



Violation of the Code of Ethics for Constitutional Judges in the Constitutional Court's Decision on Requirements for Presidential and Vice Presidential Candidates

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Abstract

As a country based on legal principles, Indonesia has a responsibility to respect and prioritize the principles of the rule of law, including independence and the absence of partiality in the judicial system. The level of success in implementing this principle can be measured by the extent to which the judiciary is independent in carrying it out to realize justice based on the law. However, the power of the Constitutional Court (MK) cannot be avoided from criticism and evaluation. For example, a Constitutional Court decision attracted public attention regarding the requirements for presidential and vice presidential candidates. Therefore, this article discusses the impact of the controversy that emerged after the decision of the Constitutional Court (MK) in Case Number 90/PUU-XXI/2023 on January 4 2023. This decision, which includes the cancellation of part of Law Number 7 of 2017, has raised various criticisms and doubts about the independence of the Constitutional Court. By focusing on the role of Chief Justice of the Constitutional Court Anwar Usman in minority opinions, this article analyzes the examination carried out by the Honorary Council of Constitutional Court Judges (MKMK) regarding alleged ethical violations. The implications for the credibility of the Constitutional Court as a democratic oversight institution are a major concern in this context.

Keywords: Law, Constitutional Court, Controversial Decisions, Code of Ethics for Judges

1. Introduction

Indonesia, as a rule of law country, has an obligation to respect and uphold the principles of the rule of law (Peerenboom, 2004). One of the fundamental principles is the existence of an independent and impartial judiciary. The success of implementing this principle can be measured by the extent to which judicial institutions carry out their duties independently in upholding law and justice, and are supported by statutory provisions that guarantee the judicial independence of judicial power (Arnall, 2011). Judicial power is realized through state judicial institutions, which have the main function of examining, adjudicating, deciding and resolving cases submitted by people seeking justice. The legal basis for judicial power in Indonesia can be found in Chapter IX Articles 24, 24A, 24B, 24C and 25 of the 1945 Constitution of the Republic of Indonesia, and is specifically regulated in Law Number 48 of 2009 concerning Judicial Power.

The Constitutional Court (MK) plays a central role as the main judicial institution in Indonesia. With its unique authority, the MK has the responsibility to examine the constitutionality of laws against the 1945 Constitution. Apart from that, the MK also resolves authority disputes between state institutions, dissolves political parties that violate the law, and handles disputes over election results. The existence of the Constitutional Court is a bulwark that protects democracy and the constitution, ensuring that every state rule and decision is in accordance with the basic principles stated in the constitution.

However, the MK's power does not make it immune to criticism and evaluation. On January 4 2023, the Constitutional Court decided on a controversial case (Case Number 90/PUU-XXI/2023) which then received sharp attention from various parties. The panel of judges chaired by Anwar Usman read out the decision which created public debate. This incident underscores the importance of accountability in the Indonesian justice system, where the

institution's decisions can still be evaluated and criticized by the public. This confirms the principle that every institution, no matter how large its authority, must remain under supervision and be accountable to the public.

The decision of the Constitutional Court (MK) in case Number 90/PUU-XXI/2023 attracted attention because it granted some of the petitioners' requests. The MK stated that Article 222 of Law Number 7 of 2017 concerning General Elections (UU Election) which regulates the requirements for presidential and vice presidential candidates is contrary to the 1945 Constitution. According to the MK, the age limit requirement for presidential and vice presidential candidates should be interpreted as "age at least 40 years old or have/are currently holding positions elected through general elections including regional head elections" (Amrani, 2023).

This decision was not free from controversy, triggering protests and objections from various groups. Many parties consider the legal arguments used by the Constitutional Court in this decision to be controversial. The Constitutional Court is considered to be carrying out judicial activism and political intervention (judicial intervention) by granting requests that are considered to reduce the quality of future leaders of the nation (Fajar, 2023).

Apart from that, some people feel that this decision exceeds the authority of the Constitutional Court (*ultra vires*) because the 1945 Constitution does not explicitly regulate special requirements regarding age limits and political experience for presidential candidates. This opinion states that the Constitutional Court's interpretation of the constitution is considered too broad and subjective, declaring the age limit provisions in the Election Law to be unconstitutional (Nasution, 2023). This polemic reflects a complex debate regarding legal interpretation and the role of the Constitutional Court in maintaining constitutional consistency.

Furthermore, allegations also emerged that the Constitutional Court Panel of Judges had violated the judge's code of ethics in deciding Case Number 90/PUU-XXI/2023, including:

- a). It is suspected that he has committed judicial maladministration by issuing controversial and problematic decisions.
- b). It is considered to have shown impropriety and carelessness which resulted in the loss of public trust in the Constitutional Court.
- c). He is considered to have abused his authority by carrying out political intervention beyond his constitutional authority.
- d). Allegedly having violated the principles of natural justice as well as the independence and impartiality of constitutional judges.

Public complaints and concerns regarding alleged violations of this code of ethics have been followed up by the Honorary Panel of Constitutional Court Judges. Based on Decree Number 4/MKMK/2023, the MKMK has formed a code of ethics panel to hear and decide cases of violations of the code of ethics allegedly committed by the Chairman and 7 Members of the Constitutional Court in Decision Number 90/PUU-XXI/2023 (Judicial Commission of the Republic of Indonesia, 2023).

This article will analyze violations of the code of ethics allegedly committed by Constitutional Court Judges in Decision Number 90/PUU-XXI/2023. Analysis focused on:

- a). Legal responsibility of judges for violations of the Constitutional Court's code of ethics related to Decision Number 90/PUU-XXI/2023.
- b). The authority and procedures of the MKMK in examining and deciding cases of violations of the MK judge's code of ethics.
- c). Sanctions that can be imposed on Constitutional Court judges if they are proven to have violated the judge's code of ethics.

Upholding the code of judicial conduct is crucial to ensuring the establishment of a judiciary that is both clean and authoritative. Unfortunately, instances of judges violating the code of ethics persist, exemplified by the case involving MK Chairman Anwar Usman and others. To guarantee the enforcement of the judicial code of ethics, the presence of an authoritative institution responsible for overseeing and sanctioning breaches is imperative. In the Indonesian justice system, two bodies, namely the Judicial Commission (KY) and the Honorary Council of Judges (MKH), are authorized to handle cases involving violations of judges' code of conduct.

The MKH holds the authority to examine and make decisions regarding violations of the code of ethics and guidelines for behavior of judges in judicial bodies beneath the Supreme Court. In contrast, the KY is entrusted with supervising judges' conduct, including investigating public complaints over alleged ethical code violations by judges (Law of the Republic of Indonesia No. 22/2004, Article 13).

In cases of violations of the code of ethics by constitutional court justices, the Constitutional Court Code of Ethics Council (MKMK) assumes the responsibility of examination and adjudication. The MKMK is a specialized council established based on the Constitutional Court Law, designed to uphold the honor and nobility of constitutional justices (Constitutional Court Regulation No. 1/2022, Article 1(1)).

In the exercise of its authority, the MKMK adheres to procedural rules stipulated in Constitutional Court Regulation No. 1/2022. The examination process initiated by MKMK involves verifying public reports or complaints, forming an ethics committee to investigate, prosecute, and ultimately decide upon the case (Ibid., Article 15-16).

Regarding sanctions, the MKMK possesses the authority to impose various measures if a breach of the code of ethics by a constitutional justice is proven. These sanctions range from mild measures like a verbal warning, intermediate actions such as a written warning, to severe measures like recommending dismissal (Ibid., Article 31). Through optimal enforcement, it is anticipated that the MK institution will continue to uphold judicial integrity and honor, contributing to the overall credibility of the judiciary in Indonesia.

2. Materials and Methods

The type of research used in this research is normative juridical research. Normative juridical research refers to legal norms contained in laws and regulations as well as legal norms that apply in society (Leeuw & Schmeets, 2016).

The approaches used are the statutory approach and the conceptual approach. The legal approach is carried out by reviewing all statutory regulations related to the legal issue being handled. Meanwhile, the conceptual approach is carried out by examining legal views and doctrines related to the issue at hand (Gaffar et al., 2021).

The legal materials used in this research consist of:

- a). Primary legal materials, namely binding legal materials, consist of: a. The 1945 Constitution of the Republic of Indonesia b. Law Number 24 of 2003 concerning the Constitutional Court c. Code of Ethics and Code of Conduct for Judges
- b). Secondary legal materials, namely materials that provide explanations of primary legal materials, such as draft laws, research results, journals, books, and so on.
- c). Tertiary legal materials, namely materials that provide instructions or explanations for primary and secondary legal materials, such as legal dictionaries and encyclopedias.

All legal materials will be compiled and studied systematically to answer the legal problems raised in this research.

3. Results And Discussion

3.1. Responsibility of a Judge Who Has Violated the Professional Code of Ethics

A judge, as a central figure in the judicial process, bears a significant responsibility in examining and adjudicating each case. Awareness of this responsibility is crucial, given that a judge's decisions directly impact the lives of the parties involved in a legal proceeding.

Judges are expected to consistently exhibit fairness in upholding the law and justice. Although not legislative agents, judges play a vital role in applying the law and ensuring justice in accordance with the specific context of each case. Maintaining dignity and honor as representatives of the divine is an absolute obligation for a judge (Rao, 2011). This emphasizes that a judge's integrity and morality significantly influence public trust in the judicial system.

The judicial code of ethics and guidelines for judges' behavior serves as a primary guide for judges in carrying out their duties. Adherence to this code not only assists judges in establishing boundaries and guidelines for decision-making but also ensures that judges exercise their authority in line with prevailing norms. Having binding rules for every action taken by a judge is key to preserving the quality and consistency of judicial decisions.

In the context of violations of the code of ethics, a judge found guilty of such violations must be accountable for their actions. Sanctions imposed correspond to the severity of the violation committed, and this is a logical consequence of any actions conflicting with the professional code of ethics for judges (Renfrew, 1981). The application of sanctions serves not only as punishment but also as a mechanism to maintain discipline and integrity among judges and to preserve public trust in the judicial system. Consequently, an effective system of supervision and enforcement of the code of ethics is foundational in ensuring the professionalism and credibility of judges in the execution of their duties.

The alleged violation of the code of ethics by the Chief Justice of the Constitutional Court, Anwar Usman, has raised questions regarding the independence and integrity of the Constitutional Court as the guardian of democracy. Many are questioning whether the Constitutional Court still deserves the title of the guardian of the constitution if its leadership and judges are involved in worrisome political interventions.

This controversy gained momentum when it was revealed that the Honorary Council of Judges of the Constitutional Court (MKMK) is also investigating allegations of ethical code violations by 8 Constitutional Court judges, including the Chief Justice, related to Decision Number 90/PUU-XXI/2023. MKMK is perceived as less than optimal in overseeing the behavior of Constitutional Court judges, considering that MKMK is also part of the internal structure of the Constitutional Court.

Given the developments in this case, ideally, MKMK should expedite the examination process and fairly decide on the alleged violations of the ethical code. This process must be transparent and accountable, allowing the wider public to assess whether MKMK is genuinely objective in adjudicating their fellow judges. If proven guilty, strict sanctions according to applicable rules must be promptly imposed on the Constitutional Court judges involved. This is crucial

to maintain the dignity and public trust in the Constitutional Court as an institution. Failure to do so may result in further erosion of the Constitutional Court's credibility in the eyes of the public.

3.2. The Role of the Honorary Council of the Constitutional Court (MK) in Handling Violation Cases Code of Ethics for Constitutional Judges

The Honorary Council of Judges of the Constitutional Court (MKMK), established under the Constitutional Court Law, plays a crucial role in upholding the honor, dignity, and ethical conduct of constitutional judges. In the case concerning alleged violations of the code of ethics by the Chief Justice and seven other judges of the Constitutional Court, notably related to Decision Number 90/PUU-XXI/2023, MKMK is actively performing its duties to investigate and adjudicate the matter. The initiation of the examination process by MKMK began with the issuance of MKMK Decree Number 4/MKMK/2023, forming the ethics council, expert panel sessions, and establishing the trial agenda (MKMK RI, 2023).

Throughout the trial process overseen by MKMK, several essential practices are to be optimized:

- a). **Openness and Transparency:** Ensuring that the trial proceedings are conducted openly, transparently, and are accessible to the public. This approach is crucial for maintaining objectivity and preventing potential political interference.
- b). **Credible and Independent Witnesses:** The credibility and independence of witnesses and experts presented during the trial are paramount. Drawing from reputable and unbiased backgrounds strengthens the legal evidence and factual basis.
- c). **Evidence-Based Decision-Making:** The decisions rendered by MKMK must be firmly grounded in valid evidence, guided by the code of ethics, and in adherence to applicable laws. These decisions should remain immune to political influence or the sway of specific interests.

By executing an optimal, impartial, and interference-free trial process, MKMK aims to restore public confidence in the integrity of the Constitutional Court institution. The anticipation is that the decisions reached by MKMK will be genuinely objective in imposing sanctions on Constitutional Court judges found to be in violation of the professional code of ethics. This comprehensive and diligent approach underscores the commitment of MKMK to uphold the highest standards of justice and ethics within the Constitutional Court.

The decision-making process within the Constitutional Court often involves a lack of unanimity, leading to dissenting and concurring opinions among the constitutional judges. Different judges express varying views on whether a case should be accepted, rejected, or upheld, resulting in a diverse range of perspectives within the court. Traditionally, changes in the substance of decisions occur over an extended period, raising concerns when alterations happen abruptly. This sudden shift may provoke significant questioning, as it could be indicative of external interference with potential alternative interests at play.

In response to discontent with the Constitutional Court's Decision Number 90/PUU-XXI/2023, individuals opposing the verdict reported alleged violations of the code of ethics by the Chief Justice of the Constitutional Court. Referring to Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court (MKMK), this regulatory framework empowers MKMK to uphold the honor, dignity, and conduct of the Constitutional Court. Notably, MKMK has the authority to examine and decide on alleged violations of the code of ethics and behavior of constitutional judges within a stipulated timeframe.

Under the leadership of Jimly Asshiddiqie, the Chairman of MKMK, an open hearing was conducted concerning the reported violations. Emphasizing principles such as impartiality, integrity, competence, equality, independence, and propriety, MKMK delivered Decision Number 02/MKMK/L/11/2023. This decision imposed sanctions on Anwar Usman, resulting in his removal from the position of Chief Justice of the Constitutional Court. Anwar Usman was found guilty of serious violations of the professional code of ethics and conduct as a constitutional judge. Prior to this, MKMK had received 21 reports related to alleged violations concerning Decision Number 90/PUU-XXI/2023.

MKMK classified these reports into four categories and subsequently conducted hearings to examine them. During the examination process, facts emerged that contributed to the decision-making process, including considerations of potential conflicts of interest involving Anwar Usman in adjudicating Case Number 90/PUU-XXI/2023. This issue prompted discussions about the potential interference and manipulation of power in the decision-making process.

Gufon, the Executive Director of Imparsial, highlighted that the Constitutional Court's decision acted as a special golden ticket for specific candidates, symbolizing the peak of Indonesia's democratic decline. It is evident that Anwar Usman, as the Chief Justice of the Constitutional Court, breached the code of ethics and conduct, involving external interference and manipulation of power in the decision-making process. The decision itself, regarding the Age Requirements for Presidential and Vice Presidential Candidates, has cast shadows over the upcoming democratic process in the 2024 elections. The public celebration, which was anticipated to commence, has been overshadowed by concerns about potential harm to the electoral process.

4. Conclusion

Judges as the main actors in the justice system bear great responsibility in deciding every case for the sake of realizing justice. Therefore, judges are obliged to comply with the code of ethics and code of conduct which regulates the limits and guidelines for carrying out their duties. The code of ethics for judges has been regulated in detail in various regulations, such as Perma Number 02/PB/MA/IX/2012 and SK KMA plus SK KY Number 047/KMA/SKB/IV/2009 which contains 10 basic principles of professional ethics for judges. Violations of this code of ethics may be subject to sanctions according to the severity of the violation committed.

In the case of alleged violation of the code of ethics by Chief Justice of the Constitutional Court Anwar Usman et al regarding MK Decision Number 90/PUU-XXI/2023, it has been proven that there has been a violation of the principles of integrity, independence and impartiality of judges by a number of MK Judges including the Chief Justice of the Constitutional Court. Through MKMK Decision No. 02/MKMK/XI/2023, Anwar Usman was given heavy sanctions in the form of dismissal from his position as a constitutional judge. This decision shows that no judge is above the law, including even the Chief Justice of the Constitutional Court. Enforcement of the judge's professional code of ethics is important to maintain the dignity and trust of the public in judicial institutions. In the future, more optimal supervision is needed by the MKMK so that the behavior of MK judges always prioritizes integrity and independence.

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