

The Position and Impact of Ethics Hearings in Indonesian Law

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Abstract. Enforcing professional ethics through ethics hearings is crucial for shaping a social system aligned with customary, religious, and cultural norms. As these norms evolve with society, community and social institutions must develop ethics to earn public trust. This requirement extends to legal and governmental institutions responsible for law enforcement, ensuring integrity in the behavior of public servants and professionals. Ethical oversight can take various forms, either integrated within the organization (internal) or as a separate entity (external). The debate arises over the impact of these differing institutional forms on ethics enforcement quality and procedures. Internal oversight is seen as protective of individuals and organizations involved in ethical cases but may raise concerns about the independence of ethics enforcers. This raises questions about the role of ethics hearings in Indonesia's legal system and their impact on trials involving the same defendant in different courts. A normative juridical study was conducted to address these questions, finding that ethics hearings operate independently from court trials under the Supreme Court, ensuring their outcomes do not affect separate court proceedings involving the same defendant.

Keywords: Code of Conduct, Authorities, Law

1 Introduction

Being in a certain position makes an official have two responsibilities, namely job responsibility and moral responsibility. Job responsibilities are related to the duties and responsibilities of carrying out tasks, the success of the team, and achievements become the benchmark for whether a leader is successful or not. Meanwhile, ethics in a profession serves as a guideline in carrying out an official's duties. Because in reality intelligence, intellectual intelligence is not the only factor that can make someone a good person.

The existence of ethics then becomes important when someone holds this public position, then encourages and directs public attention to assess the behavior of leaders, public officials and even Law Enforcement Officials (APH). This reality is what we Indonesians face, where lately so many public officials who are supposed to be an example for the community are involved in various legal problems that have created confusion in the community and even resulted in a loss of public trust not only in officials but even public trust in state institutions themselves.

Efforts to explain that what happened was the work of unscrupulous officials seemed unbelievable to the public. Because what happened was not just one or a few people, but the

violations that occurred seemed to have become something natural and cultured. Corrupt practices, illegal fees, gratuities and others have become a culture that is inherited in agencies and can even be said not only at the official level but rooted to the lowest level, inherited which only changes the perpetrators in each government period and will only be processed after going viral on social media.[1] These things then seem to force the law enforcement process not only on whether an act violates the rule of law but also on ethical violations that occur, because the basic demands of ethics since thousands of years ago were poured by humans in legal provisions,[2] so that not obeying the applicable legal rules is automatically a violation of ethics.

After the reformation period, all institutions tried to clean up as well as state legal institutions. Law enforcement institutions such as the police, prosecutor's office and judiciary are trying their best because what happened during the New Order era has been imprinted in the memory of the community where law enforcement officials at that time were thick with practices of Corruption, Collusion and Nepotism which then the officials could no longer work professionally.

Law enforcement by law enforcers who only focus on the content of the texts of laws without paying attention to legal ethics that must also be applied. Law enforcement then comes out of the purpose of law, namely realizing a sense of justice, legal certainty and legal benefits. Security forces then only become something that is feared by the community and even then the actions of law enforcement officers become tainted by law enforcers themselves who ignore ethics with various deviant behaviors so that law enforcement feels dry and arid. Law that is born from ethical values comprehensively cannot be implemented without the enforcement of ethical values that have been inherent in the Indonesian nation since long ago.

Several events such as the case of police officers, the case of state officials, the case of the Constitutional Court Judge and the case of the Chairman of the KPU, then became a spectacle of the Indonesian people that in the abuse of official authority an official will not only be tried criminally or civilly but can also be tried in an ethics trial which is separate from the main trial.[3] The code of ethics trial itself is not a new thing in Indonesia, but then people question the importance and usefulness of the ethics trial itself and how it differs from the trial on the main issue that occurred.

The idea of an ethics court is a discourse that is never finished, and is always discussed in various forums. The desire for an ethics court is not easy considering that the provisions relating to the standards of ethics for state officials are not only related to corruption, collusion and nepotism (KKN) but also relate to issues or problems regarding behavior, appropriateness, conflicts of interest, reputation, and changes in ethical standards or morality. In some state agencies, both in the executive, legislative and judicial branches, they actually have standardized rules regarding professional ethics, but because the application is carried out within the institution so that the purpose of enforcing the code of ethics is not transparent so that it does not have a deterrent effect on those who violate ethics.[4]

On the other hand, external oversight institutions created to safeguard and enforce the ethics of judicial actors in exercising their authority have not been able to work optimally due to the constraints of a weak legal basis, hanging structural independence and a culture of judicial institutions that has not changed much. Based on the explanation above, then the author feels interested in raising this issue into a research and scientific writing with the title Position and Impact of Ethics Court in Indonesian Law.

2 Methodology

The research in this paper is conducted in a normative juridical manner. Where the author conducts theoretical-based research using various legal literature[5] Normative legal research is conducted to produce new arguments, theories or concepts as prescriptions in solving the problem at hand.[6] Then the data owned by the author is analyzed to obtain a legal argument.

3 Results and Discussion

In solving various legal problems to realize the order and benefit of many people, we will certainly refer to the theory expressed by Gustav Radbruch where legal settlements must have the principle of legal certainty, the principle of legal justice, the principle of legal expediency.[7] To realize these principles, a settlement process is needed both through litigation and non-litigation.[8]

A trial, which is a litigation process in finding material truth, is conducted based on the competence or authority of a court, which is divided into:[9]

a. Absolute Competence

Absolute competence is: the authority of the court to hear a case according to the object, material or subject matter of the dispute, which is also explained in the explanation of Article 10 paragraph (1) of Law Number 14 of 1970 which includes judicial power exercised by the Supreme Court, namely; Religious Courts, Military Courts, General Courts, State Administrative Courts.

b. Relative Competence

Relative competence is: the authority of the court to hear a case in accordance with its jurisdiction (territorial jurisdiction). The legal basis of relative competence is regulated in Article 118 HIR jo 142 Rbg Jo 99 Rv, in addition to the above understanding of relative authority can also be interpreted as the same level of court in several different judicial powers.

The division of these two authorities is carried out so as not to cause chaos and overlap in the implementation of legal settlements, so that both settlement and administration have order. In addition to the above authorities and referring to the explanation in the background of the writing, we then recognize the existence of an independent court that is separate from the authority of the above courts, namely the Ethics Court.

From the various definitions that we encounter, ethics, which was originally defined as a habit, is now slowly transforming into a science that talks about the problem of human actions or behavior. Because for humans, ethics is useful for assessing which ones can be considered good and which ones can be considered bad with analysis and consideration that can be digested by the human mind itself.[10] Then what is professional ethics, Kaiser explains that professional ethics is the attitude of a person who has the value of justice in providing professional services based on his capacity to the community with full responsibility.[11]

In line with Bertens, Shidarta argues that the Professional Code of Ethics is a set of rules of behavior as guidelines that must be obeyed in carrying out a profession. So there are at least three purposes contained in the formation of the Code of Ethics, namely: [12]

- a. Maintain and improve moral quality;
- b. Maintain and improve the quality of technical skills;

- c. Protecting the material well-being of those in the profession.

So, then in the implementation of the legal process we recognize the notion of an ethics hearing, of course this is something different and separate from trials in the competence of existing courts. The trial held to carry out the enforcement of the Code of Ethics will be carried out against violations committed by a person in a particular profession. The profession in question is certainly not limited to administrative positions in organizations but to all people who have certain professions that are regulated based on the rules of their respective professions to find out whether the person in carrying out his profession has been based on reasonable behavior as a human being in his profession.

The assessment of whether someone has ethics in the profession is of course more on moral judgment on the purpose of the establishment of the professional code of ethics itself, namely:[13]

- a. Uphold the dignity of the profession
- b. Safeguarding and maintaining the welfare of members
- c. Improving the dedication of members of the profession
- d. Improving professional quality
- e. Improve the quality of professional organizations
- f. Promoting service over personal gain
- g. Having a strong and closely knit professional organization
- h. Define the standards of a profession.

In its implementation, the ethics hearing which takes place separately from the implementation of the trial in the court that hears a legal case, aims to resolve issues that are only related to violations of the professional code of ethics, but still in an effort to ensure legal certainty itself. Of course, the results of the ethics hearing decision do not have to wait for the results of the trial of the court that is trying the suspect in a court with other competencies, because the decisions of these two trials do not affect each other but support each other in the legal process.

In the judicial system in Indonesia, only the judicial institutions / agencies have a special institution established by the state to carry out ethical trials to the Judicial Commission (KY), while in other institutions / agencies issues related to ethics will be carried out independently by the institution itself by forming an Ethics Commission / Supervisory Board / Court of Honor consisting of officials in agencies that can be elected or appointed as ethics trial judges on a non-permanent (ad hoc) basis.[14]

Some of the acts that qualify as violations of the Code of Ethics include willful and continuous misconduct in carrying out official duties, inability to control oneself from matters that interfere with performance such as the use of drugs and intoxicants, committing and/or being involved in criminal acts. In addition, the commission is also authorized to conduct investigations into judges who are strongly suspected of having a permanent and continuous disability that may affect their performance. [15]

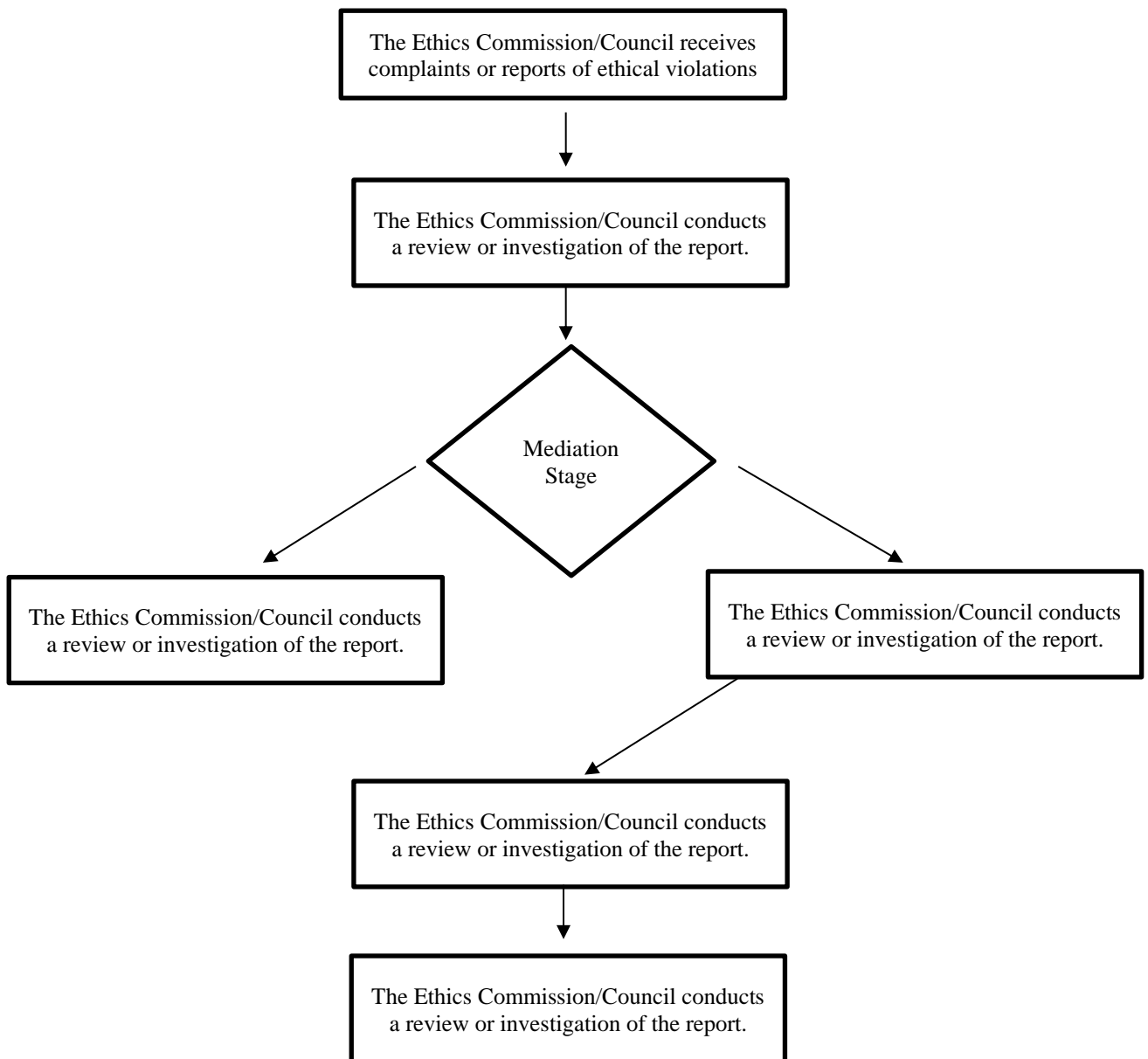
Code of ethics hearings conducted at an agency for a profession are distinguished by the level of misconduct divided into:

- a. Speedy trial: conducted for code of conduct violations in the minor and moderate categories of misconduct. The category of minor misconduct refers to actions taken by a person on the orders of a person where the perpetrator does not know the purpose and risks of what he/she is doing. The category of moderate misconduct is misconduct committed by a person who is aware of but is forced by a superior, in other words there

is a strong power relationship between the perpetrator and the order giver where the perpetrator cannot refuse the order.

- b. Ordinary hearing: conducted for violations of the code of ethics in the serious category of misconduct. The category of serious misconduct is misconduct committed intentionally by a person either alone or by using an intermediary to gain benefits at the expense of others so that other people suffer both material and immaterial losses.

Settlement of ethical violations in ethical trials is carried out internally by each agency by forming an Ethics Commission / Ethics Council / Court of Honor consisting of officials in the authorized agency who are appointed to adjudicate ethical cases on a non-permanent (ad hoc) basis. With a description of the stages as follows:



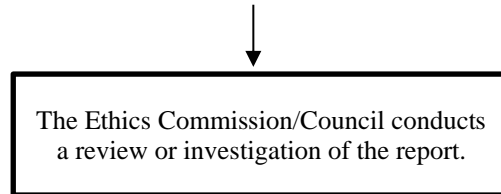


Figure.1. Scheme of work of the ethics commission.

The journey from the investigation process to the ethics hearing process is a series whose results are final or not. For policies and agency regulations that provide space, the results of the ethics hearing decision can be appealed, while if the policies and regulations of the agency do not provide space, the ethics hearing decision is final. The sanctions produced by the code of ethics hearing are:

- a. Moral Sanctions
Moral sanctions can be viewed in two perspectives, *First*: for some people, the rejection of society, ridicule and insults from society is something very heavy, because for those who need public recognition, positive views and flattery are invaluable, so they will feel humiliated if their predicate as a great person is damaged. *Second*: for those who are in a certain community and do not interact much with society, moral sanctions are not something burdensome because they do not affect their lives.
- b. Administrative sanctions
The imposition of administrative sanctions at the code of ethics hearing is something heavy for those being tried because this sanction can be in the form of; Expelled from the organization; Dismissal Not Honorably (PTDH); Transferred; Delayed promotion; Demotion.

The results of the decision of the code of ethics hearing above show that there is no relationship and determination with the results of hearings in courts with different competencies. This is because the points that are heard in ethics hearings are: [16]

- a. State Ethics
- b. Institutional Ethics
- c. Societal Ethics
- d. Personality Ethics

For example, a police officer may be convicted because he was caught among drug users, even though it was proven that he did not participate in using drugs, but at the ethics hearing he was found guilty because as a law enforcement officer he should have prohibited or reported the use of drugs. Or another example where a Constitutional Court judge who was proven to have violated serious ethics still participated in deciding one of the cases. The decision of the Constitutional Court judge will still be considered valid because it is related to *res judicata*, while the results of a separate ethics hearing are to prove *judicial corruption*, so the results of an ethics investigation that shows ethical violations will not undermine the legal decisions of the Constitutional Court that have been taken and become legal products with permanent force.

These examples then become our assessment that the results of the decisions of the ethics hearing not only do not affect the decisions of the results of other hearings but also do not invalidate the results of decisions in other trials that have permanent legal force even though they are both trying the same person. Although the organization of ethics hearings is sometimes carried out behind closed doors to avoid chaos and maintain the dignity of the institution, the results of the code of ethics hearing will still be announced because it will be related to the sanctions that will be received by the reported party. So, that indeed in its position as a legal process in Indonesia the code of ethics trial is an independent process that is not under the authority of the Supreme Court. But even though it is not in the legal system in Indonesia, the use of ethics hearings is very helpful in efforts to establish *Good Governance and Clean Governance*.

Based on the decision of the ethics hearing, there is a message to all state apparatus that their behavior during their responsibilities must uphold professional ethics, namely behaving fairly, honestly, wisely and wisely, independently, with high integrity, responsible, upholding self-respect, high discipline, humble, and professional. By not asking for various rewards or certain facilities to parties who directly or indirectly have an interest in the various arrangements handled.

4 Conclusions and Suggestions

4.1 Conclusion

If we look at the competence of the court, both absolute competence and relative competence, then we will not find where the position of the ethics trial is. This is because an ethics hearing is a trial process that is outside the authority of the Supreme Court. Decisions at the ethics hearing will not be influenced and affect the results of the trial of the same defendant who is also being tried at the same time in a different trial. However, the results of the ethics hearing and other trials for the same reported person or suspect will support each other where the decisions of both trials will be very useful not only as a punishment for the reported person but more than that is for the establishment of *Good Governance and Clean Governance*.^[17]

In addition to having moral sanctions with the risk of being judged through negative views and negative assessments of the community on all personal and social life, the results of the code of ethics hearing have a considerable influence on a person's career where the sanctions of the code of ethics hearing can be in the form of administrative sanctions ranging from being transferred; Relieved of duty; Delay in promotion; Demotion (demotion); Honorably dismissed, retired; to Dismissal Not With Honor (PTDH).

4.2 Suggestions

Although it is an independent judicial process and separate from the judiciary under the Supreme Court, it is hoped that the trial of the professional code of ethics can be carried out openly not only in major cases that have become the concern of the general public but also in minor cases so that decisions on errors committed by state apparatus are still resolved in the code of ethics trial to avoid administrative sanctions given only based on superior policies that may not have a sense of justice. *Conflict of Interest* may occur where the person being tried has a great influence in the institution even on those who are trying him.^[18]

Rearrangement is needed in several laws and regulations related to the ethical sanction of Dishonorable Dismissal (PTDH). Because in certain institutions, someone who has been sentenced to PTDH at some time later can still reapply to the institution to be able to return to being active as a state apparatus. Supposedly to realize a sense of justice for everyone, someone who has been sentenced to PTDH can no longer become a state apparatus. In addition, supervision is also needed both internally and externally by the community with a public complaint system for violations of the ethics of state apparatus.

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