

THE MEANING OF AN HONORABLE PERSONALITY OF THE JUDGE OF THE REPUBLIC OF INDONESIA *

Fatkur Rosyad **

Abstract

This Article explores the problems of the meaning of an honorable personality of the judge of The Republic of Indonesia and its consequences of the absence formulation of the meaning of an honorable personality of the judge of The Republic of Indonesia. This article applies a qualitative method with a normative juridical type with a statute and conceptual approach. The analysis shows that the meaning of an honorable personality is a specific feature of the judge of The Republic of Indonesia in their relationship with others in the perfect environment, honorable, sensible, honest, wise and discreet, independent, responsible, high self esteem, high discipline, and humble. Meanwhile, the effect from the absence of the meaning of an honorable personality can distort law enforcement for the judge.

Keywords: Judge, Personality, Honorable

* This article is summarized and rearranged from the thesis "The Meaning of an Honorable Personality of the judge of The Republic of Indonesia" Law Graduates Studies Program, Faculty of Law, Jember University, Indonesia, 2017

** Graduate Student of Law Graduates Studies Program, Faculty of Law, Jember University. Email address: frosyad@gmail.com

1. Introduction

The judge must render a just, legal and definite ruling and bring benefits to the justice seekers. Therefore the judge shall have integrity and be an honorable personality, honest, fair, professional, godly and noble as shall as experienced in the law. This is explicitly stated in Art 24A (2) and Art 24C (5) of the 1945 Constitution of the third amendment and in Art 5 (2) of the The Act No. 48 of 2009. This an honorable personality norm applies to all judges, either judges in the Supreme Court and its subordinate courts or in the Constitutional Court.

As a central figure in the judicial process, judges are always required to build intellectual intelligence, especially emotional intelligence, moral intelligence and spiritual intelligence. If spiritual intellectual, emotional, and moral intelligence is built and maintained properly, not only will it benefit itself, but it will also benefit the community in the context of law enforcement. Judges shall have the attributes of God that are just, wise, authoritative, virtuous, honest, godly who underlies judges in their daily behavior. This is where the essence that puts the judge as a demigod.¹

Based on the above description, the legislation has stipulated one of the conditions of the judge ,that is an honorable personality. However, the law does not provide an adequate explanation on what is meant by an honorable personality. There are needs to be explained through research so that nothing goes wrong in interpretation. Therefore this research is to find a formula about the meaning of an honorable personality of the judge of The Republic of Indonesia and the legal consequences of the absence of the formulation of its meaning.

¹ Kamil, Ahmad, *Judge's Code of Conduct in the Ethical Philosophy Perspective*, Suara Uldilag Legal Magazine No. 13, June 2008, 39

2. The Importance of the Meaning of an Honorable Personality of the Judge of the Republic of Indonesia

The judges in the Supreme Court and its subordinate courts or in the Constitutional Court are required to have an honorable personality as in Art 24A (2) and Art 24C (5) of the 1945 Constitution of The Republic of Indonesia, but the norm has not get a concrete explanation. To avoid misinterpretations that will result in legal uncertainty for the judge before an official explanation, it is necessary to provide detailed explanations or interpretations of an honorable personality phrase of the judge of the Republic of Indonesia.

Detailed explanations or interpretations of an honorable personality phrase of the judge of the Republic of Indonesia are useful as a protection against the extent of the accusations of violation of an honorable personality norm due to the vagueness of the meaning of the norm which in turn also influences the law enforcement process by the judge.

3. Basic Principles for Building of the Meaning of an Honorable Personality

The meaning of an honorable personality is very important to be formed to regulate the behavior of the judge of the Republic of Indonesia in carrying out their duties and obligations in law enforcement. In the legal dogma the clarity of the meaning formulation is the basis of legal certainty. This resulted in many laws prior to the actual regulation, limiting the prior understanding of the definitions used in the law as juridical concepts.²

If the formulation of the meaning of an honorable personality of the judge of the Republic of Indonesia through understanding with few characteristics and elements, then of the meaning of an honorable personality is broader, conversely if the formulation is through understanding which contains many characteristics and elements, then the meaning of an

² Lanur OFM, Alex, *Overview of Logic*, Jakarta: Kanisius, 1983, 14

honorable personality of the judge of the Republic of Indonesia to be narrower. So in formulating the meaning of an honorable personality of the judge of the Republic of Indonesia can be obtained through a formulation process from various sources of information relating to the object defined.

4. The Meaning of an Honorable Personality of the Judge of the Republic of Indonesia

4.1. Grammatical interpretation

The word personality comes from the basic word *pribadi* meaning human as an individual (human self or self), human condition as an individual, the overall characteristics that are the character of a person, by getting the *ke* prefix and *an* suffix, becoming a *kepribadian* (being a noun) which means ways of behaving that are a particular characteristic of a person and their relationship with others in their environment.³

Whereas the despicable word comes from the basic word *cela* (noun) which means something that causes less than perfect, defect, deficiency, injury, disgrace, stain (about behavior, etc.), insults, criticism, by getting the *ter* prefix, being *tercela* (being verbs) which means defective, reprehensible, inappropriate.⁴

Thus what is meant by an honorable personality phrase according to the Big Indonesian Dictionary and the Grammatical Structure of the Indonesia means ways of behaving which are a special feature of the judge of the Republic of Indonesia and their interaction with other people in their environment that are unblemished, appropriate and deserving.

³ National Education Department Language Center, *Indonesia Dictionary*, 3th ed, Jakarta: Balai Pustaka. 2002, 895

⁴ Ibid., 267-268

4.2. Historical Interpretation

The an honorable personality norm of the judge of The Republic of Indonesia as in Art 24A (2) and Art 24C (5) of the 1945 Constitution is the result of the third change in the The People's Consultative Assembly of The Republic of Indonesia session during the trial of 2001, but in the third session there was no specific discussion about this norm.

According to the minutes of the discussion of changes to the 1945 Constitution of The Republic of Indonesia, citing the opinion of Hamdan Zoelfa⁵, that 'an honorable personality' of the judge is wise, wisdom, discreet.

4.3. Systematical Interpretation

Grammatical and historical interpretation will result in a more satisfying interpretation when combined with the understanding that the occurrence of laws is always related to other laws and regulations, and that there is no stand-alone law completely separated from the overall legislation. According to Sudikno Mertokusumo, that in interpreting the law as part of the whole system of legislation by connecting it with other laws such as this is called systematic or logical interpretation.⁶

In regard of a systematic interpretation of 'an honorable personality' phrase of the judge of the Republic of Indonesia, the author will research the regulations relating to judicial power and the judicial institutions in the Republik of Indonesia, as follows:

4.3.1. Legislation Concerning Judicial Power

Art 32 of the The Act No. 4 of 2004 concerning the Basic Provisions of Judicial Power has regulated the provisions of an honorable personality norm of the judge of the Republic of Indonesia. Then this Act was replaced

⁵ The Republic of Indonesia, *Comprehensive Manuscript of Amendments to the 1945 Constitution of The Republic of Indonesia, Background, Process, and Discussion Results 1999-2002*, Book VI Judicial Power. rev. ed., Jakarta: Secretariat General and Registrar of the Constitutional Court, 2010, 102

⁶ Mertokusumo, Sudikno, *Know the Law, An Introduction*, Yogyakarta: Liberty, 1999, 157

with the The Act No. 48 of 2009 which is the last Act concerning Judicial Power in the Republic of Indonesia, but an honorable personality norm of the judge of the Republic of Indonesia is no longer regulated generally. However in Art 33 of the The Act No. 48 of 2009 has regulated an honorable personality norm of Constitutional Judge. Up to the The Act No. 48 of 2009, an explanation of an honorable personality norm of the Judge of the Republic of Indonesia is not found.

4.3.2. Legislation Concerning the Supreme Court

The Art 7 (1) the The Act No. 14 of 1985 has regulated an honorable personality norm of the judge, with the editorial ‘behaving impeccably’. Then this Act was amended, the first amendment by the The Act No. 5 of 2004, but the provisions of an honorable personality norm of the judge of the Republic of Indonesia is not regulated. The second amendment by the The Act No. 3 of 2009 has regulated the provisions of an honorable personality norm of the judge in Art 6A, but until the latest Act concerning the Supreme Court, the explanation of an honorable personality norm of the judge of the Republic of Indonesia is not found.

4.3.3. Legislation Concerning the Constitutional Court

The Art 15 of the The Act No. 24 of 2003 concerning the Constitutional Court, has regulated an honorable personality norm of the judge of the Constitutional Court of the Republic of Indonesia. Then this Act was amended by the The Act No. 8 of 2011, an honorable personality norm is not editorial change, but changes in location, from Art 15 of the The Act No. 24 of 2003 becomes Art 15 (1) in the The Act No. 8 of 2011. In the second amendment by the The Act No. 4 of 2014, an honorable personality norm did not get any changes, nor explanation of the norm.

4.3.4. Legislation Concerning General Courts

3 (three) Act concerning General Courts, as follows: The The Act No. 2 of 1986 (in Art 14 (1)), The The Act No. 8 of 2004 (in Art 14 (1)) and the The Act No. 49 of 2009 (in Art 13B (1) and in Art 14 (1)) has regulated an honorable personality norm of the judge of General Courts, but the an honorable personality norm of the judge did not get an explanation.

4.3.5. Legislation Concerning Religious Courts

3 (three) Act concerning Religious Courts, as follows: The The Act No. 7 of 1989 (in Art 13 (1)), The Act No. 3 of 2006 (in Art 13 (1)) and The Act No. 50 of 2009 (Art 12 B (1) and in Art 13 (1)) has regulated an honorable personality norm of the judge of Religious Courts, but the an honorable personality norm of the judge did not get an explanation.

4.3.6. Legislation Concerning Military Courts

The Art 18, Art 19 and Art 20 of the The Act No. 31 of 1997 has regulated an honorable personality norm of the Military Judges and High Military Judges, but this norm did not get an explanation.

4.3.7. Legislation Concerning State Administrative Courts

3 (three) Act concerning State Administrative Courts, as follows: The The Act No. 5 of 1986 (in Art 14 (1)), then in The Act No. 9 of 2004 (in Art 14 (1)) and The Act No. 51 of 2009 (in Art 13B (1) and in Art 14 (1)) has regulated an honorable personality norm of the judge of State Administrative Courts, but an honorable personality norm of the judge did not get an explanation.

4.3.8. Regulation of Judge's Professional Code of Ethics

The 2006 Judicial Code of Conduct fourth paragraph states that: The Judge's Code of Conduct is an elaboration of the 10 (ten) guiding principles to behave fairly, behave honestly, behave wisely and wisely, be independent, have high integrity, be responsible, upholding self-esteem,

being highly disciplined, behaving humbly, and being professional.⁷ Then the 2009 Code of Conduct for Judges restated the ten principles of the judge's code of conduct.⁸

Of the ten principles of the Judicial Code of Conduct with the provisions of Art 24A (2) and Art 24C (5) of the 1945 Constitution of Republic of Indonesia, it can be concluded that those included in an honorable personality norm are seven principles, as follows: honest, wise and discreet, independent, responsible, high self esteem, high discipline, and humble.

5. Legal Impacts of the Absence of an Honorable Personality Meanings of the Judge

Legal benefits (zweckmassigkeit) that obtained after discovering the meanings of an honorable personality of the judge of the Republic of Indonesia are protecting them from allegations of violations of an honorable personality norm with special objectives is justice for the judge of the Republic of Indonesia and the general goal is justice of all citizen of the Republic of Indonesia.

The absence of formulation of an honorable personality meanings of the judge is the limitation of legal texts as vague norms which distort the principle of legal certainty for the position of the judge which causes uncertainty in law enforcement carried out by the judge. This is to avoid the law being used as a sub-ordination of interests, both the interests of the authorities or some of citizen and this is contrary to the mandate of the constitution.

7 Supreme Court of Indonesia, *Decree No. KMA/104A/SK/XII/2006, December 22, 2006, concerning the Judicial Code of Conduct*.

8 Supreme Court and Judicial Commission, *Joint Decree No. 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009, April 8, 2009 concerning the Code of Ethics and Code of Conduct for Judge*.

6. Conclusion

The analysis shows that the meaning of an honorable personality is a specific features of someone (the judge of Republic of Indonesia) along with their interaction with others in the perfect environment, honorable, sensible, honest, wise and discreet, independent, responsible, high self esteem, high discipline, and humble.

Meanwhile, the absence of formulation of an honorable personality meanings of the judge is distorting the principle of legal certainty for the judge which causes uncertainty in law enforcement carried out by the judge.

References

- The Constitution of Republic of Indonesia 1945 and its Amendments
- The Act No. 14 of 1985 concerning *the Supreme Court*
- The Act No. 2 of 1986 concerning *General Courts*
- The Act No. 5 of 1986 concerning *State Administrative Courts*
- The Act No. 7 of 1989 concerning *Religious Courts*
- The Act No. 31 of 1997 concerning *Military Courts*
- The Act No. 24 of 2003 concerning *the Constitutional Court*
- The Act No. 4 of 2004 concerning *Basic Provisions of Judicial Power*
- The Act No. 5 of 2004 concerning *Amendment to The Act No. 14 of 1985 concerning the Supreme Court*
- The Act No. 8 of 2004 concerning *Amendment to The Act No. 2 of 1986 concerning General Courts*
- The Act No. 9 of 2004 concerning *Amendment to The Act No. 5 of 1986 concerning State Administrative Courts*
- The Act No. 3 of 2006 concerning *Amendment to The Act No. 7 of 1989 concerning Religious Courts*
- The Act No. 3 of 2009 concerning *the Second Amendment to The Act No. 14 of 1985 concerning the Supreme Court*
- The Act No. 48 of 2009 concerning *Judicial Power*
- The Act No. 49 of 2009 concerning *the Second Amendment to The Act No. 2 of 1986 concerning General Courts*
- The Act No. 50 of 2009 concerning *the Second Amendment to The Act No. 7 of 1989 concerning Religious Courts*
- The Act No. 51 of 2009 concerning *the Second Amendment to The Act No. 5 of 1986 concerning State Administrative Courts*
- The Act No. 8 of 2011 concerning *Amendment to The Act No. 24 of 2003 concerning the Constitutional Court*
- The Act No. 4 of 2014 concerning *the Stipulation of Government Regulation in Lieu of The Act No. 1 of 2013 concerning the second amendment to The Act No. 24 of 2003 concerning the Constitutional Court into Act.*

Decree of the Supreme Court No. KMA/104A/SK/XII/2006, December 22, 2006, concerning *the Judge's Code of Conduct*

Supreme Court Decree No. 215/KMA/SK/XII/2007, December 19, 2007, concerning *Implementation Guidelines for Judicial Code of Conduct*.

Joint Decisions of the Supreme Court and Judicial Commission No. 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009, April 8, 2009 concerning *the Code of Ethics and Judicial Code of Conduct in Indonesia*.

Joint Decisions of the Supreme Court and Judicial Commission No. 02/PB/MA/IX/2012 and 02/PB/P.KY/09/2012, 27 September 2012 concerning *the Enforcement Guidelines for Judicial Ethics and Judicial Code of Conduct*.

Kamil, Ahmad, *Judge's Code of Conduct in the Ethical Philosophy Perspective*, Suara Uldilag Legal Magazine No. 13, June 2008

Lanur OFM, Alex, *Overview of Logic*, Jakarta: Kanisius, 1983

Mertokusumo, Sudikno, *Know the Law, An Introduction*, Yogyakarta: Liberty, 1999

National Education Department Language Center, *Indonesia Dictionary, 3th ed.*, Jakarta: Balai Pustaka, 2002

The Republic of Indonesia, *Comprehensive Manuscript of Amendments to the 1945 Constitution of The Republic of Indonesia, Background, Process, and Discussion Results 1999-2002*, Book VI Judicial Power, rev. ed., Jakarta: Secretariat General and Registrar of the Constitutional Court, 2010