

## BOOK REVIEW

### COURT OF ETHICS AND CONSTITUTIONAL ETHICS



This book presents an idea on making a court of ethics in Indonesia, written by Indonesia's famous scholar in Constitutional Law, Prof. Dr. Jimly Asshiddiqie. This book has brought new perspectives by advancing the existence of law of ethics in the domination of rule of law.

The discussion starts with the author's experience as the Chairman of Election Organizer Ethics Council in Indonesia, which brings much influence in this book. The author believes that there is a request to functionalize an ethical norm besides the existing legal norm in Indonesia. The existing legal system has been fatigue and burdened by the complexity of humans' problems and social problems. Therefore, it is urged to find alternatives in order to help the legal system to control the human conduct in society. This book suggests building the functional law of ethics where load of legal system can be reduced while mechanisms of ethics can side by side control the development of modern society.

This book reveals the basic understanding of rightness paradigm which is initiated by concept of moral and ethics. The concept of ethics and moral are rooted from the adat norm, religion norm and other norms which live in the society. This ethics norms, then are crystallized to the formal legal norm which bind the society with punishment and reward.

Earl Warren, Chief Justice of Supreme Court of United State (1953) stated that "Law floats in a sea of ethics". It means that the underlying norm of the laws arises from the ethical norm. Therefore, it is important to understand the law of ethics as one of the tools of law in modern era. Ethics code of conduct which is already known in the early 19th to the end of 20th century, has been revitalized as supporting body that functionally works for ethics enforcement.

The rise of ethics commissions and ethics institutions (permanently or ad hoc), reflects the awareness of the importance of professional ethical enforcement. It is one of the reasons why General Assembly of the United Nation in 1996, encourage all UN members to build the ethics infrastructure in public offices. The 82nd UN-General Assembly Resolution, A/RES/51/59, has adopted the Action against Corruption which attached International Code of Conduct for Public Officials as an Annex. It consists six points of code of ethics of public officials: 1) General Principles, 2) Conflict of Interest and Disqualification, 3) Disclosure of Assets, 4) Acceptance of Gifts or other Favours, 5) Confidential Information, and 6) Political Activity.

This book also puts some reference and examples for the existence of ethical body for public officials. For instance, there is Mesa City Ethics Committee that already precedes the City of Mesa Ethics Handbook for Elected Officials. While in Indonesia,

there is a proposed law regarding State Official Ethics as one of agenda of national legislation.

The author argues that law of ethics has the capacity to prevent abuse of power or any potential conflict among stakeholders which the writer called the new macro political quadrant (state, civil society, market and the media). The law of ethics may balance and control the conflict of interest between actors, therefore law can be maintained effectively and efficiently as a guidance of ideal behavior.

The book consists of five chapters. First chapter discusses about the court of law burden in contemporary world. It theoretically shows development of court of law from *rechtsstaat*, separation of power, until the need of acknowledge of ethic norm as one of system in the modern state. In the subchapter, it mentions about the load of penitentiary system where no longer effective as correctional institutes.

The second chapter of the book describes ethical system norm that examine three kinds of norms; religious norm, ethical norm, and law as a norm. These three norms have been used as the basic legal norm that manifested in constitutions. Therefore, the concept of constitution is not consisted of constitutional law only, but also consisted of constitutional ethics. Moreover, the authors agree with Keith E. Whittington who recommends the importance of development of constitutional ethics theory.

Third chapter explores the contemporary development of ethics of public offices and sectors. The author noted the existence of code of medical ethics in early of 9 Hijriah centuries titled "The Conduct of a Physician" (*Adab al-Tabib*) written by Islamic scholars named Al-Ruhawi and Al-Razi. The author claimed this Islamic Medical Ethics was the first medical ethics of human kind. Later on, in 1846 United States formed "American Medical Association (AMA)" that comprise of rights, duties and authorities of physician which becoming the first Code of Medical Ethics and Code of (Professional) Ethics in modern history.

Fourth chapter gives examples of the existence of code of ethics in nine organizations and profession in Indonesia. This section describes the existence of organizational and profession associations as the body which built the ethical code and also enforce the ethical norm. Therefore, the code of ethics has its own characteristics which can only made by their own professional community/associations.

The last chapter is the most important chapter which contains understanding of constitutional law not only as the highest legal norm, but also as the highest ethical norm in Indonesia. The 1945 Constitution of Indonesia involves the constitutional ethics as guidance of all stakeholders performs as constitutional ethical guidelines. Using the author's experience as the Chairman of Election Organizer Ethics Council in Indonesia, author believes that it is possible to make one kind of court of ethics in Indonesia. This court of ethics will specially enforce the ethical matters using the code of ethics in Indonesia.

Unfortunately, this book is written in Bahasa Indonesia. This book also does not mention the relation of national legislation regarding State Official Ethics to the embodiment of court of ethics in Indonesia. This book might need a sequel book for enhancing the pro and contra of the existence of court of ethics in Indonesia.

Generally, this book is one of the biggest Prof. Jimly's breakthroughs of constitutional ideas in Indonesia. After the establishment of the Constitutional Court and Election Organizer Ethics Council in Indonesia, it is possible to have court of ethics corresponding Prof. Jimly's thinking.

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Title : Peradilan Etik dan Etika Konstitusi  
[Court of Ethics and Constitutional Ethics]  
Language : Bahasa Indonesia  
Publisher : Sinar Grafika  
Author : Prof. Dr. Jimly Asshiddiqie  
Pages : 306 pages  
Year : 2014  
Reviewer : Qurrata Ayuni