

CHAPTER I

INTRODUCTION

A. Background

As a state institution, the Constitutional Court is often discussed by the society because many cases occurred in the Constitutional Court. For example in 2016, there was a case of Arif Hidayat, the chairman of the Constitutional Court. He was alleged as someone who sent a memo to the former General Deputy Attorney for Special Crimes, Widyo Pramono. The memo was described as a request to Widyo to give special treatment to the Prosecutor Muhammad Zainur Rochman in Trenggalek. In the memo, Arif mentioned that Zainur was one of his relatives. Based on these allegations, Arif obtained the ethical sanctions in the form of an oral sanction from the Board of Ethics which led by Abdul Mukthie Fadjar and other members of the Board of Ethics, namely Hatta Mustafa and Muchammad Zaidun. The Board of Ethics stated that Arif Hidayat had violated the code of conduct of judges about the propriety and decency as a constitutional judge.¹

In the history of Constitutional Court, three cases happened regarding the violation of code of conduct of Constitutional Judges i.e. Arif Hidayat case, Akil

¹Inge Klara Safitri, 2016, “Ketua Mahkamah Konstitusi Terbukti Melanggar Etik”, taken from <https://m.tempo.co/read/news/2016/04/30/078767290/ketua-mk-terbukti-melanggar-etik-jimly-tak-perlu-mundur> , viewed on 16thNov, 2016 at 13:33pm.

Mochtar Case and Arsyad Sanusi Case. Akil Mochtar was fired from his positions because he violated the code of conduct of Constitutional Judges in the Constitutional Court. While Arsyad Sanusi resigned earlier from The Constitutional Court, Arif Hidayat only received oral sanction from the Board of Ethics.

The Constitutional Court has already been able to resolve political issues that happen in Indonesia. It is the role of the judges to give the verdict that is fair for all the parties in a dispute. The Article 24C paragraph (5) of the 1945 Consitution stated that Constitutional Court Judges must have good integrity and personality, being fair in their attitude, being a statesman who understand the Constitution and understand their obligation state official. Therefore, the role of the Constitutional Court Judges is very influential to the quality of the verdict in resolving disputes in the Constitutional Court. The Constitutional Court has nine Constitutional Judges, in which these nine judges are proposed by the Supreme Court, three are by the House of Representative, and the other three are by the President as stated in the Article 24C paragraph (3) of the 1945 Contitution *jo* Article 4 paragraph (1) Act No. 24 of 2003 about the Constitutional Court.

In doing their duty, Constitutional Court judges must obey the code of conduct and the guidelines of code of conduct of judges of the Constitutional Court, as mentioned in article 27A paragraph (1) and article 28A points a with Law No. 8 of 2011 *jo* Law No. 24 of 2003 on the Constitutional Court. The code of conduct and guidelines of the constitutional Judge is a tool to maintain the integrity and the conduct of judges in making decision of a case so that the

quality of the judge's decision can be maintained. In addition, the importance of the code of conduct and guidelines of the Conduct of Constitutional Court judges itself function as a means to avoid the practice of abuse of power committed by the judges of the Constitution Court. Besides, it will also have an effect on the quality of the verdict of the Constitutional Court judges in upholding justice in the Constitutional Court.

One of the cases which happened in the Constitutional Court is about the violation of the code of conduct which was done by one of the Constitutional Court Judges. It is an evidence that the Constitutional Court Judges haven't applied the code of conduct created by the Constitutional Court in carrying out their duties and authority. It happened due to the very high position and enormous power of the judges and therefore it created possibility of abuse of power in the implementation of their duties as judges of the Constitutional Court.

To supervise the Constitutional Court judges in the implementation of duties and authority, the Constitutional Court conducts supervision against a Constitutional Court judges by using the internal supervision system with the establishment of the Honorary Council Constitutional Judges. This Council is part of the organization of the Constitutional Court and its nature is *ad hoc* which is stated in Article 14 of Regulation of Constitutional Court No.2 of 2013 about Honorary Assembly Constitutional Court. Besides the Honorary Council of Constitutional Judges, in 2013 the Constitutional Court also established the Board of Ethics. The aims of the Honorary Council is to maintain and enforce the code of conduct of judges of the Constitutional Court. In contrast to the

Honorary Council Constitutional Judges that is *ad hoc*, the Board of Ethics is a permanent body.²

In addition, another thing that triggered the case of violation of the code of conduct in the Constitutional Court is because the supervisory bodies of Constitutional Court were not able to detect the occurrence of the offence as well as the weaknesses of the Organization. The existing supervisory mechanism is only hierarchical and structural, and it does not involve all components of the Organization so that the supervision is not participatory and effective. The situation was also reinforced with massive news coverage in the media about the practice of bribery which was done by the judges this also influenced the public trust to judicial authority. Alexander Hamilton stated the judges are required to have incredible in order to carry out their duties as a faithful protector of the Constitution.³ Based on the background, it is important to evaluate the implementation of the code of conduct of the Constitutional Court Judges in order to maintain the dignity and honor of the judges.

²Zihan Syahayani, 2014, “Pembaharuan Hukum dalam Sistem Seleksi dan Pengawasan Hakim Kontitusi”, taken from <file:///C:/Users/Axioo/Downloads/Documents/630-682-1-PB.pdf>, viewed on November 19th, 2016, at 09:30 pm.

³Leonard W. Levy, 2005, *Yudicial Review, Sejarah Kelahiran, Wewenang, dan Fungsinya dalam Negara Demokrasi*, Bandung, Nuansa, p. 98.

B. Research Problem

Based on the background above, it can be formulated a research problem that how is the implementation of code of conduct of Judges of Constitutional Court in order to uphold justice?

C. Objective of the Research

The objectives of the research are to analyze the implementation of the code of conduct of the Constitutional judges in order to uphold justice. It also describes the code of conduct of the constitutional Court Judges and propose some suggestion to overcome the problem of the implementation of code of conduct of Constitutional Judges.

D. Benefit of the Research

The research gives some benefits to several fields, such as:

1. Scientific Benefit

This research will provide an understanding to the Constitutional Court judges, government and others supported instrument. This research will provide the view of the effectiveness code of conduct of judges of Constitutional Court.

2. Development Benefit

This research will suggest recommendation for better quality of the Constitutional Court judges in implementing code of conduct in Constitutional Court.