



The Relevance of Violations of the Code of Ethics and the Independence of Constitutional Judges in Indonesia (Study Decision Number: 2/MKMK/L/11/2023)

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Abstract

The issue of violations of the code of ethics committed by the nine constitutional judges and serious violations committed by the chairman of the constitutional court, has tarnished the image of law enforcement in Indonesia. This problem has an impact on the independence of constitutional judges in Indonesia which influences their decisions. This research aims to analyze and examine the relevance of violations of the code of ethics and dependencies constitutional judges in Indonesia who have been decided by the Honorary Court of the Constitutional Court (MKMK) in decision Number: 2 /MKMK/L/11/2023, dated 7 November 2023. In particular, this research will answer the problem of how violations of the code of ethics are committed by judges. constitution in Indonesia? and what is the relevance of violations of the code of ethics and dependencies constitutional judge in Indonesia? The research method used is a normative juridical research method. The research results concluded that violations of the code of ethics committed by Anwar Usman included not resigning from the process of examining and making Decision Number 90/PUU-XXI/2023, Anwar Usman as chairman of the Constitutional Court was proven not to have carried out his leadership function optimally. Furthermore, the violation of the code of ethics of all Constitutional Judges shows their inability to maintain confidentiality in closed Judge Deliberation Meetings. Violations of the code of ethics by constitutional judges and the chief justice of the Constitutional Court show that the independence of constitutional judges in Indonesia is currently weak, especially regarding interventions based on the interests of families or certain groups.

Keywords: *Violation of the Code of Ethics; Independence; Authority; Constitutional Justice*

Introduction

The history of the formation of the constitutional court, which became known in Indonesia as the Constitutional Court (MK), cannot be separated from the mechanism for reviewing laws by the judiciary (*judicial review*) in the monumental case of *Marbury v Madison* (1803) which was decided by the United States supreme court under led by John Marshall (Suprancio, 2014). This case relates to the process of appointing high-ranking government officials, where the procedure for appointing *Justices of the Peace* requires completion within the President's term of office, that is, the official appointment must be carried out while the President is still active in carrying out his duties. The problem was that the appointment of

William Mambury was not completed because President John Adam's term of office had ended before officially appointing Marbury. In its development, countries in Europe began to develop *judicial review mechanisms* by giving this authority to the judiciary (Faiz & Chakim , 2020) . Historically, the idea of forming a constitution as a separate institution for the Supreme Court was openly introduced by Hans Kelsen, a lawyer from Austria, this idea was conveyed when he was appointed as a member of the Austrian Constitutional reform institution (*Chancellery*) in 1920. The Austrian Constitutional Court (*Verfassungsgerichtshoft*) was then formed as a judiciary in 1920 (Faiz & Chakim, 2020) . This historical fact later became the forerunner to the emergence and formation of the Constitutional Court in Indonesia.

The MK in Indonesia is one of the administrators of judicial power (Judicial) which was established in 2003. The formation of the MK in Indonesia is based on the provisions of statutory regulations, namely Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) which determines that;

"Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, state administrative court, and by a Constitutional Court."

The establishment of the Constitutional Court in Indonesia is related to the aim of the Republic of Indonesia, namely to provide protection and certainty of legal rights to every Indonesian citizen without discrimination. (Soemarsono, 2017) The protection of legal rights which is the authority of the Constitutional Court based on the provisions of Article 24C of the 1945 Constitution of the Republic of Indonesia has specifically determined the authority of the Constitutional Court, namely conducting judicial reviews, deciding disputes over election results, deciding on the dissolution of political parties and deciding the authority of state institutions whose authority comes from the Constitution. NRI in 1945. The Constitutional Court was formed with the aim of providing protection for the rights of citizens and enforcing the law, requiring an institution called judicial power, judicial power in practice is held by the state judicial body (Asnawi, 2016) . As with judicial institutions in general, the Constitutional Court has the authority to examine, adjudicate, decide and resolve cases submitted by people seeking justice (Mustofa, 2013) .

The formation of the Constitutional Court in Indonesia when viewed from the amendments to the 1945 Constitution of the Republic of Indonesia can be seen that the Constitutional Court was formed during the 3rd (three) amendment, then specifically , judicial power was also regulated in "Law no. 48 2009 concerning Judicial Power , thus UU no. 48 of 2009 ” is an organic law (Sahlan, 2016) , as well as law enforcement guidelines for judicial institutions in Indonesia. Article 18 of Law No. 48 of 2009, states that *"Judicial power is exercised by a Supreme Court and judicial bodies located in below in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court."*

The Constitutional Court contains 9 (nine) constitutional judges, 3 (three) of whom are nominated by the Supreme Court (MA) as a judicial institution, 3 (three) people are nominated by the People's Representative Council (DPR) as a legislative institution, and 3 (three) three) people were proposed by the President as executive institutions, (Muhammad Reza Maulana, 2018) and then based on this proposal, constitutional judges were appointed by the President based on the provisions of Article 24C paragraph 3 of the 1945 Constitution of the Republic of Indonesia. The nine constitutional judges are bound by one Code of Ethics and Behavior for Judges the Constitution as stated in " Sapta Karsa Utama, Principle of Impartiality, Principle of Integrity, Principle of Competence and Equality, Principle of Independence, and Principle of Appropriateness and Politeness."

MK Judge who is *the Guardian of the Constitution* (Ahmad Ahmad, 2020) must be honest, trustworthy, chivalrous, sportive , disciplined, hardworking, independent, impartial, serving, maintaining the dignity of the Constitutional Court, and responsible (Wiryanto, 2016) . All of these

criteria have been regulated in a Code of Ethics and Behavior for Constitutional Judges contained in the Sapta Karsa Utama. The problem that arises now is when the Constitutional Court exercises one of its powers, namely reviewing laws against the 1945 Constitution of the Republic of Indonesia or *Judicial Review* (JR). The JR submission was made by a student through his attorney, who essentially asked the Constitutional Court to declare the provisions of Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections, which has been amended by Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2017. 2022 as long as "you are at least 40 (forty) years old;" " contradicts the 1945 Constitution of the Republic of Indonesia conditionally and has no binding legal force as long as it is not interpreted to mean... or experience as a Regional Head at both the Provincial and Regency/City Levels. "

Based on JR's petition, the Constitutional Court decided through decision "Number 90/PUU-XXI/2023 on 16 October 2023" that Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Additional Gazette Republic of Indonesia Number 6109) which states that "a minimum of 40 (forty) years of age" is contrary to the 1945 Constitution of the Republic of Indonesia. Based on this decision, the provisions of " Article 169 letter q of Law Number 7 of 2017 concerning "The full General Election states that you must be at least 40 (forty) years old or have/are currently holding positions elected through general elections, including regional head elections. "

This decision then received opposing responses from various groups, which then formed the Honorary Council of the Constitutional Court (MKMK) consisting of " Jimly Asshiddiqie as Chairman and Member, Wahiduddin Adams, as Secretary and Member, and Bintan R. Saragih, as Member. " Furthermore, the MKMK examined and decided in decision Number: 2 /MKMK/L/11/2023, dated 7 November 2023" which essentially stated that the Chief Justice of the Constitutional Court as the respondent was proven to have committed a serious violation of the " Code of Ethics and Conduct of Constitutional Judges as stated in the Sapta Karsa Utama, Principle of Impartiality, Principle of Integrity, Principle of Competence and Equality, Principle of Independence, and Principle of Appropriateness and Politeness ". Furthermore, based on this, the chairman of the Constitutional Court, Anwar Usman, was sentenced to be dismissed from his position as chairman of the Constitutional Court and may not be renominated as chairman of the Constitutional Court for the remainder of his term as judge. Another sanction is that Anwar Usman is not allowed to participate in examining and deciding election result disputes that have the potential for conflicts of interest.

Based on this description, it can be seen that the MKMK's decision regarding the issue of serious violations of the code of ethics committed by the chairman of the constitutional court has tarnished the image of law enforcement in Indonesia. This problem has an impact on the independence of constitutional judges in Indonesia which influences their decisions. This research aims to analyze and examine the relevance of violations of the code of ethics and dependencies constitutional judges in Indonesia who have been decided by the Honorary Court of the Constitutional Court (MKMK) in decision Number: 2 /MKMK/L/11/2023, dated 7 November 2023. In particular, this research will answer the problem of how violations of the code of ethics are committed by judges. constitution in Indonesia? and what is the relevance of violations of the code of ethics and dependencies constitutional judge in Indonesia? Based on the preliminary description and formulation of the problem, this research aims to find out what forms of violations of the code of ethics are committed by constitutional judges in Indonesia and find out about the relevance of violations of the code of ethics and dependencies. constitutional judge in Indonesia.

Research Methods

The research method used in this research is " normative juridical by basing the analysis on applicable laws and regulations (Benuf & Azhar, 2020) . The research data used is secondary legal data

consisting of primary legal materials, namely statutory regulations, including; Constitution of the Republic of Indonesia of 1945, Law, Law No. 48 of 2009 concerning Judicial Power, No. 7 of 2020 concerning the third amendment to Law No. 24 of 2003 concerning the Constitutional Court, Constitutional Court Regulations concerning Procedures for Dismissing Constitutional Judges. MK Decision and MKMK Decision. This research also uses secondary legal materials, namely literature related to the research problem. The legal data was obtained through literature study which was then analyzed descriptively and analytically to answer the research problem " (Sonata, 2014) .

Results and Discussion

1. Forms of Violations of the Code of Ethics Committed by Constitutional Judges Based on Decision Number: 2/MKMK/L/11/2023, Dated 7 November 2023

MKMK Decision Number: 2/MKMK/L/11/2023, dated 7 November 2023 stems from the Constitutional Court decision Number 90/PUU-XXI/2023 (hereinafter referred to as MK Decision No. 90/2023), dated 16 October 2023, which in case no. 90/2023, the applicant is Almas Tsaqibbiru Re A, a student who is represented by his attorney, namely H. Arif Sahudi, SH, MH, Utomo Kurniawa, SH, Georgius Limart Siahaan, SH, Dwi Nurdiansyah Santoso, SH, and Ilyas Satria Agung, SH That the contents of the petition of the applicant's petition and the ruling of the Constitutional Court No. 90/2023), dated 16 October 2023, has been described in the introductory section of this article.

Constitutional Court Decision No. 90/2023), dated 16 October 2023, received counterclaims from various parties and various groups, as stated in the MKMK decision Number: 2/MKMK/L/11/2023, dated 7 November 2023, there were 16 (sixteen) complainants, among others: The following are: rapporteur Denny Indrayana , rapporteur Perekat Nusantara and TPDI, rapporteur TAPP, rapporteur Madani Youth Association, rapporteur PBHI, rapporteur TAPHI, rapporteur LBH BARA JP, rapporteur CALS, rapporteur Advocate for Constitutional Guards, rapporteur LBH Yusuf, rapporteur Zico, rapporteur KIPP, rapporteur Tumpak Naingolan, BEM UNUSIA reporter , Alamsyah reporter, and PADI reporter.

Some of the legal factual reasons postulated by the reporters in their reports can be summarized briefly as follows;

That the reporter stated " Decision Number 90/PUU-XXI/2023 shows how M K has been subdued by the interests of winning power by changing the laws and regulations, which should not be wise and should not be done. Moreover, the change in regulations regarding the age requirements for presidential/vice presidential candidates used the hands of the Reported Judge who should have resigned because the case had direct interests in his family, namely President Joko Widodo and his son Gibran Rakabuming Raka because it had become a legal fact with the registration of Gibran Rakabuming Raka as a deputy candidate pair. "The President went to the General Election Commission, one of which was to take advantage of the new provisions regarding the age requirements in Decision Number 90/PUU-XXI/2023 which was just decided by the Court." This is in conflict with the concept of *judicial disqualification* or *recusal* , or also *the principle of nemo iudex in causa sua* , which means " a judge may not examine a case related to his interests, this is very clearly illustrated and is especially one of the most basic issues in Decision Number 90/PUU-XXI/2023 , as well as Constitutional Court Regulation Number 9 of 2006, especially point 5 letter b, clearly states that constitutional judges must resign if there is a conflict of interest in handling cases related to their families. "It states that the constitutional judge or his family members have a direct interest in the decision."

That in essence the reporter stated "the petitioner in case Number 90/PUU-XXI/2023 and Case Number 91/PUU-XXI/2023 firmly stated that the material review of Article 169 letter q of Law Number 7 of 2017 concerning General Elections was an attempt to get Gibran Rakabuming Raka, the son of

President Joko Widodo who is also the nephew of the Reported Judge, can contest the 2024 Presidential and Vice Presidential Election of the Republic of Indonesia."

Furthermore, the Chief Justice of the Constitutional Court, namely Anwar Usman, has given a different statement regarding his reasons for not attending the Judge Deliberation Meeting (RPH) in "Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI/2023 (2) secondly, in the form of participation of the Reported Judge in examining and deciding cases Number 90/PUU-XXI/2023 and 91/PUU-XXI/2023 where there is a conflict of interest. Anwar Usman delivered a different statement, namely Constitutional Justice Saldi Isra and Hakim Arief Hidayat's constitution regarding the reasons for his absence from the RPH Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI/2023. To Constitutional Justice Saldi Isra, the Reported Judge stated that the reason for his absence from the RPH Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI/2023 was to avoid potential conflicts of interest (*conflict of interest*). Meanwhile, to Constitutional Justice Arief Hidayat, the Reported Judge stated that the reason for his absence from the RPH Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI/2023 was mainly due to health reasons. The reporter concluded that of these two different statements, one of them was certainly a lie." However, it is not known which statement was a lie, whether the statement submitted to Constitutional Justice Saldi Isra, or the statement submitted to Constitutional Justice Arief Hidayat .

That the open comments submitted on September 9 2023 took place at the Sultan Agung Islamic University by Anwar Usman, who commented on the judicial review case of " Article 169 letter q of Law Number 7 of 2017 concerning General Elections which is being handled by the Constitutional Court as per the YouTube video Kompas TV broadcast on September 13 2023. Based on Article 10 letter f number 3 of the Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court, Constitutional Judges are prohibited from issuing opinions or statements outside of court regarding a case they are handling prior to the decision."

That based on *the dissenting opinion of 4 (four) judges*, namely " Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Arief Hidayat, and Constitutional Justice Suhartoyo. Which reveals the entire examination process up to the decision in Case Number 90/PUU-XXI/2023 which clearly shows Judge Anwar Usman's partiality in this case." Therefore, this strengthens what causes chaos in the KPU and legal uncertainty.

That there is a difference in " Decision between Number 90/PUU-XXI/2023 and the difference between Decision 102/PUU-XXI/2023 is the same norm regarding the age limit of Presidential and Vice Presidential Candidates, regarding Article 169 letter q, but the ruling is different, this will giving rise to conflict over basic concepts about certainty, about justice, about the usefulness of the law decided by the Constitutional Court Judges."

Whereas furthermore, there were several experts proposed by the reporter in the process of proving the case in casu, one of which was expert Ni' Matul Huda, who submitted an expert statement entitled "Violation of the Principles of *Nemo Juxta in Causa Sua* in Constitutional Court Decision No. 90 /PUU-XXXI/2023. The principle which states that judges may not hear cases related to themselves is known as the principle of *nemo judex in causa sua*. "The existence of this principle is intended to maintain the impartiality and independence of judges in deciding cases because if there is a conflict of interest *in* a case, it can cause the judge to be in a dilemma position in deciding the case." the case of Constitutional Court Decision No. 90/PUU-XXI/2023, even though the applicant is not Gibran Rakabumi Raka's brother, the decision was in favor of Gibran RR, it was proven that after the decision was issued, Gibran was declared by Prabowo Subianto as his vice presidential running mate and registered with the Indonesian KPU. Is it in Decision No. 90/PUU-XXXI/2023 Is there a violation of ethics by constitutional judges? " The Chief Justice of the Constitutional Court – YM Anwar Usman is the uncle of Gibran's

brother. Either directly or indirectly, the position of Chief Justice of the Constitutional Court has a *conflict of interest* with the case filed by the Petitioner. The public will definitely see that YMANwar Usman's position will benefit the interests of the applicant and Gibran, who is currently serving as Mayor of Solo and is not yet 40 years old. In order to avoid a *conflict of interest*, the Chief Justice of the Constitutional Court - YM Anwar Usman should not participate in examining and trying this case. Just leave it to the eight existing constitutional judges to hear it. However, it is unfortunate that YM Anwar Usman actually took part in examining the case and was very active in overseeing the case. This clearly violates the principle of *nemo iudex in causa sua*."

Whereas based on all the factual and legal considerations revealed in the trial, MKMK is of the following opinion;

" Regarding the issue of procedural violations in the process of canceling the withdrawal of the case, the Honorary Council did not find sufficient evidence to be able to state that the Reported Judge ordered the violation in question. Regarding the issue of the Reported Judge lying regarding the reason for his absence from the RPH decision making, the Honorary Council found no evidence that the Reported Judge had lied. In the Honorary Council hearing, the Reported Judge stated firmly that his absence from the RPH in making Decision 29/PUU-XXIU/2023, Decision Number 51/PUU-XXI/2023, and Decision Number 55/PUU-XXI/2023 was due to illness, not for reasons of avoiding a conflict of interest with a *quo case*. According to the Honorary Council, the statement of the Reported Judge actually proves that the Reported Judge does not feel he has a conflict of interest with a *quo case* even though the conflict of interest of the Reported Judge with the *a quo case* is very clear. Regarding the issue of the Reported Judge not resigning from the process of examining and making Decision Number 90/PUU-XXI/2023, the Honorary Council without any doubt stated that the Reported Judge was proven to have violated the Sapta Karsa Utama, the Principle of Impartiality, Application point 5 letter b, and the Principle of Integrity, point Application of 2 (two)."

The Honorary Council is of the opinion that "Anwar Usman did not work impartially (*to be impartial*) and also did not appear to work impartially (*appear to be impartial*) in handling case number 90/PUU-XXI/2023. This is based on several considerations. Firstly, the Reported Judge did not withdraw from handling case 90/PUU-XXI/2023, even though there was clearly a conflict of interest, because case 90/PUU-XXI/2023 was directly related to the interests of the family of the Reported Judge, namely Gibran Rakabuming Raka. Whereas based on consideration of the facts and law above, the Honorary Panel is of the opinion that the Reported Judge is not working and is also not seen to be working independently and impartially, especially in handling case 90/PUU-XXI/2023. Thus, the Reported Judge has committed a violation towards the Principle of Independence, Implementation points 1, 2, and 3 in Sapta Karsa Utama ."

Regarding the issue regarding Anwar Usman speaking in a public space which is related to the substance of the case being examined at the event entitled youth leadership at the Sultan Agung Islamic University, according to reasonable reasoning it is closely related to the substance of the case regarding the age requirements of the Presidential and Vice-Presidential Candidates which are being examined and tried by the Constitutional Court. Thus, " the Reported Judge can be said to have been proven to have violated the Sapta Karsa Utama, Principle of Impartiality, point of application 4, Constitutional judges are prohibited from giving open comments on cases that will be, are being examined, or have already been decided, either by the judge concerned or another constitutional judge, except in certain cases and is only intended to clarify the decision."

Whereas further, based on the conclusion of the MKMK decision, it is known that " Anwar Usman's actions as chairman of the Constitutional Court, who did not resign from the process of examining and making Decision Number 90/PUU-XXI/2023, were proven to have violated Sapta Karsa Utama, Principle of Impartiality, Application of number 5 letter b, and the Principle of Integrity,

Application of number 2. Anwar Usman as Chairman of the Constitutional Court was proven not to have carried out his leadership function (judicial leadership) optimally, thus violating Sapta Karsa Utama, Principle of Competency and Equality, Application of number 5. The Reported Judge was proven to have intentionally opened up room for intervention by outside parties in the process of making Decision Number 90/PUU-XXI/2023, thus violating the Sapta Karsa Utama, Principles of Independence, Application of numbers 1, 2 and 3. 10. " Lecture by the Reported Judge on " leadership The young age at Sultan Agung Islamic University 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 Impartiality, Application of number 4. 11. The Reported Judge and all Constitutional Judges are proven unable to keep information or information confidential in a closed Judge Deliberation Meeting, thus violating the Principle of Appropriateness and Politeness, Application of number 9. "

Based on the legal issues that form the basis of the reporters' reports regarding Constitutional Court Decision No. 90/2023 and based on the considerations of the MKMK and based on the conclusions of the MKMK as explained above, it can be stated that the form of violation of the code of ethics committed by constitutional judges based on decision number: 2/MKMK/1/11/2023, dated 7 November 2023 is as follows;

The form of violation of the Code of Ethics committed by Anwar Usman was not resigning from the examination process and making Decision Number 90/PUU-XXI/2023. Apart from that, Anwar Usman as Chairman of the Constitutional Court has been proven not to carry out his judicial leadership function *optimally*. Another form of violation of the Code of Ethics committed by Anwar Usman was that he was proven to have intentionally opened up space for intervention by outside parties in the process of making Decision Number 90/PUU-XXI/2023. Apart from that, the lecture given by Anwar Usman regarding youth leadership at the Sultan Agung Islamic University, Semarang, was closely related to the substance of the case regarding the age requirements for presidential and vice presidential candidates. That Anwar Usman's actions constitute a violation of the Code of Ethics for Constitutional Judges. Then there was a violation of the code of ethics for constitutional judges which was committed by Anwar Usman and all the Constitutional Judges who were proven unable to protect confidential information or information in closed Judge Deliberation Meetings, thereby violating the Principle of Appropriateness and Politeness, Application of number 9.

2. The Relevance of Violations of the Code of Ethics and the Independence of Constitutional Judges in Indonesia

There is a legal adage which states that " *Politiaie legius non leges politii adoptandae* - politics must be subject to the law, not the other way around " (Alkostar , 2009) . This adagium is relevant to be put forward in discussions about cases of violations of the code of ethics committed by Constitutional Justices in general and the chairman of the Constitutional Court, namely Anwar Usman. This legal adagium is *das seolen* which is different from the reality that occurs in cases of violations of the code of ethics by constitutional judges and the chairman of the Constitutional Court (Anwar Usman), which occurs as stated by Mahfud MD that "law is a political product, law is an affected variable (*Dependent Variable*) while politics is an influencing variable (*Independent Variable*) (Mochtar , 2019) , furthermore, the legal substance contained in statutory regulations and law enforcement carried out by law enforcement agencies is influenced by political power (MD, 2014) ." Political power in the context of this case is executive power, namely the president.

Evidence that in cases of ethical violations by constitutional judges in general and by the chairman of the MK (Anwar Usman) in particular, can be seen in the considerations and rulings of the MKMK. Whereas regarding MKMK, as stipulated in Article 22 of the Constitutional Court Regulation (PMK) No. 2 of 2014, which states that " one of the authorities of the Ethics Council is to propose the

formation of an Honorary Council to examine and make decisions on Suspected Judges who are suspected of having committed serious violations and to examine and make decisions on Reported Judges or Suspected Judges who have received verbal warnings and /or writing three times. "The MKMK has decided that judge Anwar Usman as chairman of the Constitutional Court has committed a serious violation of the Constitutional Court's code of ethics and the nine Constitutional Court judges have violated the Constitutional Court's Code of Ethics in deciding case Number 90/PUU-XXI/2023.

It can be stated that the Constitutional Court's decision Number 90/PUU-XXI/2023, is a legal product resulting from the process of examining and making decisions by the Constitutional Court which violated the Constitutional Court's code of ethics by all Constitutional Court judges, especially by the chairman of the Constitutional Court (Anwar Usman). However, even though it is clear that the Constitutional Court's decision Number 90/PUU-XXI/2023 resulted from a process of violating the code of ethics, this decision cannot be canceled by any institution, including the MKMK, which in accordance with its authority, the MKMK has no authority to cancel decisions that have been issued. by the MK, because the MKMK's authority is only limited to the ethics and behavior of judges (Sorik, Nasution, 2018) . Article 10 paragraph (1) Law no. 24 of 2002 concerning the Constitutional Court (UU MK) the decision of the MK is final and binding so that there is no other mechanism to annul the decision. Violations of the code of ethics by the chairman of the Constitutional Court do not annul the decision of the Constitutional Court (Saputra, 2023) . The Constitutional Court's decision is final and binding, *which* means that the Constitutional Court in all cases under its authority, when it has given a decision, the decision immediately has permanent legal force and there are no further legal efforts, including ordinary legal efforts, such as appeals and cassation. extraordinary legal measures such as judicial review (*herziening*) and examination at the cassation level for legal purposes. The Constitutional Court's decision is binding and can be implemented immediately (Maulidi, 2017) .

Regarding the Constitutional Court decision Number 90/PUU-XXI/2023 which has been confirmed based on the MKMK decision number: 2/MKMK/L/11/2023, dated 7 November 2023, it is a decision resulting from a judicial process that violates the Code of Ethics. Violations of the code of ethics by constitutional judges, especially by the Chief Justice of the Constitutional Court (Anwar Usman), show that in reality the independence of constitutional judges as enforcers of the constitution of the Republic of Indonesia is not yet strong. In fact, a Chief Justice of the Constitutional Court should understand and above all obey "a *sas nemo judex in causa sua* intended to maintain the impartiality and independence of judges in deciding cases because if there is a conflict of interest *in* a case it can cause the judge to be in a dilemmatic position in deciding the case (Lailam , 2015) .

Violation of the *principle of nemo judex in causa sua* and subject *conflict of interest* by the Chief Justice of the Constitutional Court (Anwar Usman) followed by constitutional judges Wahiduddin Adams and Suhartoyo which were expressed in the *dissenting opinion* section. The two constitutional judges essentially stated that;

" Decision Number 90/PUU-XVIII/202 3 , where in fact the applicant does not have legal standing and again that the applicant has not experienced any constitutional loss at all from the enactment of Law No. 7 of 2017 concerning General Elections (Election Law). The two Constitutional Court judges were concerned that the judicial review case being examined, tried and decided was in their own personal interest and not the Petitioner's legal interests or constitutional losses. "

If understood carefully, it is reasonable what was stated by the two Constitutional Court judges that the applicant is a student who does not experience constitutional loss due to the enactment of the age limit provisions for Presidential and Vice Presidential Candidates regulated in the Election Law, so that the applicant does not have legal standing as an applicant. testing of the law, but it turned out that the petition was still examined, tried and decided by the Constitutional Court. In fact, in his petition the applicant clearly stated that he was very inspired by the leadership of Giran Rakabuming Raka as a young

leader. Furthermore, another fact is that the Chief Justice of the Constitutional Court (Anwar Usman) is the uncle of Giran Rakabuming Raka, so based on this description, because Anwar Usman is the uncle of Giran Rakabuming Raka, who is suspected to be the figure behind the Election Law review case, it can be argued that there is a conflict of interest. in the person of the Chief Justice of the Constitutional Court and a violation of the principle of *nemo judex in causa sua* very real.

Whereas then, based on the Constitutional Court's decision Number 90/PUU-XXI/2023, it appears that the Constitutional Court has exceeded the limits of its authority in deciding on judicial review cases against the 1945 Constitution. In essence, the Constitutional Court may not cancel an article in a law if the article is clearly does not conflict with the 1945 Constitution (Sylviadianti & Suprobowati, 2022) . The Constitutional Court's considerations in the Constitutional Court's decision Number 90/PUU-XXI/2023 do not clearly explain which Articles of the 1945 Constitution are violated by the provisions regarding the age limit for Presidential and Vice-Presidential Candidates. In fact, it is known that constitutional judges should give clear considerations regarding which articles of the 1945 Constitution are violated by the provisions regarding the age limit for presidential and vice-presidential candidates. This can be seen as evidence that the independence of constitutional judges in Indonesia is strongly influenced by certain political interests.

MKMK in its recommendation section explains that among the 9 (nine) constitutional judges there is still a work culture of "*ewuh pekewuh* ", which is taken from the Javanese word, which means that constitutional judges still prioritize feeling reluctant to remind each other between judges, especially the chief constitutional judge, this makes violations of the code of ethics a common occurrence. Such a work culture increasingly shows the low level of independence of constitutional judges in Indonesia. Based on this description, it is known that violations of the code of ethics by constitutional judges and the chairman of the Constitutional Court indicate that the level of independence of constitutional judges in Indonesia is still low, so it is necessary for the Constitutional Court itself to develop an attitude of professionalism in each constitutional judge.

Closing

In connection with the writing and research results above, the author can conclude that; The forms of violations of the code of ethics committed by constitutional judges based on decision number: 2/MKMK/L/11/2023, dated 7 November 2023 are as follows; The form of violation of the Code of Ethics committed by Anwar Usman was not resigning from the examination process and making Decision Number 90/PUU-XXI/2023. Apart from that, Anwar Usman as Chairman of the Constitutional Court has been proven not to carry out his judicial leadership function *optimally*. Another form of violation of the Code of Ethics committed by Anwar Usman was that he was proven to have intentionally opened up space for intervention by outside parties in the process of making Decision Number 90/PUU-XXI/2023. Apart from that, the lecture given by Anwar Usman regarding youth leadership at the Sultan Agung Islamic University, Semarang, was closely related to the substance of the case regarding the age requirements for presidential and vice presidential candidates. That Anwar Usman's actions constitute a violation of the Code of Ethics for Constitutional Judges. Then, a form of violation of the code of ethics for constitutional judges committed by Anwar Usman and all Constitutional Judges was proven to be unable to protect information or confidential information in closed Judge Deliberation Meetings, thus violating the Principle of Appropriateness and Politeness, Application of number 9. Violation of the code of ethics by constitutional judges and the chairman The Constitutional Court shows that the level of independence of constitutional judges in Indonesia is still low, so it is necessary for the Constitutional Court itself to develop an attitude of professionalism in each constitutional judge.

References

- Ahmad Ahmad, NMN (2020). The Pulse of the Fifth Amendment to the 1945 Constitution through the Involvement of the Constitutional Court as the Principle of the Guardian of the Constitution. *Constitutional Journal*, 16 (4), 785–808. <https://doi.org/https://doi.org/10.31078/jk1646>.
- Alkostar, A. (2009). Correlation of Political Corruption with Law and Government in Modern Countries. *Law Journal*, 16 (2), 155–179.
- Benuf, K., & Azhar, M. (2020). Legal Research Methodology as an Instrument for Unraveling Contemporary Legal Problems. *Echoes of Justice*, 7 (1), 20–33. <https://doi.org/https://doi.org/10.14710/gk.7.1.20-33>.
- Depri Liber Sonata. (2014). Normative and Empirical Legal Research Methods Typical Characteristics of Legal Research Methods. *Fiat Justisia Journal of Legal Studies*, 8 (1), 15–35. <https://doi.org/https://doi.org/10.51749/jphi.v2i1.14>.
- Faiz, PM, & Chakim, ML (2020). *Constitutional Justice- A Comparison of Institutions and Constitutional Authorities in Asia*. Raja Grafindo Persada.
- Habib Shulton Asnawi. (2016). The Constitutional Court's interpretation of the Oil and Gas Law. *Judicial Journal*, 9 (3), 259–279. <https://doi.org/http://dx.doi.org/10.29123/jy.v9i3.10>.
- Lailam, T. (2015). Pros and Cons of the Constitutional Court's Authority to Review Laws Regulating Its Existence. *Constitutional Journal*, 12 (4), 795–824. <https://doi.org/https://doi.org/10.31078/jk1247>.
- MD, M. (2014). *Legal Politics in Indonesia* (6th ed.). Raja Grafindo Persada.
- Mohammad Agus Maulidi. (2017). Legal Problems of Implementing Final and Binding Decisions of the Constitutional Court from a State of Law Perspective. *Journal of Ius Quia Iustum*, 24 (4), 535–557. <https://doi.org/10.20885/iustum.vol24.iss4.art2>.
- Mohammad Sahlan. (2016). The Authority of the Corruption Court After the Enactment of Law no. 30 of 2014 concerning Government Administration. *Legal Arena Journal*, 9 (2), 166–189.
- Muhammad Reza Maulana. (2018). Efforts to Create Constitutional Quality Legal Products Through a Preventive Review Model. *Constitutional Journal*, 15 (4), 774–795. <https://doi.org/https://doi.org/10.31078/jk1545>.
- Noverdi Puja Saputra. (2023). Is the decision of the Honorary Council of the Constitutional Court correct regarding the dismissal of the Chief Justice? *Brief Info*, 15 (22), 6–10. https://doi.org/https://berkas.dpr.go.id/puslit/files/info_cepat/Info%20Singkat-XV-22-II-P3DI-November-2023-2046.pdf.
- Soemarsono, M. (2017). Indonesian Legal State Viewed from the Point of State Goal Theory. *Journal of Law and Development*, 37 (2), 300–322. <https://doi.org/https://scholarhub.ui.ac.id/jhp/vol5/iss2/6>.
- Steven Suprantio. (2014). The Binding Power of the Constitutional Court Decision Concerning "Testimonium De Auditum" in Criminal Justice. *Judicial Journal*, 7(1), 34–52. <https://doi.org/https://doi.org/10.29123/jy.v7i1.92>.
- Sutan Sorik, Mirza Nasution, NN (2018). The existence of the Honorary Council of the Constitutional Court (Study of the Decision of the Honorary Council of the Constitutional Court Number 01/MKMK/X/2013). *Constitutional Journal*, 15(3), 666–687. <https://doi.org/https://doi.org/10.31078/jk15310>.

- Sylviadanti, A., & Suprobowati, GD (2022). Systematics, Procedures and Requirements for Submitting a Judicial Review at the Constitutional Court. *Journal of Democracy and National Resilience*, 1 (3), 449–455.
- Willda Suyuthi Mustofa. (2013). *Code of Ethics for Judges* . Prenadamedia Group.
- Wiryanto Wiryanto. (2016). Strengthening the Ethics Council in Maintaining the High Dignity of Constitutional Judges. *Constitutional Journal*, 13 (4),720–742.
<https://doi.org/https://doi.org/10.31078/jk1342>
- Zainal Arifin Mochtar. (2019). Accountability of Political Parties that Commit Corruption Crimes. *Law Pulpit* , 31 (2), 157–173.

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