

# Ethical violation by the Chairman of the Constitutional Court against Indonesian law and democracy

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## Abstract

**Purpose:** This study aims to analyze the decision of the Honorary Council of the Constitutional Court Number 02/MKMK/L/11/2023 regarding violations of the code of ethics of the chairman of the Constitutional Court, where the Constitutional Court's decision on the age limit of presidential and vice presidential candidates has caused polemics and pros and cons for society and Indonesian democracy.

**Method:** The research method used is normative legal research that focuses on coherence between principles, concepts, and positive legal rules.

**Results:** The results of this study indicate that the Decision of the Honorary Council of the Constitutional Court Number 02/MKMK/L/11/2023 states that AnwarUsman was proven to have committed serious violations of the code of ethics and behavior of constitutional judges in a state of law; the position of the ruler and the people in the eyes of the law are the same (equal) and not people who have power will feel immune to the law. In carrying out their duties as Constitutional Court Judges, they must uphold the code of ethics and not abuse trust, position, or authority for personal or group interests. Therefore, the decision of the Honorary Council of the Constitutional Court Number 02/MKMK/L/11/2023 imposed on the Chief Justice of the Constitutional Court is expected to restore public trust in the institution of the Constitutional Court.

**Limitations:** The limitation of this research is the decision of MKMK Number 02/MKMK/L/11/2023 and the code of ethics of the office.

**Contributions:** This research can contribute to Constitutional Court Judges in giving judicial decisions to pay attention to the code of ethics of office, for legal academics as research material in adding insight into positive law, and for the community to restore public trust in the Constitutional Court.

**Keywords:** MKMK Decision, Code of Ethics, Democracy

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## 1. Introduction

Decision Number 90/PUU-XXI/2023 ("Decision 90") is one of the toughest tests faced by the court. That is, when the contestation of the 2024 Presidential Election made the Constitutional Court courtroom a battleground, which unfortunately was not always sincere in the interests of the nation and state. Thus, what emerges is the political interest in victory, without paying attention to Indonesian politics. Supposedly, as the *guardian of the constitution* and democracy, especially those filled with constitutional judges who are qualified statesmen, the Court should be resistant to the temptation of intervention in the form of power or wealth. However, unfortunately, in the view of the Complainant,

Decision 90 shows how the Court has been subjugated by the interest to win power by changing the rules of law, which should not be wise and should not be done. Moreover, the change in the regulation on the age requirement of the presidential and vice presidential candidates used the hand of the Reporting Judge (Anwar Usman), who should have resigned because the case had a direct interest with his family, namely President Joko Widodo and his son Gibran Rakabuming Raka. This interest is indisputable because it has become a legal fact, with the registration of Gibran Rakabuming Raka as a vice-presidential candidate pair to the General Election Commission by one of them, utilizing the new provisions related to age requirements in Decision 90, which was decided by the court. Not only is the decision contrary to the principle of impartiality, but the Reporting Judge should have resigned in accordance with the concept of *judicial disqualification*.

Based on Article 24 C paragraph (5) of the 1945 Constitution of the Republic of Indonesia, constitutional judges must have integrity and impeccable personality, fairness, and statesmen who master the constitution and state administration and do not concurrently serve as state officials. The affirmation of the requirements for constitutional judges is so strict and severe in the Constitution because constitutional judges carry a very noble mandate, namely, upholding the nation's life by safeguarding the constitution in accordance with the principles of the rule of law.

Integrity as a prerequisite for Constitutional Court judges is actually the realm of strengthening ethical aspects. Ethics is an instrument with ethical and internal dimensions to prevent reprehensible actions from the judges of the Constitutional Court. Ethics in the context of Constitutional Court judges are commonly referred to as the code of ethics for Constitutional Court judges, which is one of the main prerequisites for demonstrating the integrity and independence of the Constitutional Court. The Constitutional Court's effort to uphold the code of ethics of the Constitutional Court Judges is the establishment of the Constitutional Court of Honor (MKMK). Article 1 point 4 of Law Number 8 of 2011 Concerning the Amendment to Law Number 24 of 2003 Concerning the Constitutional Court in conjunction with Article 27, paragraph (4) of Law Number 4 of 2014 Concerning the Second Amendment to the Constitutional Court Law confirms that one of the efforts of the Constitutional Court in upholding the code of ethics of Constitutional Judges is the establishment of MKMK as the guardian of ethics for Constitutional Court judges. The urgency of the presence of MKMK, apart from being an effort to guarantee a code of ethics for Constitutional Court judges, also aims to maintain public trust in the existence of the Constitutional Court as the final interpreter of the constitution and guardian of the people's constitutional rights (Disantara, Putri, Mufarrochah, & Assari, 2023).

The duties and authority of judges must be actualized proportionally within the framework of upholding law, truth, and justice in accordance with laws, regulations, and codes of ethics, as well as taking into account the law and sense of justice that lives in society. The enormous authority of judges demands high responsibility, so that court decisions with the *irah-irah* "For the Sake of Justice Based on God Almighty" mean that the obligation to uphold truth and justice must be horizontally accountable to all humans and vertically accountable to God Almighty (Chatamarrasyid, 2007).

The Constitutional Court Honour Council (MKMK) must follow up on ethical violations, procedural violations, and/or potential criminal offences expressed in the dissenting opinion of the Constitutional Judge Arif Hidayat in Constitutional Court Decision Number 90/PUU-XXI/2023. Therefore, MKMK plays an important role in proving and stating the actual facts to the public on how the Constitutional Court Decision Number 90/PUU-XXI/2023 was prepared and whether any acts of violation were committed.

At this time, authority and public trust in constitutional judges is declining, even though constitutional judges carry a very important mandate to maintain the establishment of democracy and the pillars of the rule of law, so it is necessary to make efforts to save constitutional judges quickly. Therefore, let the Honorary Council of the Constitutional Court put forward the principle of maintaining the dignity and behavior of constitutional judges by imposing sanctions on constitutional judges who have been proven to have violated the code of ethics in the form of sanctions for violations of the code of ethics

and behavior of constitutional judges allegedly committed by the chief judge of the Constitutional Court Anwar Usman.

## 2. Literature review

### 2.1 Democracy

Theoretically, democracy is a government of the people, by the people and for the people. When it comes to constitutional practice, although a country claims to be a democracy, it ignores many principles of democracy in many ways. The term democracy comes from the Latin "*demos*" which means people, the people "*cratein*" which means government. Thus, democracy is the government of people. However, in the modern world, the notion of democracy emphasizes that the power of political affairs is in the hands of the people (Suseno, 2001).

Jimly Asshiddiqie argues that democracy is first of all an idea that presupposes that power is of, by and for the people. In a participatory sense, democracy is a concept of power that is essentially recognized as coming from the people; therefore, it is the people who actually determine and give direction and who actually organize state life. This notion is encompassed in the notion of the sovereignty of the people, which is the supreme power in the hands of the people, organized by and for the people themselves, and continuously opens itself to the widest possible participation of the people in the administration of the state. A state that can accomplish this idea of democracy is good and ideal (Asshiddiqie, 2005).

The characteristics of a democratic government are as follows.

- a) The involvement of citizens ( people) in political decision making, either directly or indirectly (representation).
- b) The existence of equal rights for all citizens in all fields
- c) The existence of freedom and independence for all citizens
- d) There is a general election to elect representatives of people who sit in people's representative institutions.

Thus, democracy as the basis of social and state life implies that it is the people who provide provisions in matters concerning their lives, including assessing state policies, because these policies determine the lives of the people. Thus, a country that adheres to a democratic system is organized based on the will of the people.

### 2.2 The Theory of the Rule of Law

According to Soepomo, the concept of the rule of law emerged to oppose the concept of absolutism that gave birth to the state of power. In essence, the power of the ruler (king) must be limited so as not to treat people arbitrarily. This restriction is carried out by means of the supremacy of law, namely that all actions of the ruler must not be at will or arbitrary, but must be based and rooted in applicable laws and statutes; for this reason, there must also be a division of state power, especially judicial power (judiciary), which must be separated from the power of the ruler (Fadjar, 2016).

According to Jimly Ashidique, the conception of democracy contains the principles of popular sovereignty (*democratie*), whereas the concept of the rule of law contains the principles of the rule of law (*nomocratie*), in which each principle is carried out in tandem as two sides of one coin. Such an understanding of the rule of law is known as a "*democratic state of law*" (*demokratische rechtsstaat*) or in *constitutional* form is called *constitutional democracy*. It is called a "*democratic state of law*" because it accommodates the principles of the rule of law and the principles of democracy:

1. *Supremacy of Law*. There is normative and empirical recognition of the principle of the rule of law; that is, all issues are resolved with the law as the highest guideline.
2. *Equality before the Law* Every person is equal *before* the law and the government. All discriminatory attitudes and actions were prohibited, except for special and temporary measures to encourage the accelerated development of certain groups (*affirmative action*).

3. Principle of Legality (*Due Process of Law*): All government actions must be based on legal and written laws and regulations. These laws and regulations must first exist and apply or precede the actions taken.
4. There is a limitation of state power and state organs by applying the principle of vertical division of power or horizontal separation of powers. This limitation of power is to avoid abuse of power and develop a mechanism of *checks and balances* between the branches of power.
5. As an effort to limit power, there is also the development of independent government institutions, such as the central bank, the organization of the army, the police, and the prosecutor's office. In addition, there are new institutions such as the National Human Rights Commission, the Election Commission, the Ombudsman, the Indonesian Broadcasting Commission, and others.
6. *An independent and impartial judiciary* is essential in the state of law. Judges must not take sides except in favor of truth and justice and must not be influenced by anyone, be it political or financial.
7. The State Administrative Court is part of a broader judiciary that must be free and impartial; however, its existence needs to be specifically mentioned. In every state of law, there must be an opportunity for citizens to challenge the decisions of administrative officials, which is the competence of the state administrative court.
8. Besides the State Administrative Court, Modern rule-of-law countries also commonly adopt the idea of establishing a constitutional court as an effort to strengthen the system of *checks and balances* between the branches of power to ensure democracy. For example, this court is given the function of testing the constitutionality of laws and deciding disputes over authority between state institutions that reflect separate branches of state power.
9. Constitutional protection of human rights with legal guarantees for enforcement through a fair process.
10. Democratic (*Demokratische Rechtsstaat*). The principle of democracy or popular sovereignty is adopted and practiced, which guarantees the participation of the community in the state decision-making process so that any laws and regulations that are applied and enforced reflect the people's sense of justice.
11. It functions as a means of realizing the state's goals (*welfare rechtsstaat*). In the Indonesian context, the idea of a democratic rule of law is to achieve national goals, as set out in the preamble of the 1945 Constitution.
12. Transparency and social control of law-making and law-enforcement processes can help correct weaknesses in institutional mechanisms to ensure truth and justice. Direct participation is needed, because the mechanism of representation in parliament cannot always be relied upon as the only channel for people's aspirations. This is a form of representation of ideas that is not always inherent in representation in presence (Asshiddiqie, 2009).

Therefore, the rule of law must be supported by a democratic system because there is a clear correlation between the rule of law, which rests on the constitution, and the sovereignty of people exercised through a democratic system. Popular participation is the essence of a democratic system. However, democracy without legal arrangements will lose its shape and direction, whereas law without democracy will lose its meaning (Muhlashin, 2021).

### 2.3 Code of Ethics Theory

According to Shidarta, a code of ethics is a moral principle inherent in a profession that is systematically organized. This means that, without a code of ethics that is deliberately arranged systematically, a profession can still run because these moral principles are inherent in the profession. Nevertheless, a code of ethics becomes necessary because the number of people in the profession itself is already very large and the demands of society are also increasingly complex. At this point, professional organizations are urged to be formed (Sinaga, 2020).

A professional code of ethics is a norm established and accepted by a professional group, which directs or instructs its members on how to act and simultaneously ensures the moral quality of the profession in the eyes of society. A professional code of ethics is the norm applied and accepted by a professional group that directs or instructs members on how to act. Generally, it provides instructions to members to practice in the profession. However, it can be stated that the general principles formulated in a

profession will vary from one another. Professional codes of ethics are the product of applied ethics, subject to change and amendment, the result of self-regulation of the profession concerned, effective if imbued, the formulation of human moral norms, a benchmark for the actions of group members, and an effort to prevent unethical behavior for its members.

A professional code of ethics is needed as a means of social control, a deterrent to interference from other parties, and a deterrent to misunderstanding and conflict. Other functions: It is a criterion of professional principles that have been outlined, so that it can be known with certainty the professional obligations of old, new, or prospective members of the professional group, and can prevent possible conflicts of interest between fellow members of the professional group, or between members of the professional group and the public. Members of professional groups or members of the public, as a control through the formulation of a professional code of ethics, determine whether members of professional groups have fulfilled their professional obligations in accordance with the professional code of ethics.

### **3. Research method**

The type of research used in this research is normative law research using a normative case approach in the form of legal behavior products, for example, examining the law. The subject of study is law, which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. Thus, normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in concrete cases, legal systematics, the level of synchronization, comparative law, and legal history (Muhammad, 2004).

In collecting data, descriptive analytical research is carried out, namely research describing the situation that occurs regarding the problems raised by limiting the framework of study to the analysis of legislation regarding the Constitutional Court Law and the role of the Honorary Council of the Constitutional Court in resolving issues for Constitutional Court Judges who violate the code of ethics. This research uses a statute approach by examining Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, Regulation of the Constitutional Court Number 09/PMK/2006 on the Enforcement of the Declaration of the Code of Ethics and Behavior of Constitutional Judges, and MKMK Decision Number 02/MKMK/L/11/2023.

### **4. Results and discussions**

#### ***4.1 MKMK Decision Number 02/MKMK/L/11/2023 Against the Chief Justice of the Constitutional Court in the State of Law***

Constitutional judges are the main pillars of carrying out their constitutional powers and duties in accordance with statutory provisions. Judges carrying out their constitutional powers and duties must have integrity and impartiality, as well as accountability (Wiryanto, 2016). The practice of abuse of authority in the judiciary today has been considered by the entire community and justice seekers, is a very extraordinary abuse of authority in the realm of judicial power, and has even been considered a judicial mafia, causing damage to the legal system and not fulfilling a sense of justice (Wiryanto, 2016).

Law enforcement itself is inseparable from the participation of law enforcers because law enforcers will later enforce the rule of law. If law enforcers have a dilapidated mentality, it will create dilapidated law enforcement as well, and vice versa if law enforcers have a good mentality in carrying out/enforcing the rule of law, it will create good and responsive law enforcement (Maula, 2022).

In MKMK's verdict Number 02/MKMK/L/11/2023, Anwar Usman was proven to have committed serious violations of the code of ethics and behavior of constitutional judges, as stated in Sapta Karsa Hutama, the principle of impartiality, the principle of integrity, the principle of competence and equality, the principle of independence, and the principle of decency and modesty. Anwar Usman was also decided not to be entitled to nominate himself or be nominated as a leader of the Constitutional Court until his term as a constitutional judge ends. In addition, he is not allowed to be involved or involve himself in examining and making decisions in cases of disputes over the results of the

presidential and vice presidential elections, then the elections of members of the DPR, DPD, and DPRD, as well as the elections of governors' regents and mayors that have the potential for conflicts of interest.

In the State of law, the position of the ruler and the people in the eyes of the law are the same (equal); the only difference is the function, namely, the government functions to regulate and the people are regulated. Both those who regulate and those who are regulated have one guideline, namely the law. If there is no legal equality, then people with power will feel immune to the law. In principle, *equality before the law* is that there is no place for backing the wrong, but the law is backing the right (Noor, 2017).

Equality before the law is a universal concept that applies everywhere, universally equality before the law has become a principle of law and state, and requires the existence of applicable laws. Conversely, from the point of view of the field, the law must not allow itself to favor some parties because, if there is an exception, it will damage the concept of law.

The principle of *equality before law* is a fundamental pillar of the rule of law. For MKMK, this principle has been applied to Anwar Usman, and MKMK has been an impartial objective and is consistent in deciding cases. Enforcement of this principle is very important for realizing a democratic state of law.

#### **4.2 Violation of the Code of Ethics of the Chief Justice of the Constitutional Court in a Democratic State**

The relationship between ethics and the profession, especially the legal profession, that professional ethics is an attitude of life, in the form of a willingness to provide professional services in the field of law to the community with full involvement and expertise in order to carry out duties in the form of obligations to the community in need of legal services with careful reflection (Burhanudin, 2018).

Article 1 point 4 of Law Number 8 of 2011 states that The Honorary Council of the Constitutional Court is a device established by the Constitutional Court to monitor, examine, and recommend action against constitutional judges who are suspected of violating the code of ethics and conduct of constitutional court judges. This shows that constitutional judges' behavior must be guided by the code of ethics established by the Constitutional Court itself.

Code of ethics and code of conduct for judges. The profession of judges has an ethical system that can create discipline and provide a value system boundary line that can be used as a guide for judges to complete their duties in carrying out their functions and carrying out their profession. The principles of the Code of Ethics and Code of conduct for judges are implemented in Constitutional Court Regulation Number 09/PMK/2006 on the Enforcement of the Declaration of the Code of Ethics and Conduct of Constitutional Judges (Sapta Karsa Utama): (1) Principles of Independence; (2) Principles of Impartiality; (3) Principles of Integrity; (4) Principles of Decency and Decency; (5) Principles of Equality; (6) Principles of Proficiency and Equality; and (7) Principles of Wisdom and Discretion.

The existence of Anwar Usman who decided case Number 90/PUU-XXI/2023 is full of interests where Gibran Rakabuming Raka is Anwar Usman's nephew for his position in handling the case Anwar Usman has violated the principle of impartiality sapta karsa utama. The rules of the professional code of ethics of a judge play a very important role in maintaining the stability and performance of the judge himself, to control every action by the judge so as not to violate the rules that have been set. If these rules are violated, then a judge can be sanctioned for his/her actions (Mujadi & Astutik, 2023).

Although, in principle, judges are independent or free, the freedom of judges is not absolute, because in carrying out their duties, judges are micro-limited by Pancasila, the basic law, laws and regulations, the will of the parties, and morality. If so, the values contained in Pancasila must be understood as the limits of responsibility. At the macro level, the judge's freedom is also limited by the government, political, economic, and so on (Sutiyoso, 2010).

As law enforcement officials, judges are firm, disciplined, devoted to their work, free from the influence of anyone, do not abuse trust, position, and authority for personal or group interests, do not have a soul, do not accentuate their position, maintain the dignity of judges in official relations, and adhere to the code of honor of judges (Sinaga, 2020).

Essentially, the code of ethics functions as a means of struggling to solve legal problems that exist in society. Judging from this formulation, the legal profession's code of ethics will make the legal profession an honorable profession (*officium nobile*). The code of ethics will also prevent this life from being tainted by harmful actions, such as harming the freedom, degree, and dignity of the professionals concerned (Kalalo, 2014).

The importance of efforts to enforce a good code of ethics in the Constitutional Court is oriented so that the Constitutional Court obtains high trust from the public to uphold the constitution and justice. This is even more associated with the independence of the Constitutional Court in certain cases where its credibility is at stake. An example is the case of the Constitutional Court's decision number 90/PUU-XXI/2023 concerning the age limit for presidential and vice-presidential candidates, which is a violation of the code of ethics by the Constitutional Court Judges.

see and consider the values and norms that are still relevant to the case The principle of democracy or popular sovereignty that guarantees the participation of the community in the state decision-making process, so that every law and regulation that is determined and enforced reflects the sense of justice that lives in the midst of society (Purwadi, 2019). Based on the decisions of previous Constitutional Court judges and the issue of violations of the Code of Ethics of the Constitutional Guard Institution, judges are expected to have independence that is not influenced by wealth, politics, or the authorities, so that the Constitutional Court will truly become a judicial institution that has high trust from the public. A trial is based on the purpose and nature of a democracy.

Therefore, MKMK Decision Number 02/MKMK/L/1/2023 handed down to the Chief Justice of the Constitutional Court is expected to restore public confidence in the Constitutional Court, especially before the 2024 elections. This is because the Constitutional Court is authorized to decide on cases if there is a dispute later.

## **5. Conclusion**

### **5.1 Conclusion**

MKMK Decision Number 02/MKMK/L/11/2023 stated that Anwar Usman was proven to have committed serious violations of the code of ethics and behavior of constitutional judges In the State of law, the position of the ruler and the people in the eyes of the law is the same (equal) and no one who has power will feel immune to the law. In carrying out their duties as Constitutional Court Judges, they are obliged to uphold the code of ethics and not abuse trust, position, or authority for personal or group interests. Therefore, MKMK's decision number 02/MKMK/L/1/2023 imposed on the Chief Justice of the Constitutional Court is expected to restore public trust in the institution of the Constitutional Court.

### **5.2 Limitation**

This research has limitations, such as the limitations of the author's time, so this writing can be developed again by the next writer.

### **5.3 Suggestion**

Constitutional Court judges in giving decisions must pay attention to *Sapta karsa hutama* in the form of integrity, independence, alignment with the constitution, professionalism, accountability, honorable behavior, and cooperation. As well as avoiding situations that can lead to conflicts of interest in the decision-making process and Constitutional Court Judges must be open and transparent in the decision-making process, this can be done by providing a clear and logical explanation for the decisions taken.

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