

Ethical Supervision of Judges to Improve the Integrity of the Constitutional Court

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ABSTRACT

This study aims to analyze the juridical implications of the Constitutional Court Decision Number 90/PUU-XXI/2023 on the independence of Constitutional Court judges. To examine the urgency of regulating the ethical supervision of Constitutional Court judges. This research is expected to be material for improving the law related to the supervision of the ethics of the Constitutional Court judges. The type of research is normative legal research. The approach methods used are the types of statutory approaches, case approaches, and conceptual approaches. The technique of collecting legal materials used is a literature study. The data analysis method used is qualitative descriptive. The deductive method of concluding is used. The results of this study show that the juridical implications of the Constitutional Court Decision Number: 90/PUU-XXI/2023 on the independence of Constitutional Court judges are defects that lead to violations of the code of ethics by Constitutional Court judges during the trial process of the decision, resulting in the loss of the independence of Constitutional Court judges, and the issuance of 4 MKMK decisions. This signals that supervision in judicial institutions such as the Constitutional Court has not been optimal. The urgency of regulating the supervision of the ethics of constitutional court judges is that internal supervision in judicial institutions such as the Constitutional Court has not been optimal. Therefore, it is necessary to reorganize the supervision system and institutional management of the Constitutional Court both internally and externally.

Introduction

Indonesia is a country that uses law as the basis (*rechstaat*), not one that uses power as the basis of the state (*machstaat*).¹ According to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a State of Law.² Thus, the state of law implemented by the Indonesian state as a major organization must always place the law as the main and first foundation in

¹ Firza Setiawan Putra et al., "Impeachment Mechanism for The President and/or Vice President of Indonesia and United States," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 96–111, <https://doi.org/ejournal.pustakaparawali.com/index.php/jicl/article/view/4>.

² Imam Subechi, "Mewujudkan Negara Hukum Indonesia," *Jurnal Hukum Dan Peradilan* 1, no. 3 (2012): 343–44, <https://doi.org/10.25216/jhp.1.3.2012.339-358>.

organizing state life in every field of life.³ In Indonesia, state institutions administer power.⁴ A state institution is a body regulated in the 1945 Constitution, where the Constitution gives its authority.⁵

The Constitutional Court of the Republic of Indonesia is the highest state institution, holding judicial power together with the Supreme Court. It was formed after the amendment of the 1945 Constitution to strengthen democratic institutions in the constitutional structure.⁶ The position of the Constitutional Court is as one of the state institutions of judicial power to uphold law and justice. Based on Article 24, paragraph (2) of the 1945 Constitution, judicial power is exercised by a Supreme Court and general judicial bodies, the religious court environment, the military court environment, the state administrative court environment, and the Constitutional Court.⁷

The Constitutional Court (hereinafter referred to as the Constitutional Court) as one of the judicial institutions, has four powers and one obligation regulated in Article 24C of the 1945 Constitution of the Republic of Indonesia, namely, to test the law against the Constitution, to resolve disputes over the authority of state institutions whose authority is granted by the Constitution, to decide disputes over the results of general elections and to decide on the dissolution of political parties, as well as one obligation to give a decision on the opinion of the House of Representatives (DPR) related alleged violations committed by the President and/or Vice President according to the 1945 Constitution of the Republic of Indonesia.⁹ Therefore, the Constitutional Court is also known as "the guardian of the Constitution, the final interpreter of the Constitution, the guardian of democracy, the protector of citizens' constitutional rights, and the protector of human rights".¹⁰

³ Muwaffiq Jufri, "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 1 (2016): 40–47, <https://doi.org/10.17977/um019v1i12016p040>.

⁴ Muwaffiq Jufri et al., "Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and The State in Madura," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 21, no. 2 (2024): 221–46, <https://doi.org/10.21154/justicia.v21i2.9283>.

⁵ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2018), 127.

⁶ Muwaffiq Jufri et al., "Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law," *Jurnal Konstitusi* 21, no. 3 (September 1, 2024): 366–91, <https://doi.org/10.31078/jk2132>.

⁷ Mark Cammack, "Legal Certainty in the Indonesian Constitutional Court: A Critique and Friendly Suggestion," *Constitutional Democracy in Indonesia*, 2023, 275–98, <https://doi.org/10.1093/oso/9780192870681.003.0014>.

⁸ Muhammad Zhafran Shobirin et al., "A Comparison of Presidential Threshold Systems in Presidential and Vice-Presidential Elections in Indonesia and Brazil," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 1–14, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article/view/7/1>.

⁹ Nurus Zaman, "Constitution in Legal Political Perspective," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68, <https://doi.org/10.21107/tr.v4i1.16487>.

¹⁰ Jimly Asshiddiqie, "Building A Constitutional Aware Culture to Create A Democratic Law State," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARLAH* 8, no. 1 (April 1, 2023), <https://doi.org/10.22373/petita.v7i2.128>.

Article 24C paragraph (5) of the 1945 Constitution of the Republic of Indonesia expressly requires that constitutional judges have integrity and personality that are irreproachable, fair, statesmen who control the constitution and state administration and do not concurrently serve as state administrators.¹¹ The nine people proposed to become constitutional judges must meet these requirements.¹² In addition to the conditions that must be met to become a constitutional judge, constitutional judges must be independent and impartial in exercising their authority. However, it does not mean that the freedom and independence of the judicial power are unlimited.¹³

The freedom and independence of the judicial power must also be tied to responsibility and accountability. Therefore, judges' independence must be balanced with judicial accountability. Still, judges' independence, impartiality, and accountability in their implementation are also limited by the code of ethics and judges' code of conduct.¹⁴ A further consequence of the existence of accountability, code of ethics, and guidelines of conduct for judges is the need for supervision or control over the performance of judicial bodies both regarding the course of justice and the behavior of judges to ensure independence and freedom that are abused. Supervision is essential to balancing judges' independence and implementing the principle of checks and balances.¹⁵

The Constitutional Court took the initiative to form a supervisory organ outside its institutional structure, namely the Constitutional Court Ethics Council and the Honorary Assembly of the Constitutional Court (Dewan Kehormatan Mahkamah Konstitusi, MKMK), based on PMK/No. 2/2014 concerning the Honorary Assembly of Constitutional Judges.¹⁶ The Ethics Council exists outside the organizational structure of the Constitutional Court and has the task of

¹¹ Arif Sharon Simanjuntak, "Kepercayaan Masyarakat Terhadap Kinerja Hakim Mahkamah Konstitusi Dalam Rangka Penegakan Konstitusi Di Indonesia," *Pandecta: Research Law Journal* 10, no. 2 (December 31, 2015): 153, <https://doi.org/10.15294/pandecta.v10i2.4950>.

¹² Ahmad Fadlil Sumadi, "Independensi Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 5 (May 20, 2016): 631, <https://doi.org/10.31078/jk851>.

¹³ Mellani Mugia Adhita, "Independensi Hakim Mahkamah Konstitusi Dalam Perkara Pengujian UU Yang Memuat Conflict of Interest Pada Putusan MK No 90/PUU-XXI/2023," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 1, no. 2 (2023): 127–40, <https://journal.forikami.com/index.php/nusantara/article/view/440>.

¹⁴ Muh Ridha Hakim, "Tafsir Independensi Kekuasaan Kehakiman Dalam Putusan Mahkamah Konstitusi/Interpretation of Judicial Power Independence in Constitutional Court Decisions," *Jurnal Hukum Dan Peradilan* 7, no. 2 (July 29, 2018): 279, <https://doi.org/10.25216/jhp.7.2.2018.279-296>.

¹⁵ Mariyadi Faqih, "Nilai-Nilai Filosofi Putusan Mahkamah Konstitusi Yang Final Dan Mengikat," *Jurnal Konstitusi* 7, no. 3 (May 20, 2016): 097, <https://doi.org/10.31078/jk734>.

¹⁶ Moh. Taufik and Muh. Harley Maulana, "Strengthening the Role and Function of the Honorary Court of the Indonesian People's Representative Council in Enforcing the Code of Ethics," *International Journal of Education, Language, Literature, Arts, Culture, and Social Humanities* 2, no. 2 (March 27, 2024): 01–12, <https://doi.org/10.59024/ijellacush.v2i2.761>.

maintaining and establishing the honor, nobility, dignity, and Code of Ethics for Constitutional Judges as stipulated in Article 1, number 3 PMK/No. 2/2014.¹⁷

In 2013, the Constitutional Court became the center of attention because the Corruption Eradication Commission (KPK) arrested Akil Mochtar, its inactive chairman.¹⁸ The legal cases that ensnared the Constitutional Judge did not stop in 2013.¹⁹ This continued with violations of the code of ethics for judges (hereinafter referred to as KEPPH) committed by the Chief Justice of the Constitutional Court, Arief Hidayat, and Constitutional Judge Patrialis Akbar.²⁰ The existence of a code of ethics that should be a reference for limitations and a reminder for Constitutional Judges always to maintain their behavior and morals is still violated. It seems to ignore the existence of its internal supervisory institution, namely the Honorary Assembly of the Constitutional Court (hereinafter referred to as the MKMK).²¹ Throughout the Constitutional Court's history, 2023 is the year that the most Constitutional Court judges have been ethically sanctioned. As many as 9 Constitutional Court judges were sentenced to ethical sanctions in the form of verbal reprimands, and Constitutional Court leaders were removed from their positions.²²

Decision number 90/PUU-XXI/2023, which changes the requirements for presidential and vice presidential candidacy for the 2024 election, was not unanimously accepted by the constitutional judges. Some constitutional judges conveyed different reasons (concurring opinions) and views (dissenting opinions). The various reasons were conveyed by constitutional judges Enny Nurbaningsih and Daniel Yusmic P Foekh. Meanwhile, four constitutional judges gave other views: Wahiduddin Adams, Saldi Isra, Arief Hidayat, and Suhartoyo. After the decision, several parties reported nine constitutional judges for alleged ethical violations. As a result, the Honorary Assembly of the Constitutional Court (MKMK) stated that the nine constitutional judges violated the Principles of

¹⁷ Nurul Qamar et al., "The Enforcement of the Regional House of Representatives in Indonesia: A Normative Review," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), <https://doi.org/10.1080/23311886.2023.2220235>.

¹⁸ Ayu Putriyana and Nur Rochaeti, "The Impact of Enforcement of Corruption Law by the Corruption Eradication Commission after the Ratification of the Latest KPK Law," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (September 28, 2021): 299, <https://doi.org/10.30641/dejure.2021.V21.299-310>.

¹⁹ Ahmad Sadzali, Jamaludin Ghafur, and Idul Rishan, "Holistic Supervision of the Judges of the Indonesian Constitutional Court," in *KnE Social Sciences*, 2023, <https://doi.org/10.18502/kss.v8i9.13377>.

²⁰ Andy Omara and Novira Maharani, "Mahkamah Konstitusi Post Judicial Review of the 11/2020 Job Creation Law: Toward Politization of Judiciary?," in *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)*, 2023, 615–23, https://doi.org/10.2991/978-2-38476-164-7_56.

²¹ Iwan Satriawan et al., "Judicial Appointment of German Bundesverfassungsgericht: Lesson for Indonesia," in *Proceedings of the International Conference on Sustainable Innovation on Humanities, Education, and Social Sciences (ICOSI-HESS 2022)* (Paris: Atlantis Press SARL, 2022), 138–56, https://doi.org/10.2991/978-2-494069-65-7_14.

²² Adelia Kartika et al., "Comparative Study of the Constitutions of Indonesia and China Regarding the Existence of Atheists," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 40–47, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article/view/19/4>.

Propriety and Decency as stated in the Code of Ethics and Conduct of Constitutional Judges (Sapta Karsa Utama).²³

This is stated in 4 decisions. First, the verdict No.5/MKMK/L/11/2023 with the reported judges Manahan MP Sitompul, Prof. Enny Nurbaningsih, Suhartoyo, Wahiduddin Adams, Daniel Yusmic Pancastaki Foekh, and Prof. M Guntur Hamzah who were sanctioned with a verbal reprimand. Second, the decision No.4/MKMK/L/11/2023 with the reported judge Arief Hidayat. Third, decision No.3/MKMK/L/11/2023 of the reported judge Saldi Isra, where both were also sanctioned with a verbal reprimand in terms of leaking confidential information from the judges' consultative meeting (RPH). Fourth, decision No.2/MKMK/L/11/2023 differs from the other three decisions, namely the special sanction of constitutional judge Anwar Usman in the form of dismissal from the position of Chairman of the Constitutional Court for committing serious violations.²⁴

The nine constitutional judges are considered responsible for the leak of confidential information on the RPH in cases related to the request to examine the age requirements for presidential and vice presidential candidates, especially in case Number 90/PUU-XXI/2023. The Constitutional Court stated that Article 40 paragraph (1) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court stipulates that the Constitutional Court session is open except for the RPH.²⁵

Through the MKMK decision No.2/MKMK/L/11/2023, Anwar Usman was dismissed from his position as Chairman of the Constitutional Court because it was questioned regarding the alleged conflict of interest. Anwar Usman was declared guilty of gross violations of the code of ethics because he did not resign in handling the material test case number 90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates (presidential and vice presidential candidates). The Honorary Assembly of the Constitutional Court stated that Anwar was proven to have committed serious violations of the code of ethics and behavior of constitutional judges as stated in the Sapta Karsa Utama principles of impartiality, the principle of integrity, the principle of competence

²³ Hanif Hardianto, Sri Wahyu Krida Sakti, and Meliza Meliza, "Masalah Batas Usia Calon Presiden Dan Calon Wakil Presiden: Studi Open Legal Policy Dalam Putusan MK No. 90/PUU-XXI/2023," *Jurnal Supremasi*, March 24, 2024, 15–27, <https://doi.org/10.35457/supremasi.v14i1.3313>.

²⁴ Yahya Lutfi Kurniawan et al., "Analisa Yuridis Dissenting Opinion Putusan Nomor 90/PUU XXI/2023Terkait Argumen Open Legal Policy Dan Etika Hakim MK," *Gudang Jurnal Multidisiplin Ilmu* 1, no. 6 (2023): 192–97, <https://doi.org/https://doi.org/10.59435/gjmi.v1i6.180>.

²⁵ Teisar Arkida and Sumarlam Sumarlam, "Recontextualization of the Constitutional Court's Decision on the Presidential Age Limit in @Kompascom and @TVOneNews," *International Journal of Humanities, Education, and Social Sciences* 2, no. 1 (January 14, 2024): 26–47, <https://doi.org/10.58578/ijhess.v2i1.2493>.

and equality, the principle of independence, and the principle of propriety and courtesy.²⁶

Anwar Usman, as the reported judge, by not resigning from the examination process and taking Decision Number 90/PUU-XXI/2023, was proven to have violated Sapta Karsa Utama, the Principle of Non-Partiality, the Application of number 5 letter b, and the Principle of Integrity, Application of number 2. He was also proven not to perform his judicial leadership function optimally, thus violating Sapta Karsa Utama, Principles of Proficiency and Equality, Application of number 5. Then, it was proven that it deliberately opened a space for outside intervention in the decision-making process No.90/PUU-XXI/2023, thus violating Sapta Karsa Utama, the Principle of Independence, and the application of numbers 1, 2, and 3. Then also, Anwar Usman's lecture on youth leadership at the Sultan Agung Islamic University of Semarang is closely related to the substance of the case regarding the age requirements for Presidential and Vice Presidential Candidates so it is proven to violate Sapta Karsa Utama, the Principle of Non-Partiality, and the application of number 4.²⁷

Anwar Usman's decision paved the way for his nephew, Gibran Rakabuming Raka, to become a vice presidential candidate. Decision 90 relaxes the minimum age requirement for presidential-vice presidential candidates by opening up opportunities for regional heads to advance in the contest even though they do not meet the criteria prescribed by law (at least 40 years old).²⁸

Furthermore, Anwar Usman was sanctioned to be dismissed from the position of Chief Justice of the Constitutional Court and has no right to run or be nominated as the leader of the Constitutional Court until his term as a constitutional judge ends. Anwar Usman is also not allowed to be involved or involved in the examination and decision-making in cases of disputes over the results of the Presidential and Vice Presidential Elections, the Election of Members of the House of Representatives, DPD, and DPRD, as well as the Elections of Governors, Regents, and Mayors that have the potential for conflicts of interest.²⁹

The difference between this study and the previous research lies in the object being studied if in the previous study entitled "The Involvement of the Judicial

²⁶ Alya Ghina Viedini, Cikita Alodia Rahmasari, and Sarah Shafira Kurniawan, "Antara Keadilan Dan Etika Politik: Mahkamah Konstitusi Dan Batas Usia Calon Presiden Dalam Perspektif Aksiologi," *Action Research Literate* 8, no. 1 (January 27, 2024), <https://doi.org/10.46799/ar.v8i1.242>.

²⁷ Nadir and Win Yuli Wardani, "The Evaluation Of Independent Norm Text and Impartial Judge on The Constitutional Court of Indonesia," *Sociological Jurisprudence Journal* 2, no. 1 (2019): 13–25, <https://doi.org/https://doi.org/10.22225/scj.2.1.835.13-25>.

²⁸ Rosa Ristawati and Radian Salman, "The Role of The Indonesian Constitutional Court in Preventing Social Conflict in A Diverse Society," *Constitutional Review* 9, no. 2 (December 31, 2023): 332, <https://doi.org/10.31078/consrev925>.

²⁹ Arif Sugitanata, "Dynamics of Constitutional Court Decisions Regarding The Age Limits of Presidential and Vice Presidential Candidates," *Qaumiyah: Jurnal Hukum Tata Negara* 4, no. 2 (December 31, 2023): 23–42, <https://doi.org/10.24239/qaumiyah.v4i2.79>.

Commission as a Supervisor of Constitutional Judges in the Honorary Assembly of the Constitutional Court (Study of the Constitutional Court's Decision Number 56/PUU-XX/2022)" examined the concept of the involvement of the Judicial Commission in the membership of the Honorary Assembly of the Constitutional Court as a supervisor of judges.³⁰ Meanwhile, this study examines the urgency of ethical supervision of Constitutional Court judges to realize the integrity of Constitutional Court judges. This is also contained in the previous study entitled "The Position and Implementation of the Authority of the Ethics Council of the Constitutional Court from the Fiqh Siyasah Perspective," examining the Position and Implementation of the Authority of the Ethics Council of the Constitutional Court in supervising constitutional judges from the perspective of Islamic Constitutional Law.³¹ Meanwhile, this study examines the urgency of ethical supervision of Constitutional Court judges to ensure their integrity.

With the existence of cases of ethical violations committed by Constitutional Court judges so that they receive sanctions ranging from light to severe, such as Anwar Usman, who committed grave breaches of the code of ethics and the code of conduct of constitutional judges, this gives a signal that supervision in judicial institutions such as the Constitutional Court has not been optimal. Therefore, it is necessary to conduct research related to the supervision of the ethics of Constitutional Court judges to provide input related to what policies can be carried out by the government to strengthen the process of ethical supervision of constitutional court judges so that the realization of a check and balances system in the Constitutional Court institution begins with the supervision of Constitutional Court judges.

Methods

This type of research is normative legal research. This study used statutory, case, and conceptual approaches.³² The approach to laws and regulations is used because of various legal rules that focus research on the supervision of ethics of judges of the Constitutional Court and other literature sources. The case approach is used because it will examine cases related to the legal issues faced, namely cases of violations committed by constitutional judges—the conceptual approach proceeds from the views, doctrines, and concepts that develop in legal science.

³⁰ Markoni Markoni, "The Relationship of The Judicial Commission with the Ideal Supreme Court," *Journal Research of Social Science, Economics, and Management* 1, no. 8 (March 15, 2022): 1176–87, <https://doi.org/10.59141/jrssem.v1i8.137>.

³¹ Dinda Putri, Sabillah Lubis, and Afifa Rangkuti, "Disparity of Constitutional Court Decisions on The Position of the Corruption Eradication Commission From the Fiqh Siyasah Perspective," *JLPH; Journal of Law, Politic and Humanities* 5, no. 1 (2024): 373–81, <https://doi.org/https://doi.org/10.38035/jlph.v5i1.812>.

³² Peter Mahmud Marzuki, *Penelitian Hukum*, 8th ed. (Jakarta: Jakarta : Kencana, 2013 Info Lainnya, 2013).

The legal materials used in this study are primary, secondary, and tertiary legal materials. The primary legal materials used in this study are laws and regulations, written norm provisions, and judges' decisions directly related to the discussion being studied. Meanwhile, the secondary legal materials used are doctrines in books, legal journals, and the internet. As well as tertiary legal materials in the form of legal dictionaries and journals used to support primary and secondary legal materials. The technique of collecting legal materials used in this study is a literature study. The method of analysis of legal materials used in this study is qualitative descriptive. The analysis used is a qualitative approach to primary data and secondary data.³³

Discussion

Juridical Implications of the Constitutional Court's Decision Number: 90/PUU-XXI/2023 on the Independence of Constitutional Court Judges

The Bangalore Principles of Judicial Conduct 2002 is a regulation designed to guide judges and the judiciary to regulate judicial conduct. The Bangalore Principles of Judicial Conduct 2002 has six principles of judicial conduct or judges: independence, impartiality, integrity, courtesy, equality, competence, and diligence. These principles guide judges' or judiciary's ethics and behavior. The Bangalore Principles of Judicial Conduct 2002 are intended to set standards of ethical conduct for judges.³⁴

Based on the decision of the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and vice presidential candidates, it appears that there is a violation of the principle of independence of Constitutional Court judges from the practice of allowing the practice of conflict of interest, be it the political interests of one of the parties, which in this decision there is a political interest from the relatives of the chief justice of the Constitutional Court who needs the Constitutional Court's decision to advance in the 2024 presidential election and the existence of this decision is allegedly influenced by the pressure of the executive ruler, namely the president whose son is nominated as a president under the age of 40 so he needs the decision to be able to run for office.³⁵ If judged from the principle of impartiality, it shows the partiality of the Constitutional Court judge towards the applicant because the

³³ Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), 167, <https://www.rajagrafindo.co.id/>.

³⁴ Saldi Isra and Pan Mohamad Faiz, "The Indonesian Constitutional Court: An Overview," in *Courts and Diversity* (Brill | Nijhoff, 2024), 55–94, https://doi.org/10.1163/9789004691698_004.

³⁵ Dian Fitri Sabrina and Brett Inder, "Concentration of Power in Nomination of Presidential Candidates in Indonesia," *Asian Journal of Comparative Politics* 7 (September 7, 2023): 1–13, <https://doi.org/10.1177/20578911231199530>.

interest of this decision affects the judge's family members, namely the nephew of the judge concerned.³⁶

In Sapta Karsa Hutama and the provisions in The Bangalore Principles of Judicial Conduct 2002, it is regulated that if a judge has a family relationship, the judge must resign as the judge who handles the case in question. In terms of neglect carried out by the judge in this case, the result is that there is no independence between one judge and another in making decisions, considering that the absence of a conflict of interest in this decision shows that all judges influence each other or do not give an assessment based on the facts that are assessed by themselves.³⁷

In the Constitutional Court Decision Number: 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates, it is proven that it violates the principles set out in Sapta Karsa Hutama and The Bangalore Principles of Judicial Conduct 2002 as seen in the MKMK's decision on the report of violations of the code of ethics by Constitutional Court judges in the case of judicial review of the age limit for presidential and vice presidential candidates, this is stated in 4 decisions, namely:³⁸ For Decision Number: 2/MKMK/L/11/2023 with the reported judge Anwar Usman, the content of the decision is:³⁹ First, the Reported Judge was proven to have committed a serious violation of the Code of Ethics and Conduct of Constitutional Judges as stated in the Sapta Karsa Hutama, the Principle of Non-Alignment, the Principle of Integrity, the Principle of Competence and Equality, the Principle of Independence, and the Principle of Propriety and Courtesy; Second, imposing sanctions of dismissal from the position of Chief Justice of the Constitutional Court to the Reported Judge; Third, order the Deputy Chief Justice of the Constitutional Court to within 2x24 hours from the completion of this Decision, to lead the election of a new leader in accordance with laws and regulations; Fourth, the Reported Judge is not entitled to run or be nominated as the leader of the Constitutional Court until the term of office of the Reported Judge as a Constitutional Judge ends; Fifth, the Reported Judge is not allowed to be involved or involved in the examination and decision-making in cases of disputes over the results of the Presidential and Vice Presidential Elections, the Election of Members of the House of Representatives, DPD, and

³⁶ Fuad Hasim, "Constitutional Court Ruling Number 90/PUU-XXI/2023 Regarding Aspects of Human Rights," *ANAYASA: Journal of Legal Studies* 1, no. 2 (January 21, 2024): 121–34, <https://doi.org/10.61397/ays.v1i2.98>.

³⁷ Abdul Kadir Jaelani and Resti Dian Luthviati, "The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (March 30, 2021): 31–42, <https://doi.org/10.53955/jhcls.v1i1.5>.

³⁸ Mellani Mugia Adhita, "Independensi Hakim Mahkamah Konstitusi Dalam Perkara Pengujian UU Yang Memuat Conflict of Interest Pada Putusan MK No 90/PUU-XXI/2023."

³⁹ Yoes C Kenawas, "The Irony of Indonesia's Democracy: The Rise of Dynastic Politics in the Post-Suharto Era," *Asian Journal of Comparative Politics* 8, no. 3 (September 29, 2023): 748–64, <https://doi.org/10.1177/20578911231195970>.

DPRD, as well as the Election of Governors, Regents, and Mayors that have the potential for conflicts of interest.

For Decision Number 3/MKMK/L/11/2023 with the reported judge Saldi Isra, the content of the decision is as follows:⁴⁰ First, the Reported Judge is not proven to have violated the Code of Ethics and Conduct of Constitutional Judges as long as it relates to dissenting opinions. Second, the Reported Judge, together with other judges, is proven to have violated the Code of Ethics and Conduct of Constitutional Judges as stated in Sapta Karsa Utama, the Principle of Propriety and Decency as far as it concerns the leakage of confidential information of the Judges' Consultative Meeting and the neglect of the practice of conflict of interest of the Constitutional Judges in handling cases; Third, imposing collective verbal reprimand sanctions against Reported Judges and other Constitutional Judges.

For Decision Number: 4/MKMK/L/11/2023 with the reported judge Arief Hidayat. The content of the decision is:⁴¹ First, the Reported Judge is not proven to have violated the Code of Ethics and Conduct of Constitutional Judges as long as it is related to dissenting opinions; Second, the Reported Judge was proven to have violated Sapta Karsa Utama, the Principles of Propriety and Decency as long as it relates to statements in public spaces that degrade the dignity of the Constitutional Court and impose a written reprimand; Third, the Reported Judge together with other judges is proven to have violated the Code of Ethics and Conduct of Constitutional Judges as stated in Sapta Karsa Utama, the Principles of Propriety and Decency as far as it concerns the leakage of confidential information of the Judges' Consultative Meeting and the neglect of the practice of conflict of interest of the Constitutional Judges in handling the case and imposing the sanction of collective oral reprimand against the Reported Judge and the Constitutional Judge Other.

For Decision No.5/MKMK/L/11/2023 with the reported judges Manahan MP Sitompul, Prof. Enny Nurbaningsih, Suhartoyo, Wahiduddin Adams, Daniel Yusmic Pancastaki Foekh, and Prof. M Guntur Hamzah. The content of the decision is as follows: First, the Reported Judges are jointly proven to have violated the Code of Ethics and Conduct of Constitutional Judges as stated in Sapta Karsa Utama, Principles of Propriety and Courtesy; Second, imposing a collective verbal reprimand sanction on the Reported Judges.⁴²

⁴⁰ Wahyu Wiji Utomo, "Perspektif Rasional Choice Dan Nepotisme Pada Perubahan Pasal 169 Huruf Q Undang-Undang Nomor 7 Tahun 2017 Tentang Batas Usia Calon Presiden Dan Wakil Presiden," *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik, Dan Humaniora* 8, no. 1 (February 5, 2024): 349, <https://doi.org/10.31604/jim.v8i1.2024.349-359>.

⁴¹ Febriansyah Ramadhan and Ilham Dwi Rafiqi, "Study of Constitutional Court Decisions Cancelling All Norms in The Law," *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (July 28, 2021): 286–308, <https://doi.org/10.22219/ljih.v29i2.15434>.

⁴² Rayhan Azryal Syahputra, "Etika Profesi Hakim Mk Terhadap Kode Etik Hakim Mk Dalam Putusan Mk No. 90/Puu-Xxi/2023," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 1, no. 2 (2023): 34–51, <https://journal.forikami.com/index.php/nusantara/article/view/416>.

The decision of the Honorary Assembly of the Constitutional Court (MKMK) regarding 9 (nine) judges who violated the code of ethics is based on a series of findings that indicate a serious violation of the principles of ethics and integrity that constitutional judges should uphold.⁴³ The results of the MKMK investigation revealed that in the Constitutional Court Decision No. 90/PUU-XXI/2023 decision-making process, the judges had shown behavior that was not in accordance with the expected ethical standards. One of the main findings indicates a violation of the principle of impartiality, where the judges cannot maintain a neutral and objective attitude in handling the case. This is exacerbated by the alleged conflict of interest, where some judges are suspected of having relationships or interests that can affect the objectivity of their decisions.⁴⁴

The evidence collected also shows inappropriate communication between the judge and parties outside the trial. This kind of communication has the potential to influence the verdict and violates the principles of confidentiality and independence of judges.⁴⁵

Muhammad Ali Safa'at, a Professor of Constitutional Law at the Faculty of Law, Universitas Brawijaya, explained that there are four problems in the Constitutional Court Decision Number 90/PUU-XXI/2023, namely: Adding norms is not included in testing existing norms to be judged constitutional or unconstitutional; The Constitutional Court's decision cannot be separated from the political atmosphere because this decision is entering the stage of presidential and vice presidential candidacy; the Constitutional Court's decision Number 90/PUU-XXI/2023 was decided not unanimously because there was a Dissenting Opinion and concurring opinion between panels of judges; Considerations of several judges outlined in Dissenting Opinion and concurring opinion which is unusual in several Constitutional Court Decisions.⁴⁶ According to I Dewa Gede Palguna, the issue of the age limit should be Legal Policy. The law and the Constitutional Court do not enter there because of the realm of lawmakers. Mahfud MD argued that the Constitutional Court's decision was fundamentally wrong; the Constitutional Court was a negative legislator, so theoretically, it could not be decided.⁴⁷

⁴³ Nuraini Nuraini and Mhd Ansori, "Politik Hukum Kekuasaan Kehakiman Di Indonesia," *Wajah Hukum* 6, no. 2 (October 14, 2022): 426, <https://doi.org/10.33087/wjh.v6i2.1075>.

⁴⁴ Robi Assadul Bahri, "Perilaku Hakim Konstitusi Dalam Mengadili Gugatan Batas Usia Calon Presiden Dan Calon Wakil Presiden Menurut Aliran Filsafat Sociological Jurisprudence," *Jurnal Penelitian Hukum Galunggung* 1, no. 11 (2024): 1–17, <https://jurnal.sthg.ac.id/index.php/jurnal/article/view/15>.

⁴⁵ Linda novi Trianita, "5 Organisasi Sipil Sebut Putusan MK Ada Konflik Kepentingan," *Tempo.Co*, October 17, 2023, <https://nasional.tempo.co/read/1785132/5-organisasi-sipil-sebut-putusan-mk-ada-konflik-kepentingan>.

⁴⁶ Rizky Suryarandika, "Kontroversi Putusan MK, Eks Pegawai KPK: Dinasti Politik Rawan Korupsi," *Republika Online*, October 17, 2023, <https://news.republika.co.id/berita/s2nw2m330/kontroversi-putusan-mk-eks-pegawai-kpk-dinasti-politik-rawan-korupsi>.

⁴⁷ Juli Hantoro, "Mahfud Md Sebut Serahkan Soal Putusan MK Yang Janggal Ke Majelis Kehormatan," *Tempo.Co*, October 23, 2023, <https://nasional.tempo.co/read/1787736/mahfud-md-sebut-serahkan-soal-putusan-mk-yang-janggal-ke-majelis-kehormatan>.

Based on the opinions of these legal experts, according to the author in the Constitutional Court decision Number: 90/PUU-XII/2023 regarding the age limit for presidential and vice presidential candidates, there is a defect that leads to a violation of the code of ethics by Constitutional Court judges during the trial process of the Constitutional Court decision Number: 90/PUU-XII/2023. The independence of the Constitutional Court as a judicial power is weakened or even lost when constitutional judges, individually or jointly, have an interest, either directly or indirectly, in the decisions being read.

The juridical implication of the Constitutional Court's decision Number: 90/PUU-XII/2023 on the independence of Constitutional Court judges is the loss of the independence of Constitutional Court judges during the trial in deciding the case.⁴⁸ This resulted in the issuance of the MKMK decision on four reports of violations of the code of ethics in determining the Constitutional Court decision Number: 90/PUU-XII/2023 regarding the age limit for presidential and vice presidential candidates. The MKMK's decision on the report of a violation of the code of ethics by Constitutional Court judges in the case of judicial review of the age limit for presidential and vice presidential candidates is: First, Decision Number: 2/MKMK/L/11/2023; Second, Decision Number: 3/MKMK/L/11/2023; Third, Decision Number: 4/MKMK/L/11/2023; Fourth, Decision Number: 5/MKMK/L/11/2023.⁴⁹

The essence of the four decisions is that all Constitutional Court judges who set decisions related to the age limit for presidential and vice presidential candidates are proven to have violated the code of ethics. The Chairman of the Constitutional Court, Anwar Usman, was proven to have committed a serious violation of the code of ethics, and the others were jointly proven to have violated the Code of Ethics and Conduct of Constitutional Judges as stated in the *Sapta Karsa Utama*, the Principles of Decency and Courtesy.

According to Jimly Ashidiqie, chairman of the MKMK, this MKMK decision shows that Decision No. 90 has procedural and substantial legal defects. Anwar Usman's behavior violates the code of ethics and the principles of partiality, integrity, proficiency, equality, independence, propriety, and courtesy.⁵⁰

Based on this, namely with the existence of ethical violations committed by Constitutional Court judges resulting in the loss of independence of Constitutional

⁴⁸ Fersianus Waku, "Ahmad Basarah Kritisi Putusan MK Terkait Syarat Cawapres Pernah Menjadi Kepala Daerah," *TribunNews,Com*, October 17, 2023, <https://www.tribunnews.com/mata-lokal-memilih/2023/10/17/ahmad-basarah-kritisi-putusan-mk-terkait-syarat-cawapres-pernah-menjadi-kepala-daerah>.

⁴⁹ Iwan Satriawan et al., "An Evaluation of The Selection Mechanism of Constitutional Judges in Indonesia and South Korea," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 1 (2023): 121, <https://doi.org/10.22304/pjih.v10n1.a7>.

⁵⁰ Ngudi Astuti and Dewi Setyarini, "Advancement of Gibran in Political Contestation As Vice President of The 2024 Election in The Perspective of Political Ethics of The Indonesian Nation," *Journal of Social Science (JoSS)* 3, no. 1 (February 12, 2024): 1174–95, <https://doi.org/10.57185/joss.v3i1.273>.

Court judges, this signals that supervision in judicial institutions such as the Constitutional Court has not been optimal. The emergence of cases regarding violations of the code of ethics of constitutional judges has presented an urgency to reorganize the supervision system and institutional management of the Constitutional Court optimally and efficiently, namely to realize the integrity of the Constitutional Court judges.

The Urgency of Regulating Ethical Supervision of Judges of the Constitutional Court

There were violations of the code of ethics for judges committed by several Constitutional Court judges, including violations committed by the inactive Chairman of the Constitutional Court, Akil Mochtar, Arief Hidayat, and Patrialis Akbar.⁵¹ In 2023, The Nine Constitutional Court judges were sentenced to ethical sanctions in the form of verbal reprimands, and the leader of the Constitutional Court, Anwar Usman, was removed from his position. The existence of cases of ethical violations committed by the Constitutional Court judges signals that supervision in judicial institutions such as the Constitutional Court has not been optimal. The emergence of cases regarding violations of the code of ethics has presented an urgency to reorganize the supervision system and institutional management of the Constitutional Court optimally and efficiently to create a check and balance mechanism. "The main cause of weak law enforcement in Indonesia is the low morality and integrity of law enforcement officials."⁵²

Efforts to strengthen the principle of Checks and Balances need to be carried out through the supervision of Constitutional Judges.⁵³ The form of supervision is divided into two types: internal supervision and external supervision. Internal supervision is supervision carried out by an organ that is organizationally/structurally included in the government environment itself, such as supervision carried out by superior officials over their own subordinates. External supervision is carried out by organs or institutions organizationally/structurally outside the institution. Ideally, the Constitutional Court needs both internal and external supervision to protect the dignity of the judiciary.⁵⁴

⁵¹ Omara and Maharani, "Mahkamah Konstitusi Post Judicial Review of the 11/2020 Job Creation Law: Toward Politization of Judiciary?," 617.

⁵² Purnama Ayu Rizky, "Pernikahan Politik Indonesia (Studi Kasus Pernikahan Adik Jokowi Dan Ketua Mahkamah Konstitusi)," *POLITICOS: Jurnal Politik Dan Pemerintahan*, 2, no. 2 (2022): 104–13, <https://www.ejournal.warmadewa.ac.id/index.php/politicos/article/view/5265/3841>.

⁵³ Tohadi and Dian Eka Prastiwi, "Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks and Balances," *RechtsVinding: Media Pembinaan Hukum Nasional* 11, no. April (2022): 19–36.

⁵⁴ Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 153, <https://doi.org/10.33331/rechtsvinding.v11i1.867>.

The Constitutional Court's internal supervision was previously regulated based on PMK Number 2 of 2014, carried out by the permanent Ethics Council and the Honorary Assembly of the Constitutional Court, which is ad hoc. Then amended by PMK Number 1 of 2023 where there is only one internal supervisory institution, MKMK, which is permanent with a term of office of 3 (three) years or is ad hoc per what is specified in the RPH. The composition of the MKMK membership also raises a polemic, where it is questioned why the MKMK has an element of active judges. The MKMK should be independent of supervising judges.⁵⁵

For this reason, there needs to be a normative update regarding the strengthening of internal supervisory institutions to increase the strengthening of the code of ethics and behavior of Constitutional Judges, namely by removing the element of active constitutional judges in Article 27A of the Constitutional Court Law and Article 4 of PMK Number 1 of 2023 concerning the Honorary Assembly of the Constitutional Court.⁵⁶ It is feared that there will be a conflict of interest where the object of supervision is the Constitutional Judge, who the Constitutional Judge supervises, and his authority comes from the PMK formed by the Constitutional Judge so it seems that he is the one who examines and adjudicates his own colleagues. In addition, the involvement of Constitutional Judges will cause an overlap of powers and interfere with the implementation of the duties of Constitutional Judges.⁵⁷

With cases of ethical violations committed by Constitutional Court judges, internal supervision in judicial institutions such as the Constitutional Court has not been optimal. Therefore, external supervision needs to be carried out by other institutions. Establishing external institutions is not a new idea in the supervision of an institution or organization. In the constitutional system, this is not strange because, for example, many external institutions have been formed, such as the Judicial Commission, which oversees the Supreme Court, and the Press Council, which supervises journalism. Efforts in carrying out supervision are definitely carried out to maintain the dignity of the Constitutional Court *as the guardian of the Constitution and the sole interpreter of the Constitution*.⁵⁸

The Constitutional Court through the New Print Building, the Constitutional Court Chapter IV realizes accountability and transparency of the Constitutional

⁵⁵ I. Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, and Abdul Kadir Jaelani, "Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia," *Bestuur* 7, no. 1 (2019): 36–46, <https://doi.org/10.20961/bestuur.v7i1.42700>.

⁵⁶ Arkida and Sumarlam, "Recontextualization of the Constitutional Court's Decision on the Presidential Age Limit in @Kompascom and @TVOneNews."

⁵⁷ Yudi Widagdo Harimurti et al., "Democratic Education on the Village Consultative Body Election in Bangkalan," *Journal of Social Studies Education Research* 11, no. 2 (2020): 84–110, <https://doi.org/jsser.org/index.php/jsser/article/view/2020>.

⁵⁸ Simon Butt and Prayekti Murharjanti, "What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia," *International Journal of Constitutional Law* 20, no. 1 (July 27, 2022): 428–53, <https://doi.org/10.1093/icon/moac014>.

Court Part B, which explains the Strategic Objectives of the Constitutional Court, stating:⁵⁹

"The Constitutional Court has a strategic role in the constitutional system, which is reflected in the authorities it has ... for this reason, the Constitutional Court needs to supervise the integrity and behavior of judges to external parties who have authority. The Judicial Commission, juridically, has the authority to supervise judges both in the general judiciary and the Constitutional Court."

Regarding the position of the Judicial Commission as the external supervisor of the Constitutional Judge, Jimly Asshiddiqie stated:⁶⁰

"Based on the literal interpretation, constitutional judges are also included in the definition of judges who are supervised according to the provisions of Article 24B paragraph (1) of the 1945 Constitution. Therefore, the UUKY broadly adheres to this last meaning, which is to interpret the word 'judge' in Article 24B paragraph (1) of the 1945 Constitution to include all judges within the Supreme Court and all judges in the Constitutional Court. Thus, the KY functions as a supervisory institution of the Constitutional Court, through its authority to maintain and uphold the honor, dignity, and behavior of constitutional judges as they should."

M. Laica Marzuki also stated:⁶¹

"The Constitution gives authority to the Judicial Commission to maintain and enforce the honor, dignity, and behavior of judges; this is related to the authority of the commission to supervise the behavior of judges; the supervisory authority also applies to constitutional judges."

Based on the provisions of the Constitutional Court in the New Print and the opinions of legal scholars, the Constitutional Court is open to external supervision of judges' integrity and behavior, so it is necessary to establish independent external supervision with an objective institutional structure.⁶²

Supervision of Constitutional Judges and the institution of the Constitutional Court externally is still necessary and is absolute. Although judges have independence, independence of judicial or judicial power is not allowed absolutely. The supervision of judges involves two institutions, namely internal supervisors and external supervisors. So, it is necessary to establish an external institution of the Constitutional Court to supervise the integrity of constitutional judges; as for this external institution, the author proposes that it is hoped that in supervising the integrity of constitutional judges, this external supervisory institution is active and

⁵⁹ Encik Muhammad Fauzan, *Hukum Tata Negara Indonesia* (Malang: Setara Press, 2016), 217–18.

⁶⁰ Jimly Asshiddiqie, *Konstitusi Bernegara Praksis Kenegaraan Bermartabat Dan Demokratis*, Kedua (Jakarta: Setara Press, 2016), 157.

⁶¹ Wahyuni, "Pola Simbiotik Negara Dan Agama Dalam Perspektif Perbandingan Hukum Tata Negara Indonesia," *Qaumiyyah: Jurnal Hukum Tata Negara* 2, no. 2 (2023): 229–42, <https://doi.org/10.24239/qaumiyyah.v2i2.37>.

⁶² Luthfi Widagdo Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia," *Jurnal Konstitusi* 15, no. 1 (March 29, 2018): 1, <https://doi.org/10.31078/jk1511>.

not just waiting for reports from the public. As an external supervisory institution, it is expected to have the task of supervising not only constitutional judges but also supervising the secretary general of the Constitutional Court.⁶³

One of the mechanisms that can be carried out to realize and strengthen integrity can be implemented by reconstructing the supervision of judges, especially internal supervision. So far, the existing supervision has not realized optimal integrity, evidenced by the many cases of ethical violations committed by judges.⁶⁴ Another thing that causes this lack of optimal internal supervision is the absence of external supervision in supervising constitutional judges. Basically, the presence of supervisory institutions such as the MKMK, as outlined in PMK Number 1 of 2023 concerning the Honorary Assembly of the Constitutional Court, has many shortcomings that must be corrected immediately, as explained in the previous discussion. And the need for an external supervisory agency. Based on this, it is hoped that the judge's integrity will be realized and can avoid abuse of authority.

Comparison of Supervision Arrangements for Judges of the Constitutional Court

Based on PMK No. 2 of 2014, the MKMK and the Ethics Council supervise constitutional judges.⁶⁵ The Ethics Council is a tool formed by the Constitutional Court permanently to maintain and enforce the honor of judges related to reports of alleged violations by Constitutional Judges, in this case, reported/suspected judges, from the public.⁶⁶ On the other hand, the MKMK is a tool formed by the Constitutional Court on the proposal of the Ethics Council in case of a serious violation by the reported judge. In other words, MKMK is *Hoc*. Meanwhile, based on PMK No. 1 of 2023, supervision of Constitutional Judges is carried out only by the Honorary Assembly of the Constitutional Court, which is permanent for a term of office of 3 (three) years or *Hoc* specified in the RPH.⁶⁷ The following is a comparison table of PMK No. 2 of 2014 and PMK No. 1 of 2023:

⁶³ Nurus Zaman et al., "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates," *PETTITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 2 (2024): 611–29, <https://doi.org/10.22373/petita.v9i2.299>.

⁶⁴ Sinta Devi Ambarwati, M. Roziq Saifulloh, and Stella M.S. Aritonang, "Rekonstruksi Sistem Presidential Threshold Dalam Sistem Pemilu Di Indonesia," *Jurnal Hukum Lex Generalis* 1, no. 5 (August 17, 2020): 80–95, <https://doi.org/10.56370/jhlg.v1i5.213>.

⁶⁵ Fritz Edward Siregar, "Between the People and the Populists: Safeguarding Judicial Independence in a Changing World," *Constitutional Review* 10, no. 1 (May 31, 2024): 170, <https://doi.org/10.31078/consrev1016>.

⁶⁶ Wiryanto Wiryanto et al., "Reconstruction of Ethics Supervision System Towards Constitutional Court Justice," *Constitutional Review* 3, no. 1 (August 2, 2017): 43, <https://doi.org/10.31078/consrev313>.

⁶⁷ Agnes Harvelian et al., "Interpretation of the Constitution on the Arrangement of State-Owned Enterprises in the National Economic System Based on the Decision of the Constitutional Court," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (June 30, 2023): 171–88, <https://doi.org/10.19109/nurani.v23i1.17109>.

Table 2. Comparison of PMK No. 2 of 2014 and PMK No. 1 of 2023

PMK No. 2 of 2014	PMK No. 1 of 2023
The MKMK and the Ethics Council carry out supervision.	MKMK carries out supervision.
Membership: One Constitutional Judge, one member of the Judicial Commission, one former Constitutional Judge, one Professor in the field of law, and one community leader.	Membership: One Constitutional Judge, one community leader, and one academic with a background in the field of law.
The formation of the MKMK is <i>ad hoc</i> , based on the Ethics Council's proposal submitted in writing to the Constitutional Court, accompanied by a proposal to dismiss the Reported Judge or Suspected Judge.	The Honorary Assembly of the Constitutional Court is permanent for a term of office of 3 (three) years or is <i>ad hoc</i> as determined in the RPH.
The object of the MKMK is the Report from the Ethics Council. Object of the Ethics Council Report and/or information on alleged violations	The object of the Honorary Assembly's examination is the alleged violation of the Code of Ethics and the Code of Conduct of Constitutional Judges, as referred to in Article 10, which can be in the form of reports or findings.

Source: *Compiled by the author based on the substance of PMK No. 2 of 2014 and PMK No. 1 of 2023*

Based on the table above, the composition of MKMK membership in PMK No. 2 of 2014 and PMK No. 1 of 2023 both contain elements of active members of the Constitutional Court, which, according to the author, needs to be updated to remove the composition of active constitutional judges. It is feared that there will be a conflict of interest where the object of supervision is the Constitutional Judge, who the Constitutional Judge supervises. His authority comes from the PMK formed by the Constitutional Judge, so it seems that he is the one who examines and adjudicates his colleagues.⁶⁸

Based on the table above, it can also be seen in PMK No. 1 of 2023 that the object of the Honorary Assembly's examination is the alleged violation of the Code of Ethics and Conduct of Constitutional Judges as referred to in Article 10, which can be in the form of reports or findings.⁶⁹ The report, as referred to, is a letter of report on allegations submitted by the Complainant to the Honorary Assembly regarding alleged violations of the Code of Ethics and the Code of Conduct for Constitutional Judges committed by the Reported Judge.⁷⁰ The findings, as intended, are allegations of violations of the provisions of the Code of Ethics and

⁶⁸ Novan Mahendra Pratama, "The Recovery of Constitutional Losses by The Constitutional Court," *Trunojoyo Law Review* 2, no. 2 (August 1, 2020): 126–39, <https://doi.org/10.21107/tlr.v2i2.9501>.

⁶⁹ Berlian Three et al., "A Comparison of Religious Freedom Guarantees for Adherents of Local Religions Between Indonesia and Japan," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 15–28, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article>.

⁷⁰ Georg Vanberg, "Constitutional Courts in Comparative Perspective: A Theoretical Assessment," *Annual Review of Political Science* 18, no. 1 (May 11, 2015): 167–85, <https://doi.org/10.1146/annurev-polisci-040113-161150>.

the Code of Conduct for Constitutional Judges obtained through mass media reports, both print and electronic, and/or from the wider community.⁷¹

According to the author, based on these provisions, the Honorary Assembly of the Constitutional Court (MKMK) does not have the authority to actively seek facts related to the causes of constitutional judges' violations of the code of ethics.⁷² In other words, it passively waits for public reports and/or findings. This is because, to examine cases related to alleged violations of the code of ethics, the MKMK can only wait for reports from individuals, groups of people, institutions, or organizations and findings through mass media reports, both print and electronic, and/or from the wider community. According to the author, this situation can imply causing a suboptimal performance of MKMK supervision because it is appropriate that even if the public does not report it, the MKMK can also examine alleged violations by the Constitutional Judge.

Conclusion

The implication of the Constitutional Court Decision Number: 90/PUU-XXI/2023 on the independence of Constitutional Court judges is that there is a defect that leads to a violation of the code of ethics by Constitutional Court judges during the trial process of the decision, resulting in the loss of independence of Constitutional Court judges, and the issuance of four Constitutional Court decisions on reports of violations of the code of ethics. The essence of the four decisions is that all Constitutional Court judges who set decisions related to the age limit for presidential and vice presidential candidates are proven to have violated the code of ethics. The Constitutional Court Judges received light to severe sanctions. This gives a signal that supervision in judicial institutions such as the Constitutional Court has not been optimal. The emergence of cases regarding violations of the code of ethics of constitutional judges has presented an urgency to reorganize the supervision system and institutional management of the Constitutional Court optimally, both internal supervision and the need for external supervision carried out by other institutions. To create a check and balance mechanism for efforts to realize the integrity of Constitutional Court judges.

Based on the previous descriptions, to realize optimal supervision of constitutional judges, it is necessary to reorganize the supervision system of the Constitutional Court. There is a need for a normative update regarding the strengthening of internal supervisory institutions to increase the strengthening of the code of ethics and behavior of Constitutional Judges, namely the holding of a

⁷¹ Surya Anogara et al., "Analysis of the Mechanism for Dismissal of Judges of the Constitutional Court by the House of Representatives of the Republic of Indonesia," in *KnE Social Sciences*, 2024, <https://doi.org/10.18502/kss.v8i21.14765>.

⁷² Makmur Pakpahan and Setia Putra, "The Political Reconstruction of Legal Completion Decision Execution Through Strengthening of Supervision Functions Strategy in a Supreme Court," in *Proceedings of the Riau Annual Meeting on Law and Social Sciences (RAMLAS 2019)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/assehr.k.200529.292>.

revision of the Constitutional Court Law and Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Assembly of the Constitutional Court by removing the element of active constitutional judges in Article 27A of the Constitutional Court Law and Article 4 of PMK Number 1 of 2023 concerning the Honorary Assembly of the Constitutional Court. It is necessary to give authority to the MKMK to actively supervise without waiting for reports or findings, and external supervision needs to be carried out by other institutions.

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