

ETHICAL PRINCIPLES OF LAWYERS IN ISLAM

Zulkifli Hasan

Faculty of Shariah and Law,

Islamic Science University of Malaysia

Tel: 07761457686/ 01913772571

E-mail: zul361977@yahoo.com Blog: <http://zulkiflihasan.wordpress.com>

ABSTRACT

Ethical principles of lawyers refer to a rule or code of conduct binding to all members of the legal profession. Professional ethic is a hallmark of the legal profession and Islam extremely concerns on the duty of the lawyers to observe certain code of ethics as stipulated in al-Quran and al-Sunnah. In Malaysia, the Legal Profession (Practice and Etiquette) Rules 1978 (LPPER) and the Code of Ethics of Peguam Syarie 2000 (COEPS) provide the minimum standards of conduct to the legal practitioner whereby the former binds an advocate and solicitor and the latter a peguam syarie. This article aims at providing an Islamic perspective on the ethical principles of lawyers by highlighting certain provisions contained in the LPPER and the COEPS.

1.0 Introduction

Legal profession plays an important role in the administration of justice. As part of the legal professions, lawyers have unique roles of creating proper image and building confidence and trust of the public through observing certain code of ethics¹. Lawyers are bound with a high standard of code of ethics to ensure that the profession is able to fulfill its role within the justice system adequately and lawyers are ethically equipped for the powerful roles that they play in the society². The lawyers' code of ethics reflects standards of chosen behavior and provides guidelines for desirable conduct between individual lawyers, clients, courts and public at large³.

Generally, a lawyer refers to a specialist in or a practitioner of law, one as an attorney, counselor, solicitors, barrister or advocate whose profession is to conduct lawsuit as to legal rights and obligations in other matter. In the context of Malaysia, lawyers can be divided into two namely an advocate and solicitor and a Peguam Syarie. An advocate and solicitor is a lawyer admitted and enrolled under the Legal Profession Act 1976 whereby a Peguam Syarie refers to those who practice specifically in the Shariah courts⁴. The

¹ It is reported that over 100 lawyers were on the police wanted list for investigations into criminal breach of trust cases involving ten millions of ringgit. Lee Shi Lan. (28 May 2007). *Lawyers in the Dock for CBT: Police unearth 30 More Cases*. New Straits Times.

² Chapman, June. (2002). *Why Teach Legal Ethics to Undergraduates*. Journal of Legal Ethics. Volume 5. Issues 1-2. pp. 69-70.

³ Aultman, Mark H. (1994-1995). *Moral Character and Professional Regulation Commentary*. Georgetown Journal of Legal Ethics. Volume 8. Issue 1. pp. 103.

⁴ Section 59 of the Administration of Islamic Law (State of Selangor) Enactment 2003 provides that "Majlis may on payment of the prescribed fee admit persons having sufficient knowledge of Islamic law to be Peguam Syarie to represent parties in any proceedings before any Shariah court. No other person than a

advocates and solicitors may also practice in the Shariah courts provided that they are qualified and fulfilled all the requirements of Peguam Syarie as stipulated in the Peguam Syarie Rules⁵.

The word *ethics* is derived from the Greek word *ethos*, which means character. It represents a wide meaning of character, behavior or code of conducts. On the other hand, legal ethics specifically refers to principles of conduct governing an individual or a profession⁶. In Islam, the word ethic is synonym with the term *adab* and *khuluq*. These two terms denote good behavior or a standard of conduct to be observed in social interactions⁷. In the holy *al-Quran* the term *khuluq* can be found in *Surah al-Qalam* verse 4 as Allah says: “And surely you (Prophet Muhammad) have the best form of morals,” and in *surah al-Shu’ara* verse 137: “There is no other than *khuluq* of the ancient”. Apart from these, the Prophetic *hadith* had made reference to ethics and morality where Aishah reported that that “the *Khuluq (Morals) of the Prophet was based upon the Qur’an*”. The Quranic dictums and the Prophet’s tradition obviously demand that all Muslims to have a high moral standard of behavior and a good character regardless of what profession that they hold⁸. Moreover, lawyers who have specialized knowledge in law are accounted and obligated to observe certain code of ethics in order to gain confidence and to build trust of the general public on the dignity of the profession.

In the context of lawyers in Malaysia, legal ethics means rules or codes of conduct which are binding on members of the legal profession. The LPPER provides the minimum standard of conduct to the advocates and solicitors and Peguam Syarie is governed by the COEPS⁹, Peguam Syarie Rules¹⁰ and the Shariah principles. The Advocate and solicitor

peguam syarie shall be entitled to appear in any Shariah court on behalf of any party to any proceedings before it”.

⁵ For instance section 55(1) of the Administration of Islamic Law (Federal Territories) Act 1993 states that “Majlis can appoint any legal officer of Federal government and any legal officer possessed a valid certificate produced under the legal profession Act 1976 or any person qualified to be a syarie lawyer to appear and represent any party in any court. The Peguam Syarie Rules (State of Selangor) 1991 provides qualifications to be Peguam Syarie namely a person who holds a bachelor degree in Shariah which is recognized by Majlis and conferred by institute of higher learning recognized by the federal government, or an advocate and solicitor registered under the LPA 1976 or has completed a professional training recognized by the Majlis in the field of Islamic judiciary or knowledgeable in Islamic Law or good character (i.e. has not been convicted in Malaysia or elsewhere of a criminal offences as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty and has not been adjudicated bankrupt) or a citizen of Malaysia or a permanent resident of Malaysia.

⁶ The word *ethics* is derived from the Greek word *ethos*, which means character. Oxford Dictionary defines the word *ethos* as the characteristic spirit of attitudes of a community, people or system or of a literary work. In addition, Webster Dictionary describes it as the character, sentiment, or disposition of a community or people, considered as a natural endowment; the spirit which actuates manners and customs; also, the characteristic tone or genius of an institution or social organization. These definitions signify that the term legal ethics is related with the code of conduct, behavior and character of members of the legal profession.

⁷ Mahmud Saedon and Nik Ahmad Kamal. *Adab al-Qadhi in Daily Activities of a Qadhi*. (1992) 2 (1) IJU Law Journal 51. pp. 51-62.

⁸ For further reading on the concept of ethics in Islam see Abdul Haq Ansari (1989). *Islamic Ethics: Concept and prospect*. American Journal of Social. Sciences. Volume 6. No. 1.

⁹ Jabatan Kehakiman Shariah Malaysia. “*Arahan Amalan Mahkamah Shariah*” No.4 2000.

and Peguam Syarie must at all times observe the code of ethics and assume personal moral responsibility for the consequences of their personal actions failing which may amount to the commission of professional misconduct¹¹.

2.0 Foundational Dimension of Ethics in Islam

Islam is a practical system of life and it provides guidance for all walks of life. As a comprehensive religion (*syumul*) Islam covers all aspects of life and this includes *Shariah*, ethics (*akhlak*), and belief *aqidah*. As the foundation of Islamic faith is *Tawhid*¹², the basis for the ethical principle of lawyers also emanates from this concept. Allah says in *al-Quran* (3: 191) “*Those who remember Allah standing, sitting, and lying down on their sides, and think deeply about the creation of the heavens and the earth, (saying): "Our Lord! You have not created this without purpose, glory to You! Give us salvation from the torment of the Fire"*”. This verse provides a very basic and fundamental principle of vicegerency (*Khilafah*) in Islam where everything created by Allah has a purpose and human being is created to be the world’s vicegerent.

A concept of *Tawhid* is a philosophic foundation and added value to every Muslim in preserving what Allah commands and what He forbids. The principle of *Tawhid* derives important concept of *Khilafah*, trustee (*Amanah*), accountability (*Taklif*) and justice (*Al-Adl wa al-Ihsan*). As *khilafah*, lawyers are obligated to motivate every member in society towards piety (*taqwa*) to remind them against falsehood, upright the truth and support the oppressed people to against the cruelty. By putting a trust to mankind as a vicegerent, Allah plays active roles to monitor and involve in every affairs of human being and He is aware and knowing everything all the times. Allah says in *al-Quran* “*O my son! If it be (anything) equal to the weight of a grain of mustard seed, and though it be in a rock, or in the heavens or on the earth, Allah will bring it forth. Verily, Allah is Subtle, Well-Aware*” (31:16)¹³. This verse clearly presents an Islamic concept of accountability which indicates that everyone is accountable to the God for his own deeds. As Allah knows everything and all mankind is answerable to Him, the principle of *khilafah*, *amanah*, *taklif* and *al-adl wal Ihsan* that derived form the supreme concept of *Tawhid* shall be the foundation of the ethical principles of lawyers in Islam.

¹⁰ Rule 10 (c) of the Peguam Syarie Rules (Federal Territories) 1993 and Rule 8 (c) of the Peguam Syarie Rules (Selangor) 1991 state that a person may be admitted as Peguam Syarie if he is of good behavior or character.

¹¹ Section 94 (3) of the LPPER, misconduct means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety. Professional Misconduct refers to misconduct arising to the solicitor’s professional business. Section 94 of the Legal Profession Act 1976 and Section 19 of Peguam Syarie Rules (State of Selangor) 1991 provide that lawyers or Peguam Syarie if found guilty of professional misconduct may be suspended, struck off or any other order deems fit and reasonable.

¹² Ismail Raji Al-Faruqi. (1982). *Al-Tawhid: Its Implications for Thought and Life*. Herndon, Virginia: The International Institute of Islamic Thought.

¹³ See also *al-Quran* 99: 7-8 where Allah says “*So, whosoever does good equal to the weight of a speck of dust shall see it. And whosoever does evil equal to the weight of a speck of dust shall see it*”. The verse reminds the human being that Allah knows everything even to things that were to be hidden inside a solid rock, not even the weight of a speck of dust in the heavens or on the earth.

3.0 Lawyers in Islamic History

Lawyers must be honest and competent in order to ensure that judges are able to deal with the cases that come before them justly. Lawyers may find guidance of their duties to be honest and to establish justice as enjoined by the holy *al-Quran*. In *surah al-Nisa* verse 58 Allah says: “Allah commands you to fulfill your trusts to those to whom they are due and when you judge between man and man that you judge with justice, verily how excellent is the teaching which Allah gives you for Allah is He who hears and sees all things”. In this verse, justice is Allah’s attribute and to stand firm for justice is to be witness to Him, even if it is detrimental to our own interests or to the interest of those who are near and dear to us.

Profession of lawyers had already existed since the early period of Islam although it was not formally or specifically called as lawyers or solicitors or barristers¹⁴. In fact, the principle of *wakalah bil khusumah* (agency) has already been practiced as the time of *jahiliyah* where any legal dispute would be referred to *kahin* or arbitrator¹⁵. The arbitrator is appointed from the respected tribe and a noble family. During the time of the Prophet, the practice of *wakalah* can be seen in the case of Muadz bin Jabal be appointed as a Judge in Yemen¹⁶. The Prophet also asked Unais to determine conviction and enforcement of *hudud* punishment on an adultery offender¹⁷.

Saidina Ali Ibn Abi Talib was known as one of the best legal representatives amongst the companions. For instance in case of *zina* (adultery) where a pregnant woman who had been married confessed that she has committed *zina* and asked Caliph Umar to stone her to death. Ali has investigated and proven that the pregnant woman was unwillingly to have sexual intercourse with a man in a state of extreme hunger and thirsty. Caliph Umar accepted view of Ali and freed the woman¹⁸. In another case, Saidina Ali Ibn Abi Talib represented a young man who has been accused for an offence of molestation¹⁹. Beside Saidina Ali, Kaab also was known for his cleverness in legal representation²⁰. On another

¹⁴ For further details of the judicial system in Islamic history, refer Mohammad Muslehuddin. (1988). *Judicial System of Islam, Its Origin and Development*. Lahore, Pakistan: Islamic Publications Ltd. pp. 26-62.

¹⁵ Mohamad Azam Mohamed Adil. “*Peguam Syarie-Masa Depam dan Cabarannya di Malaysia*”. 1996 8 (1) Kanun 1. pp. 1-3.

¹⁶ “*Sunan Abu Dawud: Kitab al-Aqdiyah*”.(Trans. Ahmad Hassan) (1984). Lahore: Sh. Muhammad Ashraf Publishers. Chapter 1344. pp. 1016-1019.

¹⁷ Abdul Munir Yaacob. “*Etika Peguam Menurut Perspektif Islam*”. Abd Munir Yaacob (Ed). “*Etika Hakim dan Peguam*”. (1996). Kuala Lumpur: IKIM. p. 122.

¹⁸ Ahmad Ibrahim and Mahmud Saedon. (1993). *Judges and Lawyers under the Shariah*. Aidit Ghazali (Ed). *Islam and Justice*. Kuala Lumpur: IKIM. pp. 139-143.

¹⁹ In this case the lady planned a device to accuse the young man of committing an offence of molestation. She broke an egg, threw away the yolk and purred the white over her dress and he upper legs. She cried out and presented herself to Caliph Umar and accused the young man of molesting her and there were traces of his semen on her dress and upper legs. Caliph Umar asked view of Saidina Ali. Saidina Ali took boiling water and poured it on the lady’s dress. The liquid solidified and Saidina Ali has successfully proven that the accusation was *mala fide* and false. Ibnu Qayyim al-Jauziyyah. “*Al-Turuq Hukmiah*”. p.70.

²⁰ During the time of Caliph Umar, one woman complained to Caliph Umar that her husband was a committed *abid*, he performed prayer for the whole night and fasting everyday. When Umar heard about that, he thanked to Allah as he thought that the woman was lucky to have such a pious husband. Kaab

occasion in the time of Caliph Ali, Saidina Hasan represented a man who has been accused with murder²¹. All of these cases signify the acknowledgement of Islam on the legal profession particularly the roles play by the legal representative or lawyers to assist the court in the process of administrating justice.

Although there are no formal legal profession during the early stage of Islam but historical evidence in many literatures provide indication of the existence of such profession. During the Abbasids Empire the lawyer's profession is formally recognized where judges normally requested the disputed parties to be represented by a learned person in Islamic law. Amongst the famous lawyers at this time were Abu Ahmad Al Wazzan, a representative of Kadhi Abi Jaafar Ahmad Bin Ishak and Abdullah Bin Jaafar, a representative of Kadhi Abu Bakar Muhammad. It is contended that the modern practice of advocates and solicitors as practiced by Western legal system was only been introduced during the empire of Turki Uthmaniyah²².

4.0 Ethical Principles of Lawyers in Islam With Reference To the LPPER and the COEPS

It is very important that lawyers perform the duties in accordance with certain norms or code of ethics. If judges are required to adhere to certain code of ethics²³, the lawyers also must uphold their standard code of conduct as embedded in the LPPER and COEPS. Islam mentions clearly one of the basic ethical principles of the lawyers in the famous *hadith* narrated by Ummu Salama where the Prophet said: "*The Prophet said, "I am only a human being, and you people have disputes. May be some one amongst you can present his case in a more eloquent and convincing manner than the other, and I give my*

however identified that the woman was making a complaint against her husband alleging that her husband had never slept with her. Kaab gave his view to Caliph Umar that the woman's husband entitled to perform his religious observances for three days and nights and one day and night will then be for the woman. Kaab took an analogy of a man who has four wives and the woman who complained is his fourth wife. Caliph Umar later appointed Kaab as Qadhi in Basrah. Ahmad Abdul Muneim al-Bahal. "*Tarikh al-Qada fil Islam*". p. 110.

²¹ The accused was arrested by a group of persons in a building and in his hand was a knife covered with blood. Near him was a corpse of a person who appeared to have been stabbed and was covered with blood. Caliph Ali questioned the man and he admitted that it was he who killed the man. Caliph Ali sentenced the man to death but when the sentence about to be carried out another man come forward and confessed that he actually killed the man. During the hearing process, the former explained that he made a confession because he could not bring anyone or evidence to support him and the latter claimed that he killed the victim for a purpose of money. Caliph Ali then asked Saidina Hasan to give his legal view. As a legal representative Saidina Hasan gave his view that both persons should be released because the first man clearly did not kill anyone and the second man although he has committed murder, he nevertheless had also saved the life of the first man. Caliph Ali accepted the view and ordered the compensation to be paid from the *Baitul Mal* to the victim's family. Ibnu Qayyim al-Jauziyyah. "*Al-Turuq Hukmiah*". pp. 83-84.

²² The profession was started with an interpreter in the court and later developed as professional to represent parties in the court known as "vakil". Baharudeen Abu Bakar. (1995). "*Amalan Undang-undang Dalam Mahkamah Shariah*". Abd Munir Yaacob (Ed). "*Undang-undang Keterangan dan Prosedur di Mahkamah*". Kuala Lumpur: IKIM. pp. 169-171.

²³ Civil courts judges are bound by the Judge's Code of Ethics 1994 by virtue of article 125 (3A) of the Federal Constitution. Syarie Judges are bound by the Code of Ethics, Arahan Amalan Mahkamah Shariah No. 4 2000 issued by Jabatan Kehakiman Shariah Malaysia.

*judgment in his favor according to what I hear. Beware! If ever I give (by error) somebody something of his brother's right then he should not take it as I have only, given him a piece of Fire*²⁴. This hadith lays down the principles of advocacy in court whereby a judge heavily relies on the arguments and submission made by the disputed parties or their representatives. In this aspect, lawyers must be truthful and honest in conducting cases in court both by argument and as well as the manner of bringing out the evidence.

In general, the ethics may be classified into general ethics and ethics in court whereby the former refers to duty of lawyers to behave accordingly in their daily life and the latter refers to the behavior in the process of carrying out justice and fair play in court. For instance, general ethics require each lawyer to not to be influenced by others, not to involve in bribery, not to wary of litigants and to encourage reconciliation. In court, the lawyers shall remain calm, not to be influenced by those around them, to give equal treatment, to avoid lengthy proceedings, punctual and due respect to witness²⁵. Even though, many Muslims jurists refer to all of these ethics to be observed primarily to judges, it is submitted that they are also applicable to lawyers. Therefore, in discussing the ethical principles of lawyers in Islam, the article focuses on several provisions of professional ethics as provided in the LPPER and the COEPS consisting of ethics to observe good behavior and conduct with candor, courtesy and fairness, to acquire knowledge, duty of diligence and competence, to uphold interest of the client, justice and dignity of the profession, not to appear for party represented by another lawyers, duty of disclosure, to observe confidentiality and to charge reasonable and proper fees²⁶.

4.1 Good Behavior and Conduct with Candor, Courtesy and Fairness

Section 3 of the COEPS provides that Peguam Syarie shall preserve good behaviour, attitude and character in carrying out his duty. Rule 18 of the LPPER and section 16 of the COEPS mention that the conduct of lawyers before the court and in relation to other lawyers shall be characterized by candor, courtesy and fairness. In carrying out the duties, lawyers should not denigrate another lawyer or indulge in comparative promotion. For example, the lawyers should not allow a deponent to an affidavit to allege wrongdoing or illegality by another solicitor without first giving the solicitor concerned an opportunity to answer the intended allegations.

The obligation to observe behavior and good character is extremely encouraged in Islam. Abd Allah ibn 'Amr said, the Prophet used to say: "*The best of you are those who have the most excellent morals*"²⁷." In another hadith narrated by Abu Hurairah, the Messenger of Allah said: "*The most perfect of the believers in faith is the best of them in moral excellence, and the best of you are the kindest of you to their wives*"²⁸". In the eighteen hadith of the famous Imam Nawawi's collection of forty hadith mentions the needs of

²⁴ *Sahih al-Bukhari*. Hadith No. 97. Volume 9.

²⁵ *Supra* Note 7.

²⁶ For further reading on the professional ethics of an advocate and solicitor, see Tan Yock Lin. (1991). *The Law of Advocates and Solicitors in Singapore and Malaysia*. Kuala Lumpur: Malayan Law Journal.

²⁷ Ahmad Ibn Ali Ibn Hajar al-Asqalani. (2000). "*Fathu al-Bari Syarh Sahih Bukhari*". Volume 10. Damsyik: Dar al-Faiha. pp. 555-559.

²⁸ Maulana Muhammad Ali. 1944. *A Manual of Hadith*, Chapter 30: Ethics. Lahore, Pakistan.

excellent moral as Muadh Ibn Jabal reported that the Prophet said: *Fear Allah wheresoever you may be, follow up an evil deed by a good one which will wipe (the former) out and behave good-naturedly to people*²⁹.

As regard to the aspect of preserving courtesy, it is already practice of the lawyers to respect their fellow members by calling them “my learned friend” and junior lawyers will offer salutation to the senior lawyers. This is actually in line with the Islamic teaching of promoting a sense of brotherhood. Abu Hurairah reported that the Prophet said "*The younger one should offer salutation to the older one, and the one who is going along to the one who is sitting, and the smaller group to the larger group*"³⁰. This hadith signifies that Islam really encourage Muslims to observe courtesy as it mirrors the individual's character or *akhlaq*. In this regard, the lawyers shall show respect and courtesy to other solicitors so as to inculcate and build good image and reputation to the profession.

4.2 To Acquire Knowledge

Section 4 of the COEPS requires Peguam Syarie to keep on going seeking knowledge in Shariah and law to improve his competency and efficiency. The duty to seek knowledge is one of the codified ethics under the COEPS and it represents the uniqueness of the COEPS since there is no such provision could be found under the LPPER. The duty to seek knowledge is not only pertaining to the area of substantive laws, procedural laws, Shariah rules and principles but it covers any aspect of daily life.

In Islam, seeking knowledge is a duty of every Muslim as Anas reported that the Prophet said: "*The seeking of knowledge is obligatory upon every Muslim.*"³¹. In fact, Islam elevates and acknowledges the one who has knowledge over the worshiper. Reported by Imams Abu-Dawud and Al-Tirmidhi, that the Prophet Muhammad said, "*An 'Aalim (learned person in the deen) is as much superior to an 'Aabid (Worshiper) as the full moon is superior to all stars*". In addition, Anas said, the Messenger of Allah, said: "*He who goes forth in search of knowledge is in the way of Allah till he returns*"³². The above three hadith precisely support section 4 of the COEPS to advise every lawyer particularly Peguam Syarie to continuously acquiring knowledge.

4.3 Duty of Diligence and Competence

It is the duty of lawyers to represent his client with diligence and competence. The LPPER provides several provision to ensure that lawyers shall observe the duties diligently such as in Rule 3 not to accept brief if embarrassed, Rule 4 not to accept brief if professional likely to be impugned, Rule 5 not to accept brief if difficult to maintain professional independence, Rule 6 not to represent if unable to appear, Rule 8 not to ask

²⁹ Yahya ibn Sharaf al-Nawawi. (2001). *Text, Translation and Notes: Imam Nawawi's Collection of Forty Hadith*. Kuala Lumpur: Islamic Book Trust. p. 35.

³⁰ Ahmad Ibn Ali Ibn Hajar al-Asqalani. (2000). "*Fathu al-Bari Syarh Sahih Bukhari*". Volume 10. Damsyik: Dar al-Faiha. pp. 658-659.

³¹ Supra Note 28. Hadith No. 15. Chapter 3: Knowledge.

³² Supra Note 28. Hadith No. 12. Chapter 3: Knowledge.

for excuse from assignment, Rule 9 to undertake defense fairly and honorably³³, Rule 12 not to conduct civil case intended to delay proceedings³⁴, Rule 24 to be ready for the day fixed for trial³⁵ and Rule 26 not to mislead³⁶. It is moral responsibility for lawyers to observe their works diligently and to keep improving their level of competency. For instance, lawyers shall convey the client all relevant information and material including progress and status of the case, to keep proper, accurate and up-to-date records.

Islam really concerns on the quality of works as the Prophet said: "*Allah loves to see one's job done at the level of itqan or wisdom.*"³⁷. In another hadith Saidatina Aishah reported that the Rasulullah said: "*The deeds most loved by Allah (are those) done regularly, even if they are small*" (Bukhari and Muslim). These two hadith demonstrate the Islamic ethical principles on the duty of diligence and competence. The lawyers are required to improve their working standards to the utmost and it should be maintained constantly so as to avoid any occurrence of professional negligence which could harm the interest of the client.

4.4 To Uphold Interest of the Client, Justice and Dignity of the Profession

Rule 16 of the LPPER and Section 15 of the COEPS state that an advocate and solicitor and Peguam Syarie shall acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interest of his client, the interest of justice and dignity of the profession without regard to any unpleasant consequences either to himself or to any other person. These two provisions require the lawyers to balance amongst the interest of the client, justice and dignity of the profession. As an illustration, the LPPER and the COEPS restrict lawyers to communicate directly with a person represented by another solicitor³⁸ unless with consent of that solicitor. The purpose behind this provision is that if the lawyers are allowed to do such things, the danger of unfair or undue pressure is presented and it may harm the client's interest. As an agent of the client, the lawyers must try to assist him as well as possible either it relates to contentious or non-contentious matter. The duty to protect the client's interest however shall be balanced with the needs to uphold justice and therefore, the act of hiding facts and evidences to protect the guilty client is clearly against the lawyers' professional ethics.

In *al-Quran, surah 5:1* Allah clearly reminds the Muslims on the principle of fulfilling each of their contractual obligations where He says: "*O you who believe, fulfill contracts*". This verse presents a basic foundation on the principle of contract that every individual, society, corporation and the state including lawyers are bound by their contracts which defines the rights and obligations of the parties. The lawyers have duty to perform his contractual obligations in accordance with the term stipulated in the contract.

³³ Similar provision can be found in section 6, 7, 8, 9, 10 and 11 of the COEPS.

³⁴ Section 13 of the COEPS.

³⁵ Section 22 of the COEPS.

³⁶ Section 24 of the COEPS.

³⁷ See Al-Sheikh Muhammad Jamaludin al-Qasimi al-Dimasqi. (2006). "*Mawi'zat al-Mukminin Min Ihya Ulum al-Din Li Imam Ghazali*". (Transl.). Kuala Lumpur: Darul Fajr. pp. 385-388.

³⁸ Rule 42 of the LPPER and Section 37 of the COEPS.

In addition, Ibnu Umar reported that the Messenger of Allah said: *"A Muslim is the brother of a Muslim; he does him no injustice, nor does he leave him alone (to be the victim of another's injustice); and whoever does the needful for his brother, Allah does the needful for him; and whoever removes the distress of a Muslim, Allah removes from him a distress out of the distresses of the day of resurrection; and whoever covers (the fault of) a Muslim, Allah will cover his sins on the day of resurrection"*³⁹. In another hadith Anas reported that the Prophet said: *"Help thy brother whether he is the doer of wrong or wrong is done to him. "They (his companions) said, O Messenger of Allāh! We can help a man to whom wrong is done, but how could we help him when he is the doer of wrong? He said: "Take hold of his hands from doing wrong"*⁴⁰. These hadith reveal that Islam acknowledges the lawyers' duty to defense and to protect rights and interest of the clients. At the same time this fiduciary duty must be carried out in accordance with the Shariah rules and principles without neglecting the responsibility to uphold justice. Thus, the lawyers shall not be very selective of their clients and they must be ready to take a case without payment if circumstances demanded so as part of their social responsibilities.

4.5 Not to Appear For Party Represented By another Lawyers

Rule 54 provides that where in any matter or proceeding, the name of a lawyer or the name of his firm appears on the records for any party is known to be acting for a party in a matter whether in court or not, no lawyer shall knowingly agree to appear or to act or continue to appear or to act for such party unless he obtains the consent of the previous lawyer, he is satisfied that the proper remuneration of the previous lawyer has been paid and he undertakes that the same will be paid, he has in ignorance that such name appears on the record and the previous lawyer is unwilling or has refused to act further for such party⁴¹. The purpose of this provision is to maintain fair and just practice amongst the practitioners. Islam prohibits any element of monopoly or domination and unfair competition.

The Messenger of Allah said: *"Do not hate one another and do not be jealous of one another and do not boycott one another, and be servants of Allah (as) brethren; and it is not lawful for a Muslim that he should sever his relations with his brother for more than three days."*⁴². Although, the client is free to seek legal advice from any lawyer but the lawyers owe duty of fairness and courtesy to his fellow solicitors. If any lawyer still wants to represent client of another solicitor, he then must obtain consent from that solicitor.

4.6 Duty of Disclosure

Rule 25 of the LPPER and section 21 of the COEPS require lawyers at the time of his being retained to disclose to the client all circumstances of their relation to the parties and

³⁹ Supra Note 28. Hadith No. 11. Chapter 30: Ethics.

⁴⁰ Supra Note 28. Hadith No. 12. Chapter 30: Ethics.

⁴¹ Section 49 of the COEPS.

⁴² Refer Ahmad Ibn Ali Ibn Hajar al-Asqalani. (2000). *"Fathu al-Bari Syarh Sahih Bukhari"*. Volume 10. Damsyik: Dar al-Faiha' pp. 590-594.

any interest in connection with the controversy which may influence the client in the selection of counsel. Lawyers are responsible to uphold the truth no matter if it against himself or his parent or relatives or rich or poor. If lawyers have a personal knowledge that his client is a wrongful party, they shall not make any false claims as it against the ethical principles. Abd Allah reported that the Prophet said: "*Truthfulness leads to righteousness, and righteousness leads to Paradise. And a man keeps on telling the truth until he becomes a truthful person. Falsehood leads to Al-Fajur (i.e. wickedness, evil-doing), and Al-Fajur (wickedness) leads to the (Hell) Fire, and a man may keep on telling lies till he is written before Allah, a liar*"⁴³. A general lesson from this hadith is that lawyers should be careful, cautious and seek the help of Allah to protect against any deception and to uphold justice without fear and favor. Thus, lawyers must be truthful and never mislead the court. Honesty to client is the essence of the legal profession.

4.7 Confidentiality.

Rule 35 of the LPPER and section 31 of the COEPS provide that lawyer shall refrain from any action for his personal benefit or gain, or takes advantage of the confidence reposed in him by client. Lawyers deal with a lot of private and confidential matters in handling cases and it is their duty to keep these matters as confidential and never utilize the related information for any purpose other than to protect the client's interest and for the sake of justice.

These provisions are in line with hadith reported by Abu Hurairah, the Prophet said: "*Whosoever relieves from a believer some grief pertaining to this world, Allah will relieve from him some grief pertaining to the Hereafter. Whosoever alleviates the difficulties of a needy person who cannot pay his debt, Allah will alleviate his difficulties in both this world and the Hereafter. Whosoever conceals the faults of a Muslim, Allah will conceal his faults in this world and the Hereafter. Allah will aid a servant (of His) so long as the servant aids his brother. Whosoever follows a path to seek knowledge therein, Allah will make easy for him a path to Paradise. No people gather together in one of the houses of Allah, reciting the Book of Allah and studying it among themselves, except that tranquility descends upon them, mercy covers them, the angels surround them, and Allah makes mention of them amongst those who are in His presence. Whosoever is slowed down by his deeds will not be hastened forward by his lineage*"⁴⁴. This hadith evidently proves that every lawyer has duty to keep secret of all communications with his client classified as private and confidential unless it is against the public interest and justice. Allah guarantees that to whom conceal the faults of others, He will conceal his faults in this world and the hereafter.

4.8 Should charge fees which are reasonable and proper.

Rule 12 of the LPPER and section 12 of the COEPS mention provisions on fees for litigious or contentious matter. In determining the amount of fee it is proper to take into

⁴³ *Sahih Bukhari*. Volume 8. Hadith No. 116.

⁴⁴ Musa Syahin al-Asin. (1970). "*Fath al-Mun'im, Syarh Sahih Muslim*". Volume 10. Cairo: Maktabah al-Jamiat al-Azhariyah. pp. 14-15.

account time, labor and skill required, the novelty and difficulty of the question involved, whether acceptance of the particular employment will preclude his appearance for others of which he has a reasonable expectation, the customary charges of the profession for similar services, the amount in controversy, the benefit resulting to the client for the services, the character of the employment and the special position or seniority of the particularly lawyer. In actual practice, lawyers shall inform the basis on which the fees will be charged and the manner in which the client is expected to pay the fees and disbursement. Any practice of excessive fees is against the ethical principle of lawyers.

In *surah As-Shua'ra'* verse 18 Allah says: "*Withhold not things justly due to others*". This verse demands every individual to gain what is really due to him and not by depriving others. Hakim bin Hizam reported that the Prophet Muhammad said: "*The seller and the buyer have the right to keep or return the goods so long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transaction and if they told lies or hid something, then the blessings of their transaction would be lost.*"⁴⁵ The Prophet reminded us that each individual including lawyer is answerable not only to his client but also accountable to Allah. As such, the lawyers must charge their client reasonably by considering the elements in Rule 12 of the LPPER and section 12 of the COEPS and if they take anything beyond that it is considered as illegal gains⁴⁶.

4.9 Not to Actively Involve in Trade

Rule 44 of the LPPER and Section 39 of the COEPS provides that lawyers shall not actively carry on any trade which is unsuitable to engage in or be an active partner or a salaried officer. Lawyers also shall not be a full-time salaried employee of any person, firm or corporation so long as he continues to practice. These provisions do not restrict completely lawyers to involve in business. The restriction is only applicable if they engage in business actively or unsuitable which may interrupt their duties. The Prophet himself expressed his concern on this matter in hadith where he said: "*Justice can never be done by a government that conducts business with its subjects*"⁴⁷. Although the Prophet directed this advice to judges, the lesson from this hadith shall also be applicable to lawyers since the nature of both professions is likely the same.

5.0 Concluding Remark

The foregoing discussion on the ethical principles of lawyers in Islam validates the existing professional ethics contained in the LPPER and the COEPS. Islam highly insists lawyers to preserve standard of conducts, to observe good ethics, conscience and piety. The foundational dimension of the ethical principles of lawyers is rooted on

⁴⁵ See KH Adib Bisri Musthofa. (1993). *Translation of Shahih Muslim*. Volume 3. Chapter 21. Hadith No. 11. Indonesia: CV. Asy Syifa. p. 22.

⁴⁶ Illegal gains means consuming wealth acquired unlawfully. See Wahbah al-Zuhaillyy. (1989). "*Al-Fiqh al-Islami wa Adillatuhu*". (Transl.) Syria: Dar al-Fikr. Pp. 224-227.

⁴⁷ Supra Note 7.

the principles of *Tawhid*. Islam adds further values for lawyers to preserve the ethical principles through the *Tawhidic* approach which derives other sub fundamental principles of *Khilafah*, *Amanah*, *Taklif* and *al-Adl wa al-Ihsan*. These distinct epistemological frameworks provide guidelines to all members of the legal profession that they are not only subjected to the LPPER and the COEPS but also accountable and answerable to Allah the Almighty.

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