

## **Legal Analysis of the Decision of the Constitutional Court's Honorary Council Number 2/MKMK/L/11/2023 Concerning Violations of the Code of Ethics of Constitutional Court Judges**

**Rusdi Bromi<sup>1\*</sup>,**

<sup>1</sup>*Law Study Program, Universitas Islam Riau, Indonesia*

*\*Corresponding Email: romeocmc@gmail.com*

*Received: 22 April 2025; Revised: 28 October 2025; Accepted: 6 January 2026*

---

### **ABSTRACT**

*Constitutional Court (MK) is a constitutional guardian institution with the primary authority to review laws against the 1945 Constitution. However, the MK's independence has come under scrutiny after Chief Justice Anwar Usman was found guilty of a serious ethical violation in MK Decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and vice-presidential candidates. This case was examined through the Decision of the Constitutional Court's Honorary Council (MKMK) Number 2/MKMK/L/11/2023, which is the focus of this research study. The problem formulation studied is the MKMK's legal considerations in deciding the ethical violation case and its implications for the validity of MK Decision Number 90/PUU-XXI/2023.*

*This research uses a normative or doctrinal legal method with a library study approach that examines primary and secondary legal materials. The analysis shows that the Constitutional Court (MKMK) in its considerations affirms the finality of the Constitutional Court's decision, but ignores flaws in the decision-making process that have been proven to violate the code of ethics, such as conflicts of interest, intervention by other judges, and leaks of information from the Judges' Deliberation Meeting (RPH). These violations violate the principles of impartiality, independence, and integrity of constitutional judges.*

*The implications of the MKMK ruling indicate that this ethical violation undermines the legitimacy of Constitutional Court Decision No. 90/PUU-XXI/2023 and erodes public trust in the constitutional courts. This situation creates a negative precedent for internal oversight of judges and emphasizes the need for fundamental reforms in the constitutional court system, particularly through strengthening oversight mechanisms, enforcing discipline, and strengthening judicial professionalism. Therefore, this study emphasizes the importance of striking a balance between finality of decisions and ethical accountability to maintain the credibility of the Constitutional Court as a guardian of the constitution and a pillar of the rule of law.*

**Keywords:** *Constitutional Court; Judicial Independence; Violation of the Code of Ethics.*

## **1. Introduction**

Amendment process to the 1945 Constitution of the Republic of Indonesia has had a significant impact on the restructuring of the judicial branch of power in Indonesia. This is marked by the presence of the Constitutional Court of the Republic of Indonesia as a judicial institution equal to the Supreme Court.<sup>1</sup>

---

<sup>1</sup> Suparto & Zulkifli, 'Kedudukan Putusan Mahkamah Konstitusi Dalam Hukum Ketenagakerjaan (Kajian Terhadap Putusan Mahkamah Konstitusi No. 37/PUU- IX/2011)', *Jurnal Hukum & Pembangunan*, 52 No.1 (2022), 79.

The judiciary must be free and independent without being influenced by pressure from other state institutions.<sup>2</sup> In order to uphold law and justice based on Pancasila for the sake of the implementation of the rule of law of the Republic of Indonesia.<sup>3</sup> The 1945 Constitution of the Republic of Indonesia in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely:

"Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, and state administrative court environment, and by a Constitutional Court."<sup>4</sup>

The Constitutional Court has 4 (four) authorities and 1 (one) obligation as regulated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution. Article 24C paragraph (1) of the 1945 Constitution.

Article 24C paragraph (1) of the 1945 Constitution, which states:

"The Constitutional Court has the authority to adjudicate at the first and final level, the decisions of which are final, to test laws against the Constitution, to decide on disputes over the authority of state institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding the results of general elections."<sup>5</sup>

Explicitly regarding these authorities, namely: (1) testing laws against the Constitution, (2) deciding disputes over the authority of state institutions whose authority is granted by the Constitution, (3) deciding on the dissolution of political parties, and (4) deciding disputes regarding the results of general elections. Furthermore, the obligations of the Constitutional Court are regulated in Article 24C paragraph (2) of the Constitution which states "The Constitutional Court is obliged to provide a decision on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the Constitution."<sup>6</sup>

Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, which states:

---

<sup>2</sup> Aryo Akbar Zulkifli Bahri, Ellydar Chaidir, Yusri Munaf, 'Diskursus Independensi Kekuasaan Kehakiman', *Konstitusi Jurnal Magister Ilmu Hukum*, 15 No.1 (2021), 39.

<sup>3</sup> Jimly Asshiddiqie, *Format Kelembagaan Negara Dan Pergeseran Kekuasaan Dalam UUD 1945* (Jakarta: UII Press).

<sup>4</sup> Widodo Ekatjahjana, *Negara Hukum, Konstitusi, Dan Demokrasi: Dinamika Dalam Penyelenggaraan Sistem Ketatanegaraan Republik Indonesia* (Jember: Jember University Press, 2015).

<sup>5</sup> Martitah, *Mahkamah Konstitusi Dari Negative Legislature Ke Positive Legislature* (Jakarta: Konstitusi Press (Konpress), 2016).

<sup>6</sup> Ellydar Chaidir & Suparto, 'Perlunya Pengawasan Terhadap Kode Etik Dan Perilaku Hakim Konstitusi Dalam Rangka Menjaga Martabat Dan Kehormatannya (The Need For Supervision On Constitutional Court Judges' Code Of Ethics & Behavior In Order To Uphold Their Dignity And Honor)', *Uir Law Review*, 01 No.02 (2017), 111.

"The Constitutional Court has the authority to adjudicate at the first and final level, the decisions of which are final, to: (a) test laws (UU) against the 1945 Constitution of the Republic of Indonesia."<sup>7</sup>

Constitutional Court is the guardian of the constitution in relation to the four powers and one obligation that it has.<sup>8</sup> The Constitutional Court has the function of overseeing the constitution so that it is implemented and respected by both state power administrators and citizens.<sup>9</sup>

Existence of the Constitutional Court is then regulated in Chapter III, Part Three of Law Number 48 of 2009 concerning Judicial Power. As one of the executors of judicial power, Article 29 paragraph (1) explains:

"Constitutional Court has the authority to adjudicate at the first and final level, the decisions of which are final for:

- a. Reviewing laws against the 1945 Constitution of the Republic of Indonesia
- b. Resolving disputes over the authority of state institutions granted by the 1945 Constitution of the Republic of Indonesia
- c. Resolving the dissolution of political parties
- d. Resolving disputes regarding general election results and
- e. Other authorities granted by law.<sup>10</sup>

The authority of the Constitutional Court in testing laws against the 1945 Constitution is also regulated in Article 9 of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (Hereinafter referred to as the PPP Law), which states:

"In the event that a law is suspected of being in conflict with the 1945 Constitution of the Republic of Indonesia, its judicial review shall be carried out by the Constitutional Court."<sup>11</sup>

The Constitutional Court's authority to test laws against the 1945 Constitution is also regulated in Article 1 number 3 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Cases of Testing Laws, which states:

"The judicial review of the Law against the 1945 Constitution, hereinafter referred to as PUU, is a constitutional case that falls under the authority of the Constitutional Court as referred to in the 1945 Constitution and Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law

---

<sup>7</sup> Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi.

<sup>8</sup> Ni'matul Huda, *Hukum Tata Negara Indonesia*, Raja Grafindo Persada (Jakarta: Raja Grafindo Persada, 2015).

<sup>9</sup> Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Konstitusi Press, 2006).

<sup>10</sup> Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman.

<sup>11</sup> Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.

Number 7 of 2020 concerning the Constitutional Court (MK Law), including the judicial review of Government Regulations in Lieu of Laws (Perppu) as referred to in the Constitutional Court Decision."<sup>12</sup>

In enforcing the law, judges must also base their actions on Pancasila and the 1945 Constitution, which are the spirit and guideline of the law. This means that in enforcing the law, judges must align with the grand design of the national legal system and policy, which is based on the Pancasila paradigm.<sup>13</sup>

In the view of a judge, law is seen as a provision that regulates how a legal problem is resolved.<sup>14</sup> Judges who carry out trials must truly understand the actual circumstances of the case and the legal regulations that will be applied.<sup>15</sup> Judges must maintain their independence and impartiality, and must be free from any power. A court must be fair, its authority neutral, and not influenced by personal, monetary, or other considerations unrelated to the resolution of specific cases.<sup>16</sup>

Constitutional judges as state officials, who exercise judicial power, constitutional judges in carrying out their functions, duties and authorities must be guided by the law.<sup>17</sup> Constitutional judges are state officials who exercise judicial powers as regulated by law. Law Number 48 of 2009 concerning Judicial Power, Article 19 explains:

"Judges and constitutional judges are state officials who exercise judicial powers as regulated by law."<sup>18</sup>

Jimly Asshiddiqie explains that "the function of judges in implementing and applying the law (statute law) can be divided into two types, namely: First, to find the facts that occurred in a particular case, and then. Second, to find an understanding of what the legislators want the judge to do in handling such cases."<sup>19</sup>

Quality of a judge's decision is closely related to the judge's professionalism.<sup>20</sup> Judges must produce decisions that not only fulfill the principles of formal justice but also substantial justice and even social justice in enforcing national law.<sup>21</sup>

Law Number 48 of 2009 concerning Judicial Power in Article 5 paragraph (1), This provision is intended to ensure that the decisions of constitutional judges are in

---

<sup>12</sup> *Peraturan Mahkamah Konstitusi Nomor 2 Tahun 2021 Tentang Tata Beracara Dalam Perkara Pengujian Undang-Undang.*

<sup>13</sup> Siti Malikhatun Badriyah, *Penemuan Hukum Dalam Konteks Pencarian Keadilan* (Semarang: Badan Penerbit Universitas Diponegoro, 2010).

<sup>14</sup> Munir Fuady, *Dinamika Teori Hukum* (Bogor: Ghalia Indonesia, 2010).

<sup>15</sup> Riduan Syahrani, *Buku Materi Dasar Hukum Acara Perdata* (Bandung: Citra Aditya Bakti, 2000).

<sup>16</sup> Abdullah, *Pertimbangan Hukum Putusan Pengadilan* (PT Bina Ilmu Offset, 2008).

<sup>17</sup> Otje Salman, *Filsafat Hukum (Perkembangan Dan Dinamika Masalah)* (Bandung: Refika Aditama, 2009).

<sup>18</sup> *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman.*

<sup>19</sup> Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Jakarta: Sinar Grafika, 2011).

<sup>20</sup> Syarif Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim* (Jakarta: Kencana, 2015).

<sup>21</sup> Suteki, *Desain Hukum Di Ruang Sosial* (Yogyakarta: Thafa Media, 2013).

accordance with the law and the public's sense of justice.

Article 5 paragraph (1)

"Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society."<sup>22</sup>

Legal considerations of a judge's decision must not only be logical, rational and scientific, but also intuitive and irrational.<sup>23</sup> The judge's decision must take into account all legal, sociological and philosophical aspects, so that justice is achieved.<sup>24</sup>

Controversy involving Anwar Usman began with a Constitutional Court (MK) ruling on October 16, 2023. The ruling partially granted a lawsuit filed by Almas Tsaqibbirru, a student at Surakarta University, regarding the age limit for presidential and vice-presidential candidates. The lawsuit requested that the minimum age limit of 40 be changed or an exception be granted for elected officials. This ruling allowed Gibran Rakabuming Raka, President Joko Widodo's son and Anwar Usman's nephew, to run in the 2024 presidential election.<sup>25</sup>

Anwar Usman's case began with allegations that he failed to recuse himself from a case involving his family, creating a conflict of interest. These allegations surfaced after the Constitutional Court (MK) issued a ruling amending the age limit for regional head candidates, allowing Anwar Usman's nephew, Gibran Rakabuming Raka, to run in the presidential election. The MK's decision to amend the provision drew widespread criticism, as it was perceived to favor Gibran and undermine the principle of impartiality.<sup>26</sup>

Judicial review lawsuit regarding the presidential candidate's age limit was filed by Almas Tsaqibbirru, a student, and was followed by an official report against Anwar Usman by the Election Care Advocacy Team to the Constitutional Court's Ethics Council (MKMK) for alleged ethical violations. The accusations focused on Anwar Usman's failure to recuse himself from a case involving his family's interests, resulting in a conflict of interest in the Constitutional Court's ruling.

## 2. Research Method

To obtain accurate and relevant data as expected, in conducting this research the author developed a research method as doctrinal or normative legal research. Normative legal research is research based on legal materials (library based) which focuses on reading and studying primary and secondary legal materials, so that in

---

<sup>22</sup> Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman.

<sup>23</sup> Idris Rachmawati Dan Imam Mulyana, *Penemuan Hukum Nasional Dan Internasional* (Bandung: Fikahati Aneska, 2012).

<sup>24</sup> Lilik Mulyadi, *Hukum Acara Perdata Menurut Teori Dan Praktik Peradilan Indonesia* (Jakarta: Djambatan, 2005).

<sup>25</sup> Nasional Tempo.co, *Begini Kronologi Ketua MK Anwar Usman Dilaporkan Hingga Disidang MKMK*.

<sup>26</sup> 'Anwar Usman Ajukan Banding Atas Putusan PTUN', *Kompas.Com*.

legal research it will be able to produce new arguments, theories or concepts as prescriptions in solving the problems faced. The research used by the author in this normative research examines the analysis of the considerations of the Honorary Council of the Constitutional Court in deciding case Number 2/MKMK/L/11/2023 concerning violations of the code of ethics of Constitutional Court judges and the implications of the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 against the Decision of the Constitutional Court Number: 90/PUU-XXI/2023.<sup>27</sup>

### 3. Result and Discussion

#### 3.1. Analysis of the considerations of the Constitutional Court's Honorary Council in deciding case Number 2/MKMK/L/11/2023 concerning violations of the code of ethics of Constitutional Court judges

In the concept of judicial review, the right to review is divided into two forms. The formal right to review (*formele toetsubsrecht*) examines the validity of the procedure for drafting the law. Second, the material right to review (*materiele Toetsingsrecht*) examines the conformity of the law's content to higher norms.<sup>28</sup>

Formal review is a review conducted on the process of forming a law. The focus is on the legislative procedures and stages undertaken in the formation of a law, starting from planning, drafting, discussion, approval, ratification, to promulgation. This review ensures whether the process is in accordance with the provisions of laws and regulations, specifically Law Number 12 of 2011 concerning the Formation of Legislation as last amended by Law Number 13 of 2022. The object tested in the Formal Review is the process of forming a law. Formal review includes three assessments: First, the involvement of authorized state institutions (the House of Representatives, the President, and the Regional Representative Council in certain cases). Second, compliance with the procedures and mechanisms for discussion and decision-making in the DPR (for example, quorum, voting procedures). Third, the validity of the ratification and promulgation of the law in the State Gazette.

Basis for Formal Review is that formal review is a preliminary requirement or prerequisite for material review. This means that if the process of forming a law is proven to be formally flawed, then the law can be annulled without the need for material review. This is because formal validity is the foundation for the validity of a law. The Purpose of Formal Review Formal Review can be assessed from: First, Ensuring legal certainty and order in the formation of legislation. Second, Preventing abuse of power in the legislative process. Third, Guaranteeing due process of law and accountability in the formation of laws. Fourth, Ensuring meaningful public participation in the legislative process (although this is more related to the quality of the process than mere formality). The Consequences of a Formal Review Decision are If the application is granted, then the entire law is declared invalid and null and void. Deadline for Filing Formal Review Applications must be submitted no later than 45 days after the law is promulgated in the State Gazette. Impact of Formal Review Cancels the validity of

---

<sup>27</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana Prenada, 2014).

<sup>28</sup> Idul Rishan, 'Konsep Pengujian Formil Undang-Undang Di Mahkamah Konstitusi The Concept Of Judicial Review Of The Legislative Process in the Constitutional Court', *Konstitusi*, 18 No. 1 (2021), 3.

the law as a whole due to procedural flaws in its formation.

Material Testing is a test conducted on the content or material of the Law. The focus is on the substance of the norms in the Law and its conformity with higher norms, namely the 1945 Constitution. This test evaluates whether the material content of the Law is contrary to the articles and principles regulated in the 1945 Constitution. The object tested in Material Testing is the content or material content of the Law (articles, verses, or certain sections). The scope of testing in Material Testing includes two assessments, namely, First, the conformity of the material content of the Law with the constitutional rights of citizens guaranteed in the 1945 Constitution. Second, the conformity of the material content of the Law with the basic principles contained in the 1945 Constitution (for example, the principle of the rule of law, democracy, social justice).

Basis for Material Testing Is carried out after the process of forming a law is considered formally valid. The purpose of the Material Testing can be assessed from Protecting the constitutional rights of citizens from potential violations by the law. Second, Ensuring the supremacy of the constitution and the hierarchy of laws and regulations. Third, Realizing justice and legal certainty in the substance of the law. The consequences of the Material Testing Decision are If the application is granted, then only certain articles, paragraphs, or parts of the law are declared to be in conflict with the 1945 Constitution and are canceled. The Deadline for Submitting Material Testing is There is no time limit for submission. The Impact of Material Testing, Improving the substance of the law by canceling norms that are in conflict with the 1945 Constitution, so that the law remains in effect with the adjusted substance.

Fundamental difference between formal and material review lies in the object and focus of the review. Formal review focuses on the process, while material review focuses on the content. Both are crucial mechanisms in the Indonesian legal system to uphold the supremacy of the constitution and protect citizens' constitutional rights.

Constitutional Court is an institution with authority in law enforcement. The Constitutional Court's primary duties and functions are stipulated in the law, which mandates it to receive, adjudicate, and consider all cases submitted to it. As a law enforcement agency, the Constitutional Court cannot refuse to adjudicate any case reported to it. Therefore, the Constitutional Court holds significant strategic authority in ensuring law enforcement in Indonesia. One concrete example of how the Constitutional Court can maintain legal stability in Indonesia is through judicial review, or the annulment of laws and regulations that violate statutory principles.<sup>29</sup>

The Constitutional Court's (MK) interpretation of Article 24 paragraph (1) of the 1945 Republic of Indonesia Constitution emphasizes the need for judicial power to have independence in carrying out trials in order to uphold law and justice.<sup>30</sup> A number of legislative and constitutional articles, such as Article 24 paragraph (1), 28D paragraph (1), and 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 45 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, also contain references to the legal objectives that have been outlined. Upholding law and justice is the objective of the administration of justice, according to Article 24 paragraph (1) of the 1945 Constitution.

---

<sup>29</sup> Zenal Setiawan, 'Peran Mahkamah Konstitusidalam Menjaga Stabilitas Hukum Di Indonesia', *Jurnal Cerdas Hukum*, 2 No.2 (2024), 24.

<sup>30</sup> Muhammad Ilham, 'Mahkamah Konstitusi Dalam Menegakkan Keadilan Konstitusional Di Era Modern', *Legal Standing Jurnal Ilmu Hukum*, 8 No.2 (2024), 474.

Meanwhile, Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, and certainty of fair law as well as equal treatment before the law. In addition, Article 28H paragraph (2) of the 1945 Constitution states that everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to obtain equality and justice.

However, in practice, this idealism of law enforcement and justice is tested in concrete cases, as seen in Decision Number 90/PUU-XXI/2023. The considerations underlying this decision then became the focus of analysis, particularly regarding alleged violations of the Constitutional Court's code of ethics.

According to the author, as a judge, one should understand the meaning, intent, and rationale outlined in the law. When deciding a case or lawsuit, a judge must consider various aspects. The Chief Justice of the Constitutional Court argued that Decision Number 90/PUU-XXI/2023 was not made for the benefit of a particular individual, but rather applies to all. However, it cannot be denied that the case that was tried and resulted in Decision Number 90/PUU-XXI/2023 appears to be aimed at smoothing someone's path to being nominated as vice president.

Lawsuit filed by Almas Tsaibbirru clearly states that he idolizes the Mayor of Surakarta, Gibran Rakabuming Raka. As a judge, he should be able to grasp the intent of the lawsuit, which is none other than to ensure that Gibran, the President's son, can be nominated as vice president. As circulating information, when Gibran previously ran for mayor of Surakarta, there were alleged violations. His nomination through the PDI Perjuangan Party at that time was made even though candidate registration had closed, and the requirement to run through the party was that a minimum of several years of PDI membership was required. This requirement was eventually waived after intervention, allowing Gibran to run as a mayoral candidate through the party.

At the time, the President allegedly spoke with the Chairman of the Indonesian Democratic Party of Struggle (PDI) to allow Gibran to run for mayor of Surakarta. The proposal was approved by the Chairman of the PDI, allowing Gibran to run as a mayoral candidate. The other candidates in the Surakarta regional election were seen as very easy opponents, making it easier for Gibran to win the election. After being elected, during Gibran's administration in Surakarta, numerous infrastructure development projects were funded through the state budget. If I'm not mistaken, as many as 18 major projects received priority funding from the central government. This shows that Gibran's success as a regional head was not entirely due to his expertise, but rather the full support of his parents, who were then serving as President.

In Constitutional Court Decision No. 90/PUU-XXI/2023, which stated that the minimum age requirement of 40 years for presidential or vice-presidential candidates can be waived for those who have previously served as regional heads, the regional heads in question should be those with genuine accomplishments, not "instant" or pre-conditioned regional heads. This impression raises public questions about the intent and purpose of the ruling, especially if it is considered to smooth Gibran's path to being nominated as vice president.

If a regional head, such as the Mayor of Surakarta, were a young individual who had successfully built his own government career without family support, and whose achievements during his tenure were the result of his own hard work and expertise, the public might be more likely to accept the Constitutional Court's ruling without significant upheaval. However, in this context, the perception has emerged that Gibran's achievements were not

entirely the result of his own efforts.

### 3.2. Implications of the Constitutional Court's Honorary Council Decision Number 2/MKMK/L/11/2023 on the Constitutional Court Decision Number: 90/PUU-XXI/2023

A judge's decision not only concretizes and crystallizes laws and legal principles, but also symbolizes the judge's honor, dignity, and behavior. It is reasonable to say that a true and just decision reflects the judge's conscience and reason.<sup>31</sup>

Judges are not merely legal bureaucrats, but also human beings, comprised of various variables inherent in a judge, such as age, social background, race or ethnicity, religion, education, experience, and so on, all of which have the potential to influence a judge's decision-making tendencies, thus giving rise to various types of judges. Citing Satjipto Rahardjo's opinion, we can say that there are at least two types of judges. First, judges who, when examining a case, first consult their conscience or listen to their conscience's decision and then seek articles in the regulations to support that decision. Second, judges who, when deciding, first consult their own interests and then seek articles to legitimize their decisions.<sup>32</sup>

Decision Number 2/MKMK/L/11/2023 issued by the Constitutional Court's Honorary Council is an ethical decision. It addresses violations of the Code of Ethics and Conduct of Constitutional Justices committed by Constitutional Justices. In this case, Decision Number 2/MKMK/L/11/2023 issued by the Constitutional Court's Honorary Council addresses violations of the Code of Ethics and Conduct of Constitutional Justices committed by Chief Justice Anwar Usman during the examination and trial of case Number 90/PUU-XXI/2023.

Based on the Constitutional Court Regulation Article 69 states that the decision of the Constitutional Court Honorary Council is final and binding. Then Constitutional Court Regulation Number 1 of 2023 concerning the Constitutional Court Honorary Council, the Position of the MKMK in Article 2 The Honorary Council was formed by the Court to maintain and uphold the honor, nobility, dignity and Code of Ethics and Conduct of Constitutional Judges. In the decision issued by the Constitutional Court Honorary Council Number 2 / MKMK / L / 11/2023 stated that in the Constitutional Court decision Number 90 / PUU-XXI / 2023 led by Anwar Usman as the Reported Judge in this MKMK decision was proven to contain a conflict of interest and violation of the code of ethics in it. The MKMK stated in the decision 90 / PUU-XXI / 2023 that there had been violations committed by the Reported Judge including:

- a. Reported Judge did not recuse himself during the examination and trial of case No. 90/PUUXXI/2023 and was found to have violated the Principle of Impartiality in the Sapta Karsa Utama.

---

<sup>31</sup> Ramdani Wahyu Sururi, *Putusan Pengadilan* (BANDUNG: Cv. Mimbar Pustaka, 2023).

<sup>32</sup> Satjipto Rahardjo, *Sosiologi Hakim, Dalam Buku Sisi-Sisi Lain Dari Hukum Indonesia* (Jakarta: Kompas, 2023).

- b. Reported Judge violated the Principle of Competence and Equality in the Sapta Karsa Utama, relating to leadership functions. The Reported Judge failed to maintain and ensure that judicial procedures were carried out in accordance with the rules.
- c. Reported Judge violated the Principle of Independence in the Sapta Karsa Utama by deliberately allowing outside parties to intervene in the decision-making process for case No. 90/PUU-XXI/2023.
- d. Reported Judge violated the Principle of Impartiality in a public lecture held at Sultan Agung Islamic University in Semarang, addressing the topic of leadership related to the age requirements for Presidential and Vice Presidential Candidates.
- e. Reported Judge was found to have violated the Principle of Appropriateness in the Sapta Karsa Utama by leaking information during a closed-door Judges' Deliberation Meeting.<sup>33</sup>

Violations committed during the examination process leading up to the pronouncement of the verdict in Case Number 90/PUU-XXI/2023 should not have occurred. In existing judicial practice, such violations of the code of ethics by the Panel of Judges should not have occurred collectively. This has undoubtedly raised public doubts about the validity of Decision Number 90/PUU-XXI/2023. Reporting the violations of the Code of Ethics and Conduct of Constitutional Judges to the Constitutional Court's Honorary Council was one of the efforts taken to overturn the decision, which subsequently gave rise to the MKMK Decision Number 2/MKMK/L/11/2023. However, the MKMK decision does not directly impact Decision 90/PUU-XXI/2023. Rather, the MKMK decision targets the judges' method of issuing Decision 90/PUU-XXI/2023.

In Article 24C paragraph (1) of the 1945 Constitution, which states "The Constitutional Court has the authority to adjudicate at the first and final level which is final in nature to test laws against the Constitution, decide on disputes regarding the authority of state institutions granted by the Constitution, decide on the dissolution of political parties, and decide on disputes regarding the results of general elections."<sup>34</sup>

Constitutional Court's decisions are final, meaning they immediately acquire permanent legal force upon their pronouncement, and no legal remedy can be pursued. The finality of Constitutional Court decisions, as defined in this Law, also includes binding legal force.<sup>35</sup>

Although the Constitutional Court's Honorary Council does not have the authority to overturn the Constitutional Court's decision, the MKMK decision has a moral, ethical, and sociological impact on the Constitutional Court's decision Number 90/PUU-XXI/2023. The issuance of the MKMK decision proves that the Constitutional Court's decision Number 90/PUU-XXI/2023 is indeed a moral and ethical violation. Through

---

<sup>33</sup> *Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 2/MKMK/L/11/2023, Hlm. 381.*

<sup>34</sup> *UUD 1945.*

<sup>35</sup> *Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi.*

the MKMK decision Number 2MKMK/L/11/2023, the public also knows that during the examination and trial process in the Constitutional Court's decision Number 90/PUU-XXI/2023, there were serious violations of the code of ethics committed by the Constitutional Justices. This has an impact on reducing public trust in the judicial institution, namely the Constitutional Court.

#### 4. Conclusion

Consideration of the Constitutional Court Honorary Council (MKMK) in Decision Number 2/MKMK/L/11/2023 shows that the MKMK acknowledges the finality of the Constitutional Court's decision but ignores the Constitutional Court's decision-making process which has been proven to violate the code of ethics seriously by Chief Justice Anwar Usman, namely not recusing himself from cases that have a conflict of interest, persuading other judges, and leaking information from the Judges' Deliberation Meeting (RPH). This violation harms the principle of impartiality, integrity, and independence of the Constitutional Court, so a balance is needed between maintaining the finality of the decision and upholding accountability in order to maintain the integrity of the judiciary and the decision is based on a minority vote (3 judges), which does not reflect the majority vote mechanism as referred to in Article 45 paragraph (7) of Law No. 24 of 2003. This implies that the decision can be considered not to fulfill the principle of legal legitimacy regulated by law.

According to the author, this decision can be declared non-executable or cannot be implemented on the basis of non-compliance with the principle of majority vote, with only three judges agreeing, the decision does not fulfill the provisions of Article 45 paragraph (7) of the Constitutional Court Law. And Legal Uncertainty: Significant disagreement between the judges indicates a weak legal basis for the decision, which can create uncertainty in the implementation of the resulting legal norms.

MKMK should dismiss Anwar Usman as a Constitutional Court Judge for violating Law Number 7 of 2020 concerning the Constitutional Court, Article 23 paragraph 2 letter d. violating the oath or promise of office, letter g "no longer meets the requirements as a constitutional judge" and/or h. "violating the Code of Ethics and Guidelines for the Conduct of Constitutional Judges". which has been proven to have committed a serious ethical violation.

Implications of Constitutional Court Decision Number 90/PUU-XXI/2023 reveal violations of the code of ethics committed by the Respondent Judge, which undermine the principles of impartiality, independence, and integrity of the Constitutional Court (MK). These violations not only harm public trust, but also create a bad precedent in internal oversight and judicial accountability, and affect the legitimacy of Constitutional Court Decision Number 90/PUU-XXI/2023. The resulting implications reflect a poor constitutional justice system and weak oversight mechanisms, a lack of discipline, and a lack of professionalism among judges, in ensuring substantial justice and maintaining the credibility of the Constitutional Court as the guardian of the constitution and the rule of law.

## 5. References

- Abdullah, *Pertimbangan Hukum Putusan Pengadilan* (PT Bina Ilmu Offset, 2008)
- 'Anwar Usman Ajukan Banding Atas Putusan PTUN', *Kompas.Com*
- Asshiddiqie, Jimly, *Format Kelembagaan Negara Dan Pergeseran Kekuasaan Dalam UUD 1945* (Jakarta: UII Press)
- — —, *Hukum Acara Pengujian Undang-Undang* (Jakarta: Sinar Grafika, 2011)
- Badriyah, Siti Malikhatun, *Penemuan Hukum Dalam Konteks Pencarian Keadilan* (Semarang: Badan Penerbit Universitas Diponegoro, 2010)
- Ekatjahjana, Widodo, *Negara Hukum, Konstitusi, Dan Demokrasi: Dinamika Dalam Penyelenggaraan Sistem Ketatanegaraan Republik Indonesia* (Jember: Jember University Press, 2015)
- Fuady, Munir, *Dinamika Teori Hukum* (Bogor: Ghalia Indonesia, 2010)
- Huda, Ni'matul, *Hukum Tata Negara Indonesia, Raja Grafindo Persada* (Jakarta: Raja Grafindo Persada, 2015)
- Ilham, Muhammad, 'Mahkamah Konstitusi Dalam Menegakkan Keadilan Konstitusional Di Era Modern', *Legal Standing Jurnal Ilmu Hukum*, 8 No.2 (2024), 474
- Mappiasse, Syarif, *Logika Hukum Pertimbangan Putusan Hakim* (Jakarta: Kencana, 2015)
- Martitah, *Mahkamah Konstitusi Dari Negative Legislature Ke Positive Legislature* (Jakarta: Konstitusi Press (Konpress), 2016)
- Marzuki, Peter Mahmud, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana Prenada, 2014)
- Mulyadi, Lilik, *Hukum Acara Perdata Menurut Teori Dan Praktik Peradilan Indonesia* (Jakarta: Djambatan, 2005)
- Mulyana, Idris Rachmawati Dan Imam, *Penemuan Hukum Nasional Dan Internasional* (Bandung: Fikahati Aneska, 2012)
- Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023 Tentang Majelis Kehormatan Mahkamah Konstitusi*
- Peraturan Mahkamah Konstitusi Nomor 2 Tahun 2021 Tentang Tata Beracara Dalam Perkara Pengujian Undang-Undang*
- Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 2/MKMK/L/11/2023, Hlm. 381*
- Rahardjo, Satjipto, *Sosiologi Hakim, Dalam Buku Sisi-Sisi Lain Dari Hukum Indonesia* (Jakarta: Kompas, 2023)
- Rishan, Idul, 'Konsep Pengujian Formil Undang-Undang Di Mahkamah Konstitusi  
The Concept Of Judicial Review Of The Legislative Process in the Constitutional

- Court', *Konstitusi*, 18 No. 1 (2021), 3
- Salman, Otje, *Filsafat Hukum (Perkembangan Dan Dinamika Masalah)* (Bandung: Refika Aditama, 2009)
- Setiawan, Zenal, 'Peran Mahkamah Konstitusi dalam Menjaga Stabilitas Hukum Di Indonesia', *Jurnal Cerdas Hukum*, 2 No.2 (2024), 24
- Siahaan, Maruarar, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Konstitusi Press, 2006)
- Suparto, Ellydar Chaidir &, 'Perlunya Pengawasan Terhadap Kode Etik Dan Perilaku Hakim Konstitusi Dalam Rangka Menjaga Martabat Dan Kehormatannya (The Need For Supervision On Constitutional Court Judges' Code Of Ethics & Behavior In Order To Uphold Their Dignity And Honor)', *Uir Law Review*, 01 No.02 (2017), 111
- Sururi, Ramdani Wahyu, *Putusan Pengadilan* (BANDUNG: Cv. Mimbar Pustaka, 2023)
- Suteki, *Desain Hukum Di Ruang Sosial* (Yogyakarta: Thafa Media, 2013)
- Syahrani, Riduan, *Buku Materi Dasar Hukum Acara Perdata* (Bandung: Citra Aditya Bakti, 2000)
- Tempo.co, Nasional, *Begini Kronologi Ketua MK Anwar Usman Dilaporkan Hingga Disidang MKMK*
- Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan*
- Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi*
- Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman UUD 1945*
- Zulkifli Bahri, Ellydar Chaidir, Yusri Munaf, Aryo Akbar, 'Diskursus Independensi Kekuasaan Kehakiman', *Konstitusi Jurnal Magister Ilmu Hukum*, 15 No.1 (2021), 39
- Zulkifli, Suparto &, 'Kedudukan Putusan Mahkamah Konstitusi Dalam Hukum Ketenagakerjaan (Kajian Terhadap Putusan Mahkamah Konstitusi No. 37/PUU-IX/2011)', *Jurnal Hukum & Pembangunan*, 52 No.1 (2022), 79