

# EVOLUTION OF INDONESIAN JUDICIARY: FROM STRUGGLE OF INDEPENDENCE TO CRISIS OF ACCOUNTABILITY

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**Abstract** - The history of the Indonesian judiciary includes elements of irony. During authoritarian rule under Sukarno's era (1959-1966) and Suharto's era (1966-1998), judges put up long struggles to gain judicial independence. However, after amendments to the 1945 Constitution in 2001-2002, when the judiciary gained independence, the judiciary's reputation became marred with high-profile corruption cases and ethical violations. Therefore, this study uses normative legal research methods. The researchers found that the history of the Indonesian judiciary evolved from a crisis of independence in the authoritarian era to a crisis of accountability in the era of democratic transition. The two authoritarian governments limited the judiciary's independence through legal provisions. Unfortunately, despite the positive developments from gaining judicial independence, the Indonesian judiciary suffers from an accountability crisis, as seen through the arrests of several judges for bribery. This crisis of judicial accountability has resulted in a distrust of judges within Indonesian society.

**Keywords:** Judicial Independence; Judicial Accountability; Judges' Code of Ethics; Judicial Impartiality; Judicial Corruption.;

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## INTRODUCTION

Judicial independence is an important element of the separation of powers (Hayo & Voigt, 2019). And the independence of the judiciary is one of the main institutional requirements of the rule of law (Grabowska-Moroz & Śniadach, 2021). It took the Indonesian judiciary years of struggle (Alshawabkeh & Almajali, 2021), 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 (in 2001-2002). Indonesia's experience in both authoritarian governments is also found in China. In the authoritarian state of China, the judges enjoy little independence of the judiciary and the courts under the influence of state power and are laid under the bureaucracy of government (Yanrong, 2019). The end of Suharto's authoritarian rule in 1998 brought about legal reforms (Crouch & Crouch, 2019). Since then, the constitutional and political system has undergone major changes and legal reform. The judiciary has undergone changes in line with the amendments to the 1945 Constitution (Crouch & Crouch, 2019).

Amendments to the 1945 Constitution have strengthened the guarantee of the independence of judicial power from the intervention of powers outside the judicial power, especially executive power as occurred in the Sukarno era and the Soeharto era (Crouch & Crouch, 2019). The judiciary has changed with the strengthening of independence, specialization, and professionalism (Crouch & Crouch, 2019). However, ironically, after becoming independent, the judiciary has been struggling with an accountability crisis due to serious ethical violations by some of its judges (Crouch & Crouch, 2019). As mentioned, when the judiciary gained independence, several judges and court officials were found guilty of committing serious ethical violations, such as accepting bribes from litigants in court (Yuherawan, 2020). From the judicial history perspective, the Indonesian judiciary's problems 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 establishment of special courts is often motivated as an attempt to avoid the already chronic corrupt practices of general courts and career judges (Crouch & Crouch, 2019; Syarifuddin, 2021).

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 in accordance with the integralist state theory. This theory holds that the state is the father of all citizens, who represent 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.

### 1. Judicial Corruption Reflects Crisis of Accountability

Judges must be accountable for their profession as judges (Phillips, 2010). Therefore, they must demonstrate diligence and apply professional ethics in their work. A violation of professional ethics will lead to a failure in providing 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 (McKay et al., 2020). 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 judges' 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, judges do not commit violations of professional ethics 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 (Saptomo, 2019). 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 of the Republic of Indonesia 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 Corruption Eradication Commission of the Republic of Indonesia examines the criminal aspects of a judge's actions. Overall, judicial corruption can be considered a crisis of accountability and violation of judicial ethics.

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). 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 the 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 honoured 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 (Seymour, 1972). 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 for the trial. On April 20, 1973, Judge Otto Kerner of the United States Court 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 (Seymour, 1972).

Deviations from the professional ethics of judges also occur in Indonesia. One case that greatly shocked the Indonesian public was when the Corruption Eradication Commission of the Republic of Indonesia 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 (Rastika, 2013). 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 (Krishnan, 2019).

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 illustrated the violation of the law and professional ethics by the bribe-receiving judge.

Table 1. List of Judges Involved in Bribery

No.	Name of Judge	The case and its verdict
1.	Ibrahim, Judge of the High Administrative Court of Jakarta	On August 2, 2010, the Panel of Judges of the Special Corruption Court sentenced Ibrahim to six years in prison for being proven to have lawfully and convincingly committed the corruption crime of accepting a bribe of IDR 330 million in connection with his position as a judge.
2	Syarifuddin Umar, Judge of the Central Jakarta District Court	On January 28, 2012, the Jakarta Special Corruption Court sentenced Syarifuddin Umar to four years in prison, convicted of accepting bribes from PT Skycamping Indonesia’s curator amounting to IDR 250 million.
3	Heru Kisbandono, Adhoc Judge of the Corruption Tribunal of Pontianak	On March 18, 2013, the Corruption Tribunal of Semarang sentenced Heru Kisbandono to 6 years in prison, for accepting bribes in the case of alleged corruption of the former Speaker of the Regional People’s Representative Council of Grobogan Regency, Central Java.
4.	Kartini Marpaung, Adhoc Judge of the Corruption Tribunal of Semarang	On April 18, 2013, the Corruption Tribunal of Jakarta sentenced Kartini Julianna Marpaung to eight years in prison, for allegedly accepting bribes to arrange a conviction in the corruption case of former Speaker of the Regional People’s Representative Council of Grobogan Regency, Central Java.
5.	Setyabudi Tejocahyono, Deputy	On December 17, 2013, the Corruption Tribunal of Bandung Court sentenced Setyabudi Tejocahyono to twelve years in

	Chairman of the District Court of Bandung	prison for accepting bribes for handling corruption cases of social aid funds for the Bandung City Government.
6.	Akil Mochtar, Chief of the Constitutional Court of the Republic of Indonesia	During a June 30, 2014, hearing, the Corruption Tribunal of Jakarta sentenced Akil Mochtar to life imprisonment, for being found guilty of accepting gifts and money laundering crimes related to election disputes at the Constitutional Court. Akil was found to have accepted bribes for election disputes including in Gunung Regency, Central Kalimantan 3 billion rupiahs, Lebak Banten 1 billion rupiahs, Empat Lawang 10 billion rupiahs and US\$ 500,000 and Palembang City Election 3 billion rupiahs. He was also convicted of money laundering while a constitutional judge worth IDR 161.080 billion.
7.	Asmadinata, Adhoc Judge of district court of Semarang	On July 18, 2014, the High Court of Semarang added a criminal sentence to Asmadinata from five years to six years in prison, for allegedly accepting bribes for handling cases.
8.	Ramlan Cornel, Judge Adhoc of the District Court of Bandung	On December 9, 2014, the Corruption Tribunal of Bandung sentenced Ramlan Cornel to seven years, for accepting bribes in handling the Bandung City social assistance fund case.
9.	Pasti Serefina Sinaga, Judge of the High Court of Bandung,	On January 27, 2015, the Corruption Tribunal of Bandung sentenced Pasti Serefina Sinaga to four years, for accepting bribes in handling cases.
10.	Pragsono, judge The District Court of Semarang	On May 12, 2016, the Supreme Court sentenced Pragsono from 6 years in prison to 11 years in prison, for allegedly carrying out the practice of buying and selling verdicts while prosecuting the corruption case of Chairman Dewan Representative of the People's Representative of Grobogan Region, Central Java.
11.	Tripeni Irianto Putro, Chief of the Administrative Court of Medan	On December 17, 2015, the Jakarta Special Corruption Court sentenced Tripeni Irianto Putro to two years in prison for accepting bribes from litigants.
12.	Dermawan Ginting, judge of The Administrative Court of Medan,	On January 20, 2016, the Corruption Tribunal of Jakarta sentenced Dermawan Ginting to two years in prison, because he received 5 thousand US dollars from litigants.
13.	Amir Fauzi, judge of the Administrative Court of Medan	On January 27, 2016, the Corruption Tribunal of Jakarta sentenced Amir Fauzi to two years in prison for \$5,000 from lawyer Otto Cornelis Kaligis.
14.	Toton, Judge of the Corruption Tribunal of Bengkulu	On December 8, 2016, the Corruption Tribunal of Bengkulu sentenced Toton to seven years in prison for accepting bribes worth 650 million rupiahs in handling cases of alleged corruption from two defendants of the honor fund of the Bengkulu General Hospital.
15.	Imas Dianasari, Adhoc Judge of Industrial Relations Court of Bandung	On January 30, 2018, the Corruption Tribunal of Bandung sentenced Imasto 6 years in prison at the Bandung Industrial Relations Court, for allegedly committing a bribe of 352 million rupiahs from the accused manager of PT Onamba Indonesia.
16.	Janner Purba, Corruption Special Court of Bengkulu	On Januari 30, 2018 the Corruption Tribunal of Bengkulu sentenced Janner Purba to seven years in prison for accepting a bribe of 78 million rupiahs in handling cases of alleged corruption. Justice Bambang said the two former judges were found to have accepted bribes from two defendants in the case of alleged corruption of the Bengkulu regional general hospital's honor fund.
17.	Patrialis Akbar, Justice of the Constitutional Court of the Republic of Indonesia	On September 4, 2017, the Corruption Tribunal of Jakarta sentenced Patrialis Akbar to 8 years in prison for bribery in the material test of Law Number 41 of 2014 concerning Animal Husbandry and Animal Health.
18.	Dewi Suryana, judge of the Corruption Special Tribunal of Bengkulu	On February 14, 2018, the Corruption Tribunal of Bengkulu sentenced Dewi Suryana to 7 years in prison, for allegedly accepting a bribe of IDR 125 million to alleviate the verdict against Wilson as the acting Head of the Bengkulu City Government's Regional Financial and Asset Management Revenue Agency.



19.	Judge of High Court of Manado, Sudiwardono	On June 6, 2018, the Corruption Tribunal of Jakarta sentenced Sudiwardono to six years in prison, for allegedly accepting bribes worth a total of 110,000 Singapore dollars and being promised 10,000 Singapore dollars by a member of the House of Representatives of the Republic of Indonesia Aditya Anugrah Moha.
20.	Tangerang District Court Judge Wahyu Widya Nurfitri	On August 28, 2018, the Corruption Tribunal of Serang sentenced Wahyu Widya Nurfitri to five years in prison for accepting a bribe of 30 million rupiahs from the litigants.
21.	Judge Adhoc of District Court of Medan, Merry Purba	On May 16, 2019, the Corruption Tribunal of Jakarta sentenced Medan District Court Judge Merry Purba to six years in prison for receiving SGD 150 thousand from businessman Tamin Sukardi.
22.	South Jakarta District Court Judge Iswahyudi Widodo	On September 25, 2020, the Corruption Tribunal of Jakarta sentenced former South Jakarta District Court judge Iswahyudi Widodo to 4.5 years in prison, for allegedly accepting bribes amounting to 680 million rupiahs.
23.	Judge of District Court of South Jakarta, Irwan	On September 25, 2020, the Corruption Tribunal of Jakarta sentenced former South Jakarta District Court judge Irwan to 4.5 years in prison, for allegedly accepting bribes totaling 680 million rupiahs.
24.	Lasito, judge of the Corruption Tribunal of Semarang	On September 3, 2019, the Semarang Special Corruption Court sentenced Lasito to four years in prison for a pretrial bribery case.
25.	Kayat, the Judge of the District Court of Balikpapan	On January 8, 2020, the Corruption Court of Jakarta sentenced Kayat to seven years in prison, for allegedly accepting bribes worth 500 million rupiahs from real estate businessman Sudarman bin Tole who was sentenced to be free in exchange for money in a case of forgery of land certificates in District Court of Balikpapan.
26.	Sudrajad Dimiyati, Justice of the Supreme Court of the Republic of Indonesia	On September 21, 2022, the Corruption Eradication Commission arrested Supreme Court Justice Sudrajad Dimiyati for accepting a bribe of 800 million rupiahs out of a total bribe of 205,000 Singapore Dollars.

## 2. Judicial Independence

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 (Mahmud et al., 2020). 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 (Mahmud et al., 2020).

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 (Ruling of the Constitutional Court of the Republic of Indonesia of January 6, 2006, Number 05/PUU-III/2006). 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 (i.e., laws and regulations) and in practice (Zeitune, 2004).

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 (Larkins, 1996). For two reasons, the neutrality of third parties in the judicial process is important. 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 towards 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 (Syarifuddin, 2019).

Additionally, an independent judiciary is free from executive and legislative intervention. 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 (Syarifuddin, 2019).

Linking judicial independence to elections, Shugerman (2009) distinguished it into relative and absolute independence "relative independence" is defined as "independence from whom," while "absolute independence" emphasizes "how much independence from political pressure. O'Connor (2008) 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.

Ferejohn (1998) also expressed the same opinion, stating that the judiciary has the scope of personal and institutional independence. According to Shetreet & Deschênes (1985), 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. This opinion was later influenced by the formulation of various international instruments. Indeed, 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 Joseph, S. (2019). 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 rights 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 decision of the Constitutional Court of the Republic of Indonesia Number 05P/PUU/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 in

accordance with 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, in accordance with 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); IBA 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 that an independent and impartial judiciary is an institution of the highest degree in every society and an important pillar of the rule of law (Wang et al., 2014). 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) (Tomuschat, 2019). 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). 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. The independence of judicial power includes individual (substance and personal), collective, and internal freedom.


Individual freedom comprises of the following components. The first was substantive independence enables a judge to serve justice in accordance with the law and orders of conscience, without the intervention of executive power. The second was 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. The third was collective independence as the judiciary should enjoy autonomy and collective independence vis-à-vis the executive as it is not dependent or controlled by the government authority. Moreover, internal independence was determined by the following conditions. In the decision-making process, a judge should be independent vis-à-vis their judicial colleagues and superiors. Difference in hierarchical position including grade or rank should not interfere with the right of judges to pronounce their judgments freely.

### 3. Judicial Impartiality

The independence of judicial power must be supported by the impartiality, professionalism, and morality (integrity) of judges, 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. 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 (2008), accountability should be considered protection and rather than a threat to the judiciary.



In O'Connor's (2008) 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.

Cappelletti argues that there are several models of accountability for judicial power (Cappelletti, 1983). The first was political accountability: Judges, are responsible for conducting themselves as per the procedures outlined by constitutions and political institutions either individually, collectively, or institutionally. The second was societal or public accountability: Judges can be controlled by the public through the mass media, examination of judges' decisions, 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 that 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.

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

#### 4. Judicial Commission

In an effort to monitor a judge's behaviour and strengthen their adherence to professional ethics, the 1945 Constitution led to the formation of a Judicial Commission. Based on Article 24B paragraph (3) of the 1945 Constitution, "the Judicial Commission is independent in having the authority to propose the appointment of Supreme Court Justices and has other controls to maintain and uphold their honor, dignity, and behavior." However, this regulation is inseparable from the efforts to realize independent judicial power. Technically, the authority of the Judicial Commission was initially regulated by Law Number 22 of 2004, which was subsequently amended by Law of the Republic of Indonesia Number 18 of 2011. In addition, this law regulates the organization, tasks, and functions, as well as the procedures for selecting the members of the Judicial Commission.

According to Thohari, (2004), the existence of the Judicial Commission is closely associated with reform efforts in the field of justice, because the judiciary's independent power had not been fully realized (Jayus et al., 2021; Ferdiles, 2019). The judiciary has faced several problems due to the poor recruitment of Supreme Court justices and the ineffectiveness of the institutions charged with maintaining and upholding the honour, dignity, and behavior of the judges. This lack of respect for professional ethics is exemplified by the arrests of judicial officials and instances of ethical violations by receiving bribes from litigants. Judges' dishonest behavior seriously violates the "Professional Code of Ethics for Judges," which has binding power for the members of the judiciary. The Code of Ethics and Conduct has been formulated and approved jointly by the Supreme Court and the Judicial Commission through "A Joint Regulation concerning the Code of Ethics and Conduct of Judges"; it contains ten values (The Code of Ethics and Code of Conduct for Judges was formulated and ratified jointly by the Supreme Court and the Judicial Commission through Joint Regulation Number 047/KMA/SKB/IV/2009 and Number 02/SKB/P.KY/IV/2009 concerning Code of Ethics and Judge Behavior): being reasonable, honest, wise



and prudent, independent; have high integrity, responsibility, self-esteem, discipline, humility, and professionalism.

The Judicial Commission acknowledges that it is not easy to enforce the "Code of Ethics and the Code of Conduct for Judges" without implementing socialization and education efforts. The judges' growing enthusiasm towards upholding this code should be accompanied by reflection and training to build a character in accordance with the values enshrined in this code. The Judicial Commission has worked closely with the Supreme Court to implement this code of ethics regularly (The Judicial Commission of the Republic of Indonesia, Consolidating the Code of Ethics and Code of Conduct for Judges, 2014, 2-3).

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 towards a fair and impartial judicial process. It is hoped that the ideas and issues raised in this paper will help the judiciary recognise the importance of developing, maintaining, and, most importantly, honouring a code of ethics in keeping with the ethical obligations of the judicial office.

### CONCLUSION

The findings 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," that is, by bribing judges and judicial officials.

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