

CHAPTER IV

FINDINGS AND DISCUSSIONS

A. The Code of Conduct of Constitutional Judges.

Article 1 point 6 of Law of the Republic of Indonesia No 18 of 2011 concerning Judicial Commission, stated that Code of conduct and / or guidelines for the conduct of judges is a guide to preserve and uphold the honor, dignity, and behavior of judges in carrying out his profession and in performing their duties in the public relations profession and outside the office.

Abdulkadir Muhammad¹ stated that the code of conduct is a rule in writing and must be implemented by each profession as a mean of social control to prevent the intervention of other parties. One profession that has a code of ethics is a judge. Basically, the task of the judge is to give a decision on every case (conflict) they are facing. That means the judges duty is to establish a legal relationship, the legal value of the behavior and the legal position of the parties involved in the situation that confronts him, or as stated by John Marshall in the case of Marbury v. Madison: "to say what the law is".²

¹Abdulkadir Muhammad, 2006, *Etika Profesi Hukum*, Bandung, Citra Aditya Bakti, p.34.

² B. Arief Sidharta, 2015, "Etika dan Kode Etik Profesi" taken from <http://journal.unpar.ac.id/index.php/veritas/article/download/1423/1369>, viewed on February 19th. 2016, at 10:36pm.

In carrying out their duties and authorities, judges are required to implement a code of conduct that has been determined. As already mentioned earlier that the code of conduct is as a means to control the authority held by each of the judges, especially judges of the Constitutional Court. Constitutional judge has a very important role in establishing justice in Indonesia. As stated in section 24C of the rights and obligations of the Constitutional Court, it can be seen that the Constitutional Court has a very special role. Therefore, since the decision of the Constitutional Court affected the welfare of the people of Indonesia, it is necessary to limit the authority of Constitutional Justice as a means of control by the code of conduct of constitutional judges.

Code of Conduct that becomes the guideline for the Constitutional Court is usually called *Sapta Karsa Hutama*. *Sapta Karsa Hutama* is Code of Conduct and Conduct of the Constitutional Court was declared and signed by 9 (nine) Constitutional judges on 17 October 2005. This declaration is then applied to the Constitutional Court Regulation No.07/PMK/2005 started from 18 October 2005. These Regulations revoke the Constitutional Court as well as complete the values contained in the Constitutional Court Regulation No.02/PMK/2003. The Declaration is a Code of Ethics and Conduct Constitutional Judges to be used as a guide for judges regularly and constantly, and they help the public, including other state institutions in order to have an understanding of the function and performance of the Constitutional Court.³

³Achmad Roestandi, 2006, *Mahkamah Konstitusi Dalam Tanya Jawab*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006, page 23-24.

The *Sapta Karsa Hutama* explains some principles that must be possessed by constitutional justices, and these principles are as follows:

1. The principle of Independence;
2. The principle of Impartiality;
3. The principle of Integrity;
4. The Principle of Propriety;
5. The principle of Equality;
6. The principle of Competence and Diligence;
7. The principle of Wisdom.⁴

These are the principles of the code of conduct of constitutional judges in which every Constitutional Judges should have all of things listed in these principles. It is very important to understand the constitutional judges because code of conduct is not only written rules but also rules that must exist and must be applied in any constitutional justices, either in making a decision in the Constitutional Court or in making a relationship with the community other than the Constitutional Court.

Constitutional Judges should be ensured to abide the code of conduct that has been determined since the establishment of code of conduct, the constitutional judges can perform their duties and powers well. Constitutional

⁴Sakti Lazuardi, 2016, "Pengawasan Hakim Konstitusi Pasca Judicial Review Undang-Undang Nomor 22 Tahun 2004 tentang Komisi Yudisial Republik Indonesia dan Kaitannya dengan Independensi Kekuasaan Kehakiman", taken from <http://lib.ui.ac.id/file?file=digital/20271589-S445-Sakti%20Lazu>, viewed on March 24th, 2017, at 11:00pm

judges should be free to make a decision, and they should not get the intervention from any party for whatever reasons. But the judiciary independence is not an absolute freedom as there are limitations as well.

Law enforcement and justice as well as respect for human values become a prerequisite to uphold the dignity and integrity of the State. As the main actor or a central figure in the judicial process, the judge is always required to sharpen the sensitivity of conscience, maintain integrity, moral intelligence, and increase professionalism in upholding the law and justice for the wider community.⁵ Thus, in carrying out their duties and authorities the Constitutional Judges shall keep and maintain the dignity and behavior of judges, and they must implement concretely and consistently as regulated in the legislation.

The honor owned by constitutional judges will be seen when they give a decision, and their critical judgments are not only based on the law but also by their sense of justice and wisdom in society. There is no guarantee that the Constitutional Judges do not violate the law after the establishment of code of conduct of judges. One proof of the violations committed by one of the Constitutional Judges happened when code of conduct has been clearly written in the rules of the code of conduct of judges at the beginning of October 2013, Akil Mochtar who was at the time a head of the Constitutional Court was caught red-handed by the Corruption Eradication Commission.⁶In addition, Chairun

⁵Wildan Sayuti Mustofa, 2013, *Kode Etik Hakim*, Jakarta, Kencana Prenadamedia Grup, P.118.

⁶Dea Cipta Permatasari, 2014, "Analisis Opini Publik dan Analisis Akar Masalah Kasus Akil Mochtar di Mahkamah Konstitusi", taken from <http://lib.ui.ac.id/file?file=digital/20369057-MK-Dea%20Cipta%20Permatasari.pdf>, viewed on February 19th. 2017, at 14:14pm.

Nisa member of the House of Representatives of the Golkar Party faction handed over the money as much as 294 Singapore Dollar to Akil Mochtar. The money was a bribe related to the elections of Gunung Mas Central Kalimantan province and local elections of Lebak district of Banten province. Although the Code of Conduct has been clearly written in the code of conduct of judges, some violations still occurred in the Constitutional Court.

Based on the examples mentioned in the earlier paragraph, it is very important to understand why Constitutional Judges still have to investigate and understand the principles of code of conduct that have been described in the judicial conduct because the code of conduct is able to form the character of the judges as well as supervising the judges. In this case, the professional performance of judges can be formed by improving the quality/ability in understanding and application of the existing rules and all of them have to stick on the principles of code of conduct. It means the judges cannot perform their profession without respecting to the ethics of professions in which their professional ethics is expected to arise awareness and responsibility to uphold justice.⁷

⁷ Wildan Sayuti Mustofa, *Op, Cit*, p.127.

In addition to watching the behavior of judges in the Constitutional Court, the Constitutional Judges must also consider the association outside the Constitutional Court. So the Constitutional Judges should implement the code of conduct that has been written in everyday life, both in the context of duty, relationships among colleagues, the relationship to the employee, community relations, as well as family relationships.⁸

The consistency as the Constitutional Judge who has the high leadership qualities, fair, thoughtful, dignified and honest, should be shown under any circumstances and anywhere. The Constitutional Judges is a judge who has a code of conduct in performing their duties and responsibilities wherever they stay. The obligations and prohibitions on judges were clearly mentioned by the Decree of the Joint Chief Justice of the Republic of Indonesia and Chairman of the Judicial Commission of Indonesia No.740/KMA/LCS/IV/2009 and 02/SKB/P.KY/IV/2009 on the Code of Ethics and code of conduct of judges, mentioning that the basic principle of the code of conduct and code of conduct of judges are implemented in the 10 rules of conduct that contains the application, the obligations and also the prohibitions for judges who can be seen below:⁹

⁸*Ibid*, p.145

⁹ *Ibid*, p.149.

a. Being Fair

Fair has the meaning that we should follow the principle that all people have the same position. In making the decision, the judge should be based on justice, in which fair is not only to one side but to both sides of a dispute. Treating equal to all people will show the fair, their behavior of a judge. In carry out its duties and authorities, the judge have a very big responsibility in enforcing the law in order to be fair and always be fair with no distinction between one and another.

b. Being honest

Judges must be able to take decisions in an honest, and they dare to declare what is right and what is wrong. Thus, a judge can be seen to have a strong personal and he/she can encourage awareness of the nature of the rights and vanity.¹⁰

Application:

• General

1. A judge must behave with honesty (fair) and avoid bad action which may bad impression.
2. The judge shall ensure that the attitudes, behaviors, and actions, both inside and outside the court, always maintain and enhance public confidence, other law enforcement agencies as well as the parties litigant, so that the attitude reflect the impartiality of judges and the judiciary (impartiality).

¹⁰*Ibid*, p.151.

- Gift-giving

A judge may not ask / receive and should prevent judge spouses, parents, children, or family members of other judges to request and receive the promise, gift, grant, inheritance, gift, awards, and loan or from:

1. Advocate;
2. Prosecutor;
3. Resident who are in trial;
4. Another party that is a strong possibility to be tried; and
5. Parties that have an interest, either directly or indirectly to a case that is being tried, or strong possibility to be tried by the judge concerned which are reasonable (reasonable) should be considered to aim or a purpose of influencing judges in performing judicial duties.¹¹

c. Being Wise

In carrying out their duties and authorities, the judge should be prudent and wise that will form a personality which are insightful, responsible and patient. Wise means being able to act in accordance with the norms that exist in society, both legal norms, religious norms, customs, and norms of decency.¹²

¹¹*Ibid*

¹²*Ibid*, p.153.

d. Being Independent

Judges should have an attitude of being independent, which means that they do not depend on other people, and they have confidence in the truth of the principles based on the morality and law.

Application:

- 1) The judge shall apply the functions of the judiciary independently and free from any influence, pressure, threat or inducement, either directly or indirectly from any party.
- 2) The Judges shall be free from improper association with the executive and legislative bodies and other groups that threaten the independence of judges and the judiciary.
- 3) The Judges are required to behave independently in order to strengthen public confidence in the judiciary.¹³

e. Having Integrity

High integrity is one of the requirements that must be owned by a judge in order to have an honest personality, authoritative, and has establishments. Judges who have high integrity will their refuse any temptation from anyone who will influence their decision made because the high integrity of judges will prioritize conscience for truth and justice.¹⁴

f. Responsible

¹³*Ibid*, p.156.

¹⁴*Ibid*.

Judges should have a sense of responsibility in every decision making with a sense of responsibility that the judge had the courage to risk it after carrying out the authority and the duty.¹⁵

g. Uphold the Dignity

The judge should have good personality that can maintain the honor and dignity respected by everyone. High dignity of a judge will encourage and establish strong and resilient personality, so that the judges will always be able to perform self-good quality for the sake of their decision to all parties.

Application:

- General Judges should maintain the dignity of the judiciary and the profession inside and outside the court.
- Business Activity
 - 1) Judges are prohibited from engaging in financial transactions that have the potential to utilize the position of a judge.
 - 2) Judges shall recommend that members of his family not participate in activities that may exploit the position of the judge.¹⁶

h. Discipline

In carrying out its duties and authorities, the judges must pay attention to their attitude to remain obedient to the norms in force in the

¹⁵*Ibid*, p.159.

¹⁶*Ibid*

community. High discipline will drive an orderly judge in the performance of duty, sincere in devotion, and does not pick misusing the mandate that has been entrusted to him.¹⁷

i. Behaving of Humility

Judges must be humble in attitude, in order to avoid arrogance. Humility possessed by a judge will encourage the formation of a realistic attitude, respect the opinions of others, cultivate an attitude of tolerance, and to realize the attitude of simplicity, and sincerity in carrying out its duties and authorities.¹⁸

j. Professional

Judges must be professional in performing their duties as a form of seriousness performing work in their voting. Professional attitude will encourage the formation of private continuing to maintain and sustain the quality of jobs, as well as trying to improve the knowledge and performance, so it will produce quality work effectively and efficiently.¹⁹

Based on the rules above, it is clear that the Judicial Commission creates rules regarding the obligations and prohibitions on judges, in which this rule

¹⁷*Ibid*, p.160.

¹⁸*Ibid*, p.161.

¹⁹*Ibid*, p.162.

is mandatory to be implemented by each judge, including constitutional judges in performing their duties and responsibilities.

In addition to the above rules, the Constitutional Judges shall apply the principles of the *Sapta Karsa Hutama*, so this will strengthen the avoidance of the constitutional judges to do arbitrariness in carrying out its duties and authorities as a constitutional judge.

B. Problems Faced in the Implementation Code of Conduct of the Constitutional Court Judges.

The independence of Constitutional Court Judges determine the quality of the decision in the Constitutional Court. This is a preventive measure, to prevent any injustices committed by the Constitutional Court Judges in deciding cases in the Constitutional Court. Constitutional Judges are different from other judges because constitutional judges are effective only for a period of 5 years. So this position is temporary not permanent. With a limited term of period, it is necessary to draw the attention of Constitutional judges to make a good contribution to this State through a fair decision with regard to the norms and values of the code of ethics of judges in the conduct of their profession.

If the judicial authority officials, especially the judges, can carry out their duties based on the scope of the system thoroughly and they cannot be

influenced by anything else as a high moral force, then the judicial power will become a respected power.²⁰

The implementation of the code of conduct of judges used as a guide for Constitutional Judges must also be implemented in everyday life. For example, in terms of association with the community, a Judge must respect and respect others, he/she should not be arrogant and must reflect simplicity in the community. In addition, in the case of social relationship the judge should not do things that could facilitate opportunities for judges to violate the code of ethics, such as going out late into the night club or talking to people but not for the purposes of the Constitutional Court. This is because the judge will always hold their profession not only in court but outside the court. Therefore, they must pay attention to the behavior in the community.

However, the problems faced by the Constitutional Judges often ignore these values and norms. For example, they cannot keep their relationships, because even if the judges get along with anyone, the judges should know they still have limits. The judge should pay attention to who, where and for which business they are meeting. This should be considered seriously, it will provide the chance of constitutional judges to get influence from other wise parties, whether it is the form of talks, giving gifts or other ways. This is potential to influence the decision of the Constitutional Court Judges.

²⁰Harifin A. Tumpa, 2003, *Pengkajian Beberapa Topik Hukum Acara Perdata; Bunga Rampai Hukum Acara Perdata*, Jakarta, Mahkamah Agung RI, p.61-62.

Currently there have been several cases of violations of the code of conduct carried out by Constitutional Judges. One of the judges who had been charged of violating the code of ethics of judges is Akil Mochtar. Akil Mochtar violated some of the principles of the judiciary which should be guarded, implemented and guided in carrying out his duties and authorities. However, in reality Akil Mochtar violated the norms and values of the code of ethics of judges. This happened because Akil Mochtar could not keep himself from the temptations of other parties concerned in the case in the Constitutional Court.

Judges have freedom, but this freedom is limited by rules. This is a form of caution of deviant behavior that could affect any decision that will be made by the Constitutional Judges. As we know that the principle of free and independent freedom of judiciary is regulated in the 1945 Constitution of the State of the Republic, Article 24 paragraph (1), states : "Judicial power is an independent power to administer justice to uphold law and justice". Article 1 point 1 of Law Number 48 of 2009, also mentions "Judicial Power is the power of an independent State to administer justice to uphold law and justice based on *Pancasila* and the 1945 Constitution of the State of the Republic of Indonesia, for the implementation of the State of the Republic of Indonesia Law.²¹

²¹NFN Rimdan, 2012, *Kekuasaan Kehakiman Pasca Amandemen Konstitusi*, Jakarta, Kencana Prenada Media Group, p.50.

The enforcement of justice, the welfare and well-being of the Constitutional Court finally all depend on the Constitutional Court Judges. Therefore, judges are required to have high morality and responsibility. In addition, in Article 25 of the 1945 Constitution of the State of the Republic, it is determined that the conditions for becoming and being dismissed as judges are regulated by law. It is intended to provide assurance that the judges can carry out their duties earnestly and independently, as well as irrespective of the influence of governmental power or other powers in society. The independence of the judges in addition to the inherent right of the judge is also a prerequisite for the creation of impartial attitudes (impartial) judges in performing judicial duties. The form of accountability demanded by judges requires a format that can absorb such sensitivity. An uncertainty in the creation of accountability mechanism in the form of oversight, as well as the lack of prudence in their implementation, can adversely affect the ongoing judicial process.²²

Seeing the potential violation of the code of conduct by constitutional judges, it is necessary to have a basis for judges to apply their professional code of practice in the form of strict laws, good morality of judges, and the foundation of faith or religion for a judge in implementing the code of ethics of the profession. It is because the code of ethics profession of judges is a law

²²Nurul Qura'ani Mardiyah, 2017, "Pengawas Perilaku Hakim Mahkamah Konstitusi Oleh Dewan Etik, taken from <http://webcache.googleusercontent.com/search?q=cache:FeLAUGlZhQIJ:www.jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/download/189/176+&cd=1&hl=id&ct=clnk&gl=id>, viewed on 20 March 2017 at 03:42am.

in the form of laws and regulations which is applied permanently and fixedly derived from the religious which create value for the morality of good judges. In carrying out his professional ethics, a judge must also follow a his/her faith based on his/her religion because this will show the morality possessed by his/her so that he/she will run the professional ethics well.²³

The quality of a judge in deciding a case has a dominant influence in upholding the rule of law. Realizing the authority of the courts in Indonesia in addition to the support of other law enforcement officers by adhering to the Code of Professional Ethics of Judges, it is expected that judges can raise their image, authority and behavior in providing justice and certainty and legal protection needed. Communities can rely on a great hope for judges who have integrity and professionalism, because their actions and behavior show impartiality, moral integrity, and their ability to make good decisions. The independence of a judge in making decisions must be upheld by his conscience.²⁴

In addition, the Constitutional Court Judges, which influences the issue of violation of the constitutional code of Constitutional Judges is an internal supervision body. In the Constitutional Court, Constitutional Judges are overseen by the internal body that is the Constitutional Judges Ethics Council.

²³*Ibid.*

²⁴*Ibid.*

The Ethics Council of Constitutional Justices has the authority to examine and decide the reports of public complaints and media /community information regarding alleged violations of the Code of Conduct and the conduct of Constitutional Justices. Supervision of Constitutional Judges currently needs to improve the supervisory system of Constitutional Judges, so that Constitutional Judges have no opportunity to commit abuse of authority and violate the code of ethics that has been determined.

The problems faced by the Constitutional Court must really be considered, and having a good personality for Constitutional Judges should be the main condition in the election of constitutional judges. The current supervision in the Constitutional Court should be accompanied by additional supervision, and this can be done by institutions other than the Constitutional Court in order to prevent the occurrence of abuse of power.

C. The Analysis of the Issue of Violation of Code of Conduct of Constitutional Court Judges

Judges is a position related to law and justice. Justice is how a judge decide to define things in place without being interfered by subjective interests, and therefore their moral integrity are required for a judge. Nonetheless, many temptations frequently happen to the judge so that there are violations to the law.²⁵ It is similar to the case of violations the Code of Conduct committed by judges of the Constitution, Akil Mochtar.

²⁵Wildan Sayuti Mustofa, *Op, Cit*, p.217.

The chairman of the Honorary Council of the Constitutional Court, Harjono, said Akil Mochtar had been proved to have violated the Code of Ethics and Conduct Constitutional Court, and received a sanction of dishonorably discharged. Akil Mochtar case arose from a dispute case of elections in Gunung Mas, Central Kalimantan, and the elections of Lebak, Banten. Both cases were brought to the Constitutional Court when Akil Mochtar served as the Chairman of the Constitutional Court.

In solving the problems related to the local elections, the Corruption Eradication Commission found the bribery given to the Chairman of the Constitutional Justice, Akil Mochtar, in the beginning of September 2013. The Corruption Eradication Commission conducted an investigation on this case. From the investigation, the Eradication Corruption Commission obtained proof such as Akil Mochtar was proven to perform transactions with Chairun Nisa who was a member of parliament from the Golkar faction. Chairun Nisa provided an amount US \$ 284 050, equivalent to 3 billion in a brown envelope. The money was given to Akil Mochtar as a bribe for the election dispute cases in Gunung Mas, Central Kalimantan.

Actually in this case Akil Mochtar beside violates the code of conduct of Constitutional Court Judges also commit criminal action. Because one of violation which occurred by Akil Mochtar is bribe, which is bribe is the act of taking or receiving something with the intention of influencing the recipient in some way favorable to the party providing the bribe. Bribery is

typically considered illegal and can be punishable by jail time or stiff fines if authorities find out about the bribe.

Violation the code of conduct and criminal action it is not same. Which criminal action is an action prosecuted by the State as a party, against a person charged with a public offense, for the punishment there of, and an action prosecuted by the State, at the instance of an individual, to prevent an apprehended crime against his person or property.²⁶ So it is very clear different to violation the code of conduct, but any criminal action perpetrated by the constitutional judge must violate the code of ethics but not all violations of the code of ethics including criminal action.

In addition, the Honorary Council of the Constitutional Court outlined a number of other facts that Akil Mochtar often conducted traveling abroad without telling the secretary-general of the Constitutional Court. In fact, one of the ethics that should be considered by a constitutional court judge is to give a statement wherever they go. From these cases it was also revealed that Akil Mochtar had some vehicles that were not registered in the police department and disguised ownership of the vehicle under the name of the driver. The Chairman of the Constitutional Court, Akil Mochtar once ordered the Registrar of the Constitutional Court to issue a letter No.1760/AP.00.03/07/2013 dated July 26, 2013 which postponed the implementation of the Constitutional Court decision on the appointment Banyuasin regent,

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taken

from

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_1/GS_1-5.pdf
viewed on Agustus 14th 2017, at 12:10pm.

without consulting with the other the constitutional judges of the Constitutional Court. This act was considered to go beyond the authority and violated the principle of integrity and impartiality²⁷. Based on some evidences mentioned above, Akil Mochtar as a Chairman of the Constitutional Court proved to have breached the code of conduct.

A Case of violations the Code of Conduct committed by the chairman of Constitutional Court is that Akil Mochtar had been very clearly violating the Code of Conduct that has been determined. Akil Mochtar violated some of the principles of the *Sapta Karsa Utama* among which the principles of integrity, impartiality principle, the principle of propriety, the principle of merit reflected the dishonest behavior. The principles were violated by Akil Mochtar who brought himself to the attitude that was not adhering to the norms and values in carrying out the task.

The Constitutional Court Judges violations of the Code of conduct can be caused by two factors, internal factors and external factors. Internal factors depend on the attitude of the judges themselves, where the desire to do things that actually violate code of conduct come from herself or himself. While external factors is a factor that come from outside the judges, as well as the demands or force from another party or under the orders of others.

The violations committed by Akil Mochtar can be seen as internal factors such as deliberateness and intention from Akil Mochtar to violate code of conduct in the Constitutional Court. Based on the existing evidence

²⁷*Ibid.*

from some violations committed by Akil Mochtar, it is very clearly visible to the issue of personal interest. In fact, it is clear that it is an attitude that is inappropriate to be done by a constitutional judge. From the above cases, Akil Mochtar received a dishonorably discharged punishment and life imprisonment.

The code of conduct is universal, and they exist in any country that regulate moral values, guiding principles and rules of conduct that should be adhered by the constitutional judges in performing their duties profession. However, Akil Mochtar did not seem to fully understand the moral values and rules consisted in code of conduct Constitutional Court.²⁸

In relation to the supervision of Constitutional Court Judges, there is a mechanism of supervising the Constitutional Court Judges in order to maintain the dignity and honor of the Constitutional Court Judges, such as from the Honorary Council of the Constitutional Court and the Board of Ethics of Constitutional Justice.²⁹

Supervision which is conducted by the Honorary Council Constitutional Court and the Council of Ethics of Constitutional Judges need to be improved, so that the acts committed by the Constitutional Court can be controlled well. Social relationship of the Constitutional Court Judges should be limited because otherwise it would be likely to be influenced from outside

²⁸Purwoto S. Gandasubrata, 1996, *Etika Profesi Hakim Indonesia*, Jakarta, Proyek Pembinaan Teknis Yustisial Mahkamah Agung RI, 1996, p.2.

²⁹ Dwi Kurniaji, 2017, taken from <http://repository.umy.ac.id/bitstream/handle/123456789/9338/H.BAB%20IV.pdf?sequence=8&isAllowed=y>, 15:44, 13 April 2017.

parties. This is similar to Akil Mochtar who had the opportunity to violate the code of conduct several times, and the violations committed by Akil Mochtar was not only once but more than three violations.

Judges must be independent, but it does not mean that they cannot be hanging out with others. They only need to restrict social relationship of constitutional judges because the constitutional judges cannot be equated with other professions. The Constitutional Judges who has a role in law enforcement and justice in the State based on *Pancasila* is demanded that the constitutional judges should be honest, difficult to be affected, fair, unprejudiced, always seek for justice, true, and deciding the case based on his faith and accountable to the God Almighty.³⁰

D. Lesson learned from Islamic Legacy.

The main task of the judge is a law enforcement, and justice are accountable to God Almighty, according to a requirement that should be owned by the judge. The decision of the Chief of the Supreme Court of the Republic of Indonesia and the chairman of the Judicial Commission of the Republic of Indonesia Number 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009 about the Code of Conduct of Judges contains about the rules of judge behavior that must be possessed by the judge like; honest, independent, free from influence from both outside and inside, fair and have good manners. These properties are basically aligned and grains to religion.

³⁰ Ignatius Ridwan Widhya Dharma, 2000, *Hukum Profesi tentang Profesi Hukum*, Semarang, Mimbar, p.91.

Therefore, irregularities committed by the judge in practicing a profession is essentially the deviation of any religion because basically all religions teach their followers these traits.³¹

The word judges in Islam comes from the word *حكم- مكاح* synonymous with *qadhi* which is derived from the word *قضى- قضا* *قضا*, meaning to decide. Meanwhile, according to the terminology *qadhi* is a wise person or persons who decide the case and set it.³² The role of the judges has existed since the time of the Prophet Muhammad. He became a leader and judge in settling every case submitted to him and then he decided the law. Prophet Muhammad decided the law against human rights based on the appearance of the case, on the other hand, the cases which had no proof was decided by oath.³³ Beside known as the wise leader, prophet Muhammad SAW was also known as a fair judge. Thus, in the judiciary of Islam, the Prophet Muhammad was always an example for judges as a fair judge, wise and never discriminate people in deciding the case.

The example of the Prophet Muhammad to be a fair judge can be seen from his saying as follows: "If Fatimah, the daughter of Muhammad, stole I definitely cut his hand" (Hadith).³⁴

³¹ Wildan Sayuti Mustofa, *Opcit*, p.219.

³²Samud, 2017, "Kode Etik Profesi Hakim menurut Hukum Islam" taken from <http://download.portalgaruda.org/article.php?article=447226&val=9464&title=KODE%20ETIK%20PROFESI%20HAKIM%20MENURUT%20HUKUM%20ISLAM>, viewed on 9th March at 23:33pm.

³³ Wildan Sayuthi Mustofa, 2004, *Kode Etik dan Tanggung Jawab Hakim*, Jakarta, Mahkamah Agung RI, p.20.

³⁴Wildan Sayuti Mustofa, *Opcit*, p.220.

The Utterance of the Prophet Muhammad SAW above shows that everyone has the same position, therefore a judge shall not discriminate people in terms of finding justice, confirming the correct and punishing the wrong. One of the personal characteristics of the Prophet Muhammad SAW is firmness. He is very firm as a leader.

The era Prophet Muhammad was then continued by the *sahabah* until the time of *Bani Umayyah* and *Bani Abbasiah*. In Islam there are several requirements that must be owned by every judge. Classical Islamic law experts generally agree, but they have different opinion in the number of the requirements, because some mentioned in detail and some others did not. Among others are:

1. Muslim

A judge must Muslim as the word of Allah.

الَّذِينَ يَتَّبِعُونَ بِكُمْ فَإِنْ كَانَ لَكُمْ فَتْحٌ مِنَ اللَّهِ قَالُوا أَلَمْ نَكُنْ
مَعَكُمْ وَإِنْ كَانَ لِلْكَافِرِينَ نَصِيبٌ قَالُوا أَلَمْ نَسْتَحِذْ عَلَيْكُمْ
وَنَمْنَعَكُم مِّنَ الْمُؤْمِنِينَ فَاللَّهُ يَحْكُمُ بَيْنَكُمْ يَوْمَ الْقِيَامَةِ وَلَنْ
يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا

"Those (hypocrites) who wait and watch about you; if you gain a victory from Allah, they say: "Were we not with you," but if the disbelieves gain a success, they say (to them): "Did we not gain mastery over you and we did not protect you from the believers?" Allah will judge between you (all) on the Day of Resurrection. And never will Allah grant to the disbelievers a way (to triumph) over the believers." (QS.an-Nisa:141).

2. Adult and Independent Male

In Islam there are several opinions regarding the status of the gender whether it should be a male or female. Mahdzab Hanafi believes that women are also entitled to be a judge, but only in the case *had* and *qishash*. Moreover a person who becomes a judge must be independent and not dependent on others.

3. Intelligent

A judge in Islam must have a sense of healthy, intelligent, and wise so that they can do justice in resolving cases that occur in the society.

4. Fair

Fair is great in the speech to be believed, keeping away from the forbidden, preserved from sin, honest in happy and difficult circumstances, and to maintain the honor of religion and the world.

5. Familiar with Islamic Shari'ah and its branches.

This provision is intended for the judge to know the laws of God and able to distinguish between right and wrong. Seeing the severity of the requirements for a judge, Imam Al-Ghazali argued as follows: "Since the search for a judge who must meet the requirements of a *mujtahid* and fair at the present time is difficult, then we can accept the judges appointed by the authority though the judges appointed it is not wise and he is also wicked".

6. Perfect hearing, vision and speech.

This requirement is important for judges to be able to listen to the particulars of the litigants, see the evidence submitted by the parties, as well as the request for information from litigants and its ruling that dropped.³⁵

To become a judge, someone must fulfill all the requirements mentioned above because if there is one condition that is not fulfilled then, he/she will not be able to be a judge based on Islamic perspectives. In Islam, judges have the freedom to carry out its duties and authorities, as well as a judge in the Constitutional Court. Freedom of the judges in Islam when a settlement to the case of the parties is restricted by the code of conduct guidelines for judges.

An understanding of the existence of the code of conduct of judges in Islamic legal is an ethical system in Islam that would be the basis of the judge thinking, to see the values that exist in the code of professional conduct of judges.³⁶ In Islam, the code of conduct of judges is a religious ethics that describes the principles of morally commanded or forbidden.

Particularly, the Qur'an systematically embodies in the form of the laws of morality and ethics, which are then developed from the root of the

³⁵*Ibid*, p.224

³⁶Siti Zulaikha, 2017, "Etika Profesi Hakim dalam Perspektif Hukum Islam" taken from <http://ejournal.radenintan.ac.id/index.php/adalah/article/viewFile/177/417>, viewed on 11 April 2017 at 23:12pm.

Qur'an about the man and his position in the face of the earth.³⁷ Thus, the judges in Islam is very attentive to the code of conduct as one of the prevention of behaviors that deviate from religious norms.

Ethics of the profession in Islam is an activity that covers not only in the world, but also *ukhrawi*. This means that Islam involves a transcendental aspect of worship, so it works not only as an economic behavior but also as worship, so that having the profession of a judge is a profession that must be accounted for in the hereafter.

The fundamental moral value in of a judge becomes the basic of their faith in carrying out their duties and authorities. Therefore, the judges do not only help people in resolving the cases but also they show on their faith to God.

A judge is a profession that is free from any boundaries that will restrict their obligation to enforce the fair and true law, using honest and responsible way. These things must be supported by the judges who have to be prepared both mentally and physically such as the judges do not show their anger during the court, because it will affect the trial process.³⁸ Code of conduct becomes a tool to control the behavior of judges in performing their duties and authorities. However, many judges ignore the

³⁷Samud, 2017, "Kode Etik Profesi Hakim menurut Hukum Islam" taken from <http://download.portalgaruda.org/article.php?article=447226&val=9464&title=KODE%20ETIK%20PROFESI%20HAKIM%20MENURUT%20HUKUM%20ISLAM> viewed on 12th April 2017 at 11:25pm.

³⁸*Ibid.*

code of conduct of judges nowadays. Thus, it causes violations that do not reflect the norms of honesty, truth and devotion to human existence.

According to Busyro Muqoddas, weakening the dedication happens when faith and independence are in a state of crisis. When faith is in a solid condition, it will radiate in all its activities. Islamic ethics do not simply look at the activity of birth, but further notice deepest impulse of motives (*Niyat*) such action.³⁹ The Qur'an itself describes ethics based on three key terms, which is the main Qur'an. The third key is faith, Islam, and piety.⁴⁰

Therefore, in Islam when the judge is out of the norm that has been determined and violates the ethical code that already exists, it is assumed that the judge is in the situation having low faith. If a faith of a judge is strong then the judge is not going to ignore the code of conduct of judges that has been determined.

In Islam, the world and the hereafter should be balanced. All human deeds in this world is for two interests: the world and the hereafter. Judges must be able to put that job as a righteous deeds conducted based on their faith, science, and charity. In this case, people's work is divided into two views. First, the activity is related to worship, and the second, the activity is related to financial gain. The latter is doing activity which has to be done professionally.⁴¹

³⁹Busyro Muqoddas, 1997, "Etika Profesi: Fungsi dan Prospek", Yogyakarta, Laboratorium Fakultas Hukum UII Yogyakarta, p.3.

⁴⁰Siti Zulaikha, *Opcit.*

⁴¹Siti Zulaikha, *Opcit.*

Based on Islamic Values, judges always keep their behavior either in the court or outside the court. The code of conduct of judges that has been determined is not merely to supplement their income but also to worship God while always keeping the faith, science and piety. When these components are already ingrained in a judge, then the judge will be protected from temptation or intervention from other parties to do the bad behavior.

In Indonesia, there have been several cases of violation of the Code of conduct committed by the judge. One of which is the constitutional judges. The occurrences of these cases affect people's confidence in the Constitutional Court itself. There are two things that could be the cause of the judge's conduct code violations, namely self-intention, and external pressure.

Regarding the case of Akil Mochtar in 2013, he did voluntary violation of the Code of conduct himself. It means that by the time he served as a judge, he did not quite have the high integrity because he was not able to resist the temptation of intervention from other party. This case caused the collapse of the truth and justice. In Islamic viewpoint, when the judges carry out such violations, then it can be assumed that it is in a position of faith crisis.

In order to encourage the judges to apply Islamic values in carrying out their duties and authorities, the Constitutional Court is required to conduct a continuous evaluation of the Judges or by conducting studies

for Constitutional Justices to improve their faith. Thus, it will cause a great sense of responsibility in addition to humans as well for his Lord. In addition, the Constitutional Court should be more selective in choosing candidates for Constitutional Judges.

The Constitutional Court should be more careful in selecting constitutional judges, not only in terms of intellectual, but also in terms of personality and faith. Basically the value of faith cannot be forced because this will arise from individual. If a judge has Islamic faith, it will minimize the existence of constitutional judges who violate the same violation with the previous constitutional judges.