accordance with judicial principles and answering the challenges of its implementation in Indonesia.

II. DISCUSSION

A. Institutional Pattern of Ethics Court

In the state sphere, the role of ethics and morality cannot be separated from the fundamental values that form the core of behavior as a nation and state. These fundamental values serve as the foundation and guidelines in living the life of the nation and state. In the field of law, these values are enshrined in the grundnorm according to the theory of *stupen*, which occupies the most fundamental position as the essence of the *staat fundamental norm*.²²

A Healthy democracy requires simultaneous enforcement and respect for law and ethics. This democracy must be supported by "the rule of law and the rule of ethics" that go hand in hand.²³ "The Rule of Law" is based on the "Code of Law" and enforced

²⁰ Tunggal Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1-9, <https://doi.org/10.22219/aclj.v4i1.24855>.

²¹ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289, <https://doi.org/10.37253/jjr.v24i2.7280>.

²² Maria Farida Indarti, *Ilmu Perundang-Undangan (1), Jenis, Fungsi, Dan Materi Muatan, Revisi* (Yogyakarta: Kanasius, 2021).

²³ Ana Knežević Bojović, Milica V. Matijević, and Mirjana Glintić, "International Standards on Judicial Ethics and the Pitfalls of Cursory Legal Transplantation," in *Balkan Yearbook of European and International Law*, vol. 2021, 2022, https://doi.org/10.1007/978-3-030-97431-2_8.

through the Court of Law, while "The Rule of Ethics" is based on the "Code of Ethics" and enforced through the Court of Ethics.²⁴

In the Rule of Ethics, Pancasila is described with reference to the values that underlie the morality of behavior. The five precepts are formulated as components that have their own meaning but are integrated in an overall value and morality.²⁵ The first precept emphasizes the role of religion as a divine moral foundation, where society in the implementation of statehood does not separate the position of religion and the state as separate elements, but views them as an interconnected whole.²⁶ Religious teachings as ethical guidelines for behavior occupy the main and highest position in Pancasila.

In 1996, the United Nations General Assembly recommended that each member state build what it called an "ethics infrastructure in public institutions," which includes the adoption of codes of conduct as well as the establishment of code enforcement bodies.²⁷ As a result, countries in Europe, America and other parts of the world have developed a system of codes of ethics and code enforcement commissions. Indonesia is no exception, which also adopted this idea by establishing the Judicial Commission as stipulated in Article 24B of the 1945 Constitution as part of the Third Amendment to the 1945 Constitution in 2001.

Not only Pancasila and the 1945 Constitution of the Republic of Indonesia that serve as the basis for the ethics of the state itself, the People's Consultative Assembly (MPR) has long provided direction for state administrators and/or law enforcers to be ethical in the nation. This is contained in MPR Decree No. 6/2001 on the Ethics of National Life. In the MPR Decree, it has been mentioned what must be done and not done by State Officials. Therefore, the concept of state ethics has long been echoed by the State itself.

In the current era of disruption, the idealization of the establishment of a code of ethics system is increasingly prominent in various sectors of professional organizations and public organizations.²⁸ In fact, for a long time, a number of public and professional organizations in Indonesia, such as the Indonesian Medical Association, have had a Professional Code of Ethics document.

²⁴ Asshiddiqie, *Peradilan Etik Dan Etika Konstitusi: Perspektif Baru Tentang Rule of Law and Rule of Ethics Dan Constitutional Law and Constitutional Ethics (Edisi Revisi)*.

²⁵ José Manuel Cabra Apalategui, "Ethical Codes and Public Service. An Approach from the Theory of Law," *Estudios de Deusto* 68, no. 1 (2020), [https://doi.org/10.18543/ed-68\(1\)-2020pp19-41](https://doi.org/10.18543/ed-68(1)-2020pp19-41).

²⁶ Charles G. Geyh, "Judicial Ethics: A New Paradigm for a New Era," *St. Mary's Journal on Legal Malpractice & Ethics* 9, no. 2 (2019).

²⁷ Sharyn Roach Anleu et al., "Judicial Ethics, Everyday Work, and Emotion Management," *Journal of Law and Courts* 8, no. 1 (2020), <https://doi.org/10.1086/703700>.

²⁸ O. Snidevych and O. Khotynska-Nor, "Judicial Ethics as a Component of Professional Ethics of a Member of the Supreme Council of Justice," *Uzhhorod National University Herald. Series: Law* 3, no. 75 (2023), <https://doi.org/10.24144/2307-3322.2022.75.3.19>.

In contemporary times, all political parties have adopted codes of ethics that govern their management and membership. Civil servants also have a code of ethics that governs their behavior. This reflects the development of positivism in the application of ethical systems in the public sphere. However, almost all existing codes of ethics are merely pro-forma. Their presence or absence makes no significant difference. Therefore, it is time to develop a new awareness of the importance of more substantial and effective codes of ethics.²⁹

Ethics aims to clarify the nature of good and bad. Ethics plays a crucial role in setting guidelines for significant actions, where people's beliefs influence their behavior. The main purpose of ethics is to provide people with an understanding of the concepts of good and bad by applying rules that govern their behavior, while maintaining the intrinsic values contained therein. The main focus of this activity is on the implementation of law enforcement by judges in the courts..³⁰

The judge plays a central role as the sole authority in the trial. In addition to overseeing the examination of cases, judges are also responsible for ensuring the application of ethics and etiquette in trials. The principles put forward by Socrates, known as The Four Commandments for Judges, are often used as ethical guidelines for judges. The principles state that a judge must listen politely, answer wisely, deliberate calmly and decide justly.

The Bangalore Principles of Judicial Conduct 2002 states that in essence, a judge's obligation to maintain his or her integrity, dignity and behavior must be carried out with firmness and consistency, both in carrying out judicial functions and outside the judicial context, as this is very important to support the rule of law and justice.³¹ Judges must always maintain and preserve their integrity as a form of professional honor or reputation in carrying out their duties.³² The decisions made by judges and the considerations underlying the decision-making process as a whole, which are not

²⁹ Edo Maranata Tambunan et al., "ANALISIS EKSISTENSI ETIKA HAKIM MAHKAMAH KONSTITUSI DALAM MEWUJUDKAN PERADILAN BERINTEGRITAS DAN AKUNTABEL (PUTUSAN MK NO. 90/PUU-XXI/2023)," *IBLAM LAW REVIEW* 4, no. 2 (May 31, 2024): 50-61, <https://doi.org/10.52249/ilr.v4i2.406>.

³⁰ Emanuel Raja Damaitu and Christian Adam Kautsar, "Penguatan Kekuasaan Kehakiman Di Indonesia Melalui Peradilan Etik," *Jurnal Kajian Konstitusi* 3, no. 2 (December 29, 2023): 202, <https://doi.org/10.19184/j.kk.v3i2.45059>.

³¹ Eliseu Raphael Venturi, "Humanist Hermeneutics, Judicial Ethics and Bangalore Principles: Elements of a Structuring Regulation," *Revista Eletronica Direito e Sociedade* 8, no. 2 (2020), <https://doi.org/10.18316/redes.v8i2.4743>.

³² Raymond Byrne, "JUDICIAL CONDUCT IN IRELAND: A FRAMEWORK FIT FOR PURPOSE? THE BANGALORE PRINCIPLES AND THE JUDICIAL COUNCIL ACT 2019," *Irish Judicial Studies Journal* 6, no. 1 (2022).

only based on laws and regulations but also on principles of justice and social wisdom, are manifestations of the integrity of the judge.³³

Strengthening ethics and integrity should be realized through strict implementation of the code of ethics as well as conducting regular supervision to ensure that judges' behavior complies with high ethical standards. The importance of providing a safe and anonymous reporting mechanism for cases of ethical violations should also not be overlooked. Transparency and accountability are also crucial; this can be improved by increasing openness in the judicial process, including providing public access to court decisions and proceedings.

As stated in the previous introduction, all ethical judicial institutions or those that adjudicate the ethical code of behavior of judges in Indonesia are still in the grip of the state institutions that oversee them. Even if they are still placed in positions under the leadership of state institutions, such as the Judges' Honor Council (MKH) under the Supreme Court and the Constitutional Court Honor Council (MKMK) under the Constitutional Court itself, so that it is actually vulnerable to interest interventions that are very likely to be carried out. This condition is certainly unable to guarantee independence and impartiality in case resolution, especially since judges who are authorized to enforce the code of ethics are part of these state institutions.

It is certainly possible that there will be conflicts of interest in the process of enforcing the code of ethics. Ethics institutions must have absolute requirements for independence and impartiality.³⁴ Because its position must not be part of a state institution or outside the structure of a state institution. Even ethics judicial institutions must be independent both in terms of functional, structural or institutional, and personal. Institutions do not become tools of state institutions, there is no intervention from state institutions, while ethical judges have independence / freedom based on their abilities.³⁵ On the impartiality side, ethical judges must not be influenced by certain interests and are neutral in enforcing the code of ethics.

Consequently, there is a need for a new construction in the organization and supervision of the code of ethics of judges in Indonesia. The author in this case initiates and constructs an institution that is actually needed in enforcing the code of ethics of judges in Indonesia. The institution is a "Judicial Ethics Court" that is independent and impartial like ethics courts in general.

³³ Mindaugas Šimonis, "The Role of Judicial Ethics in Court Administration: From Setting the Objectives to Practical Implementation," *Baltic Journal of Law and Politics*, 2017, <https://doi.org/10.1515/bjlp-2017-0004>.

³⁴ Jonathan Abel, "Testing Three Commonsense Intuitions about Judicial Conduct Commissions," *Stanford Law Review* 64, no. 4 (2012).

³⁵ Katarina Herring-Trott, "BASTIONS OF INDEPENDENCE OR SHIELDS OF MISCONDUCT?: INCREASING TRANSPARENCY IN JUDICIAL CONDUCT COMMISSIONS," *Fordham Law Review* 92, no. 2 (2023).

Within the Indonesian judicial system, there are principles that must be upheld and cannot be ignored. These principles include: (1) independence, (2) impartiality, (3) integrity, (4) public trial, (5) transparency and so on. These five principles are general principles in the implementation of a court. Therefore, the author's idea related to the "Judicial Ethics Court" is formulated like other judicial institutions, in terms of principles and structure.

What is essential is that the ethics court must be functionally, structurally and institutionally independent, as well as personally independent.³⁶ The institution should not be used as a tool for government interests or influenced by the intervention of state institutions. Ethics judges must also have independence based on their capabilities. In terms of impartiality, ethical judges must not be influenced by special interests and must be neutral in carrying out their duties to uphold the code of ethics.

In formulating the idea of a "Judicial Ethics Court", judges who are statesmen who prioritize honesty, trustworthiness, nobility, chivalry, sportsmanship, discipline, hard work, independence, shame, responsibility, honor, and self-dignity as ethical judges as referred to in the Bangalore Principles 2002 are needed. Court judges can be appointed by the independent institution of the Judicial Commission with very strict qualifications of appropriateness, considering that ethical judges here are judges who enforce the code of ethics of judges.

The concept of institutionalizing an ethics court focuses not only on prosecuting ethical and moral violations by state officials, but also on holding them accountable for their actions to society.³⁷ The expected power design of the ethics court system is to be able to provide strong sanctions, including the possibility of dismissal, against judges who commit violations of moral or ethical values that threaten the sovereignty of the people. The aim is to hone ethical awareness in the context of national life and quality law enforcement.³⁸

B. Construction of an Ethics Judiciary: Challenges and Opportunities

In formulating his ideas, the author does not only focus on the establishment of the institution, but also discusses the organizational structure of the institution and the mechanism for handling cases of violation of the code of ethics. In terms of organizational structure, the "Judicial Ethics Court" institution has at least several important aspects, namely:

³⁶ Lydia Achode, "Judicial Ethics: A Key Tenet to Legal Ethics," *Strathmore Law Journal* 6, no. 1 (2022), <https://doi.org/10.52907/slj.v6i1.183>.

³⁷ Nandang Sutrisno et al., "The Regulation of Defendant's Religious Identity in Court Decisions," *Bestuur* 10, no. 2 (2022), <https://doi.org/10.20961/bestuur.v10i2.61409>.

³⁸ Venturi, "Humanist Hermeneutics, Judicial Ethics and Bangalore Principles: Elements of a Structuring Regulation."

- (1) 3 (three) Ethics Judges, consisting of one representative of the Judicial Commission, one public figure, and one academic.
- (2) Ethics Committee, which investigates and receives reports from the public regarding violations of the code of ethics by judges.
- (3) Secretariat, as a provider of administrative, technical, and logistical facilities.

Then, the mechanism for handling cases of violation of the code of ethics by judges, the author initiates a mechanism as follows:

- (1) Receipt of a report, the public or parties involved may submit a written report regarding an alleged violation of ethics by a judge.
- (2) Investigation, the Ethics Committee conducts an investigation into the report received, including the examination of evidence.
- (3) Examination in an ethics court shall be conducted openly to the public. The judge listens to testimony from the complainant and the reported party as well as testimony from witnesses.
- (4) Decision, the Judge makes a decision based on the findings of the investigation and examination at trial, and then gives an appropriate sanction, such as a warning, reprimand, or dismissal order to be given to the Judicial Commission.³⁹

The formulation of such an idea can be implemented in a fast or static period of time as well as taking a long or strategic time. According to the author, a concrete step in establishing a "Judicial Ethics Court" is the establishment and issuance of a Government Regulation in Lieu of Law (Perpu) on the Judicial Ethics Court on the basis of a legal vacuum in enforcing the code of ethics of judges in Indonesia. With the Perpu, an institution can be created quickly and in a short period of time.

Furthermore, another formulation or alternative in the establishment of the institution of the "Judicial Ethics Court" is through the process of the Vth amendment of the 1945 Constitution of the Republic of Indonesia or at least through the formation of laws in the House of Representatives (DPR). In the formation of regulations on the Judicial Ethics Court, it is necessary to emphasize important matters such as: (1) an independent and impartial ethics court; (2) a transparent and accountable code of ethics enforcement process; (3) strengthening the principles of accountable judicial procedural law; and (4) ethics court decisions that are final and binding. That way, the idea of a "Judicial Ethics Court" institution can enforce constitutional ethics and rule of ethics effectively and efficiently.

The establishment of the "Judicial Ethics Court" has far-reaching implications not only on strengthening the rule of law, but also in improving the judicial ethics order

³⁹ Fairuz Zahirah Zihni Hamdan, Dwi Rahayu Kristianti, and Vincentius Verdian, "Limitation of Misconduct of Judges: Increasing The Synergy of Supervision of Judges by The Judicial Commission and The Supreme Court," *Yuridika* 38, no. 2 (2023), <https://doi.org/10.20473/ydk.v38i2.45472>.

in Indonesia.⁴⁰ In the constitutional law system, the existence of such an institution reflects a concrete step towards strengthening the principle of the state of law (*rechtstaat*) which places the law as the commander-in-chief.⁴¹ The Judicial Ethics Court has the potential to be a horizontal oversight mechanism that complements the vertical oversight function that has been carried out by the Supreme Court and the Constitutional Court. The presence of this institution is expected to be able to answer various challenges faced by the judicial system, especially related to the low integrity and independence of several judges who hurt public trust.

In a comparative perspective, various countries have adopted the ethics court model as a supervisory mechanism for judges and judicial officials. For example, in the United States there are "*Judicial Conduct Commissions*" that examine ethical violations by judges,⁴² while in Canada,⁴³ the "*Canada Judicial Council*" has the authority to investigate and recommend action against judges who are found to have violated the code of ethics. However, this institutional design cannot be applied in Indonesia without considering the characteristics of the country's legal system, legal culture, and constitutional structure.⁴⁴ Therefore, an adaptive approach that considers the uniqueness of Indonesia's legal system must be the foundation for the establishment of the Judicial Ethics Court.

The regulation of this institution must also include some basic principles that underpin its success. *First*, the independence of the institution must be guaranteed through a transparent mechanism for appointing and dismissing members, free from political interference or other interests. *Second*, procedures for handling ethical violations must prioritize the principles of transparency and accountability to build public trust. *Third*, the principle of due process of law must be a foothold in every stage of the ethics trial, ensuring that the basic rights of judges are protected throughout the process. *Fourth*, the decision of the Judicial Ethics Court must be final

⁴⁰ Siti Kotijah et al., "PROBLEMATICS OF THE OVERSIGHT OF THE CODE OF CONDUCT AND THE CODE OF JUDGMENT BETWEEN THE JUDICIAL COMMISSION AND THE SUPREME COURT," *Awang Long Law Review* 5, no. 2 (2023), <https://doi.org/10.56301/awl.v5i2.788>.

⁴¹ Colin Scott, "JUDGES IN REGULATORY SPACE: TOWARDS RESPONSIVE REGULATION OF JUDICIAL CONDUCT," *Irish Judicial Studies Journal* 6, no. 1 (2022).

⁴² Shivaraj S. Huchhanavar, "Conceptualising Judicial Independence and Accountability from a Regulatory Perspective," *Oslo Law Review* 9, no. 2 (2023), <https://doi.org/10.18261/olr.9.2.3>; Leo Kipkogei Kemboi, "The Four Governance Issues for Effective Judicial Service Commission and Judiciary," *SSRN Electronic Journal*, 2022, <https://doi.org/10.2139/ssrn.4018211>.

⁴³ Departement of Justice Canada, "Canada's Court System" (Ottawa: Canada, 2015); Richard W. Pound, "Extracurricular Activities: The Canadian Judicial Council and the Federal Court of Canada," in *Chief Justice W.R. Jaccett*, 2023, <https://doi.org/10.1515/9780773568075-010>.

⁴⁴ Dejo Olowu, "Quest for Universal Standards of Judicial Integrity: Some Reflections on the Bangalore Principles," *India Quarterly* 69, no. 2 (2013), <https://doi.org/10.1177/0974928413481885>.

and binding, so that it has strong legal authority and can be implemented immediately without hindrance.

Strategically, the existence of the Judicial Ethics Court can also be an important instrument in broader judicial reform. This institution can serve as a catalyst to improve the integrity and professionalism of judges, ultimately contributing to the creation of a fairer and more credible judiciary.⁴⁵ In addition, this court can also encourage the internalization of ethical values in the decision-making process by judges, so that each decision not only meets legal standards, but also high moral standards.

In the context of implementation, these courts must be designed to be able to handle various types of ethical violations, ranging from minor violations to serious violations that can damage the credibility of the judiciary. In addition, synergy with other supervisory institutions, such as the Judicial Commission and the Supreme Court, must be sought to ensure good coordination in upholding ethical standards. With a holistic approach and careful planning, the Judicial Ethics Court can be an important milestone in efforts to strengthen the legal order and democracy in Indonesia.

In the creation or structuring of an ethics court institution as referred to above, it does not mean that there are no challenges and opportunities in it. The following are challenges and opportunities that can be considered by legislators and executors in establishing a "Judicial Ethics Court" institution:

a. Challenge

In the Indonesian context, the judicial system of judicial ethics faces a number of obstacles that have the potential to impede improvements in the integrity and efficiency of the system. Corruption, collusion and nepotism are significant obstacles. Despite various countermeasures, there are still incidents involving judges and legal officials in corrupt practices, indicating that the fight against corruption in the justice system still needs to be strengthened.⁴⁶ Moreover, the judicial system is also faced with other challenges such as nepotism and inconsistency in law enforcement.⁴⁷ Meanwhile, inconsistencies in law enforcement can result in legal uncertainty and undermine public trust. Accordingly, the author believes that improving judicial ethics in Indonesia requires addressing these challenges.⁴⁸ This requires continuous coordinated

⁴⁵ Bora Laskin, "The Supreme Court of Canada: A Final Court of and for Canadians," in *The Courts and the Canadian Constitution*, 2023, <https://doi.org/10.1515/9780773595040-011>.

⁴⁶ Muhammad Haidir Ali Hafid, Siti Khotimah Firman Agus Faisal, "KODE ETIK HAKIM MAHKAMAH AGUNG DAN MAHKAMAH KONSTITUSI," *Jurnal Ilmiah Nusantara (JINU)* 1, no. 3 (May 2024): 86–93, <https://ejurnal.kampusakademik.co.id/index.php/jinu/article/view/1562>.

⁴⁷ Chakim, "Desain Institusional Dewan Kehormatan Penyelenggara Pemilu (DKPP) Sebagai Peradilan Etik."

⁴⁸ Achode, "Judicial Ethics: A Key Tenet to Legal Ethics."

efforts from various parties, including judges, legal officials, government, and society.

b. Opportunity

The judicial notion of judicial ethics in Indonesia is based on principles such as integrity, independence, impartiality, professionalism, and transparency. The main purpose of these values is to shape the behavior of judges and other legal officials, and to ensure that they carry out their duties in a fair and ethical manner. The concept of ethical judiciary has the potential to respond to the challenges that exist in the Indonesian justice system.⁴⁹

For example, by promoting integrity and professionalism, the "Judicial Ethics Court" can contribute to the fight against corruption in the judicial system. In addition, by encouraging autonomy and objectivity, an ethics court can play a role in preventing nepotism and inconsistent law enforcement. However, to ensure that the concept of an ethics court can function effectively, it is important to ensure that these values are understood and applied consistently. This will require effective ethics education and training, as well as strong oversight and enforcement mechanisms. Therefore, although ethics courts face various challenges, the concept can address and provide a strong framework to strengthen the integrity and effectiveness of the justice system in Indonesia.

III. CONCLUSIONS

It has become urgent to introduce and promote the importance of an ethics court system. By adopting the term Judicial Ethics Court, this implies that all principles applied in the legal justice system should be equally applied in the ethics domain. For example, the principles of transparency and accountability that apply in legal justice must be implemented in the code of ethics enforcement process. Therefore, the discipline of law should expand its scope to include ethical rule systems and ethical justice systems as its object of study. Law faculties should include the teaching of the code of ethics system as part of the material ethical rules and the court system in the judicial process as part of the formal ethical rules. This is in line with the concept of material law and formal law in the legal justice system. Thus, if in the field of law we recognize the concepts of material law and formal law, then in the field of ethics, we must also introduce the concepts of material ethics and formal ethics relating to code enforcement procedures as part of material ethics.

⁴⁹ Alexander Restrepo Ramírez, "A CRITICAL REVIEW OF JUDICIAL ETHICS: BEYOND RHETORIC," *Universitas Philosophica* 40, no. 81 (2023), <https://doi.org/10.11144/Javeriana.uph40-81.rcej>.

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