



LEGAL REVIEW ON HONORABLE COUNCIL DECISIONS CONSTITUTIONAL COURT NUMBER 2/MKMK/L/11/2023 CONCERNING THE DISMISSAL OF THE CHIEF JUDGE OF THE CONSTITUTIONAL COURT

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Abstract

The Honorary Council of the Constitutional Court is an internal institution formed by the Constitutional Court to maintain the integrity and honor of constitutional judges. In decision Number 2/MKMK/L/11/2023, the Honorary Council of the Constitutional Court has carried out its role and function by imposing sanctions on Constitutional Court judges, namely dismissal as chief judge of the Constitutional Court due to serious violations that were proven to have been committed. However, the results of this decision are questionable because the decision issued by the Honorary Council of the Constitutional Court is not in accordance with the sanctions regulated in article 41C and article 47 of Constitutional Court Regulation Number 1 of 2023 which regulates sanctions for reported judges who commit serious violations. So, with the dissimilarity between the sanctions imposed and the existing regulations, it is a big question what the judge took into consideration in deciding this decision. This research examines it using normative law and taking a statutory approach. The collection of legal materials in this research also used the library research method. The results of the research that has been carried out are that the decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 is not based on Constitutional Court regulation Number 1 of 2023 concerning provisions for imposing sanctions. The decision taken by the Honorary Council of the Constitutional Court is a new breakthrough and policy issued by the Honorary Council of the Constitutional Court to handle this case by taking into account the principle of proportionality, facts and evidence in the field obtained by the Honorary Council of the Constitutional Court.

Keywords: *Honorary Council of the Constitutional Court, Decision Number 2/MKMK/L/11/2023, Dismissal of the Chief Judge.*

Abstrak

Majelis Kehormatan Mahkamah Konstitusi adalah sebuah lembaga internal yang dibentuk oleh Mahkamah Konstitusi untuk menjaga integritas dan kehormatan hakim konstitusi. Pada putusan Nomor 2/MKMK/L/11/2023 Majelis Kehormatan Mahkamah Konstitusi telah melaksanakan peran dan fungsinya dengan memberikan sanksi kepada hakim Mahkamah Konstitusi yaitu pemberhentian sebagai hakim ketua Mahkamah Konstitusi karena pelanggaran berat yang

terbukti telah dilakukannya. Namun dalam hasil putusan ini menjadi pertanyaan karena putusan yang dikeluarkan oleh Majelis Kehormatan Mahkamah Konstitusi tidak sesuai dengan sanksi yang telah diatur pada pasal 41C dan pasal 47 Peraturan Mahkamah Konstitusi Nomor 1 tahun 2023 yang mengatur tentang sanksi bagi hakim terlapor yang melakukan pelanggaran berat. Sehingga dengan ketidaksamaan sanksi yang dijatuhkan dengan peraturan yang ada menjadi pertanyaan besar apa yang menjadi pertimbangan hakim dalam memutuskan putusan ini. Penelitian ini juga dilakukan dengan mengkaji menggunakan hukum normatif dan melakukan pendekatan dengan perundang-undangan (*statute approach*). Pengumpulan bahan hukum dalam penelitian ini pun menggunakan metode kajian pustaka (*library reseach*). Hasil dari penelitian yang telah dilakukan adalah putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 2/MKMK/L/11/2023 tidak berdasarkan peraturan Mahkamah Konstitusi Nomor 1 tahun 2023 mengenai ketentuan penjatuhan sanksi. Putusan yang diambil oleh Majelis Kehormatan Mahkamah Konstitusi merupakan trobosan baru dan kebijakan yang dikeluarkan oleh Majelis Kehormatan Mahkamah Konstitusi untuk menangani perkara ini dengan mempertimbangkan prinsip proporsionlitas, fakta dan bukti yang ada di lapangan yang didapatkan oleh Majelis Kehormatan Mahkamah Konstitusi.

Kata Kunci: Majelis Kehormatan Mahkamah Konstitusi, Putusan Nomor 2/MKMK/L/11/2023, Pemberhentian Hakim Ketua.

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A. INTRODUCTION

There is article 24 paragraph (2) which states that "Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, state administrative court, as well as by a Constitutional Court". Consequently, in the model of constitutional supremacy, the authority to examine laws against the constitution is left to the judicial power.¹ If we look at the duties and authority of the Constitutional Court, it is stated that based on article 24C, it states that the Constitutional Court has the authority to examine a case at both the initial and final levels with a final decision. This authority includes reviewing laws against the Constitution, resolving

¹ Raden Muhammad Miharadi et al., "The Decision of the Constitutional Court Which Is Positive Legislature and Their Implications on Substantial Democracy in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 8, no. 12 (2021): 191, <https://doi.org/10.18415/ijmmu.v8i12.3269>.

authority disputes between state institutions that have been granted by the Constitution, decisions regarding the dissolution of political parties, and resolving disputes over general election results.²

Based on Constitutional Court Regulation Number 2 of 2014, the Ethics Council is a body created by the Constitutional Court which is intended to protect the honor, dignity and code of ethics of Constitutional Judges. The Ethics Council is permanent with a membership of three people, consisting of one former constitutional judge, one professor in the field of law, and one community figure. The term of office of members of the Ethics Council is three years and cannot be extended. The main duties of the Ethics Council include collecting, processing data and analyzing reports or information regarding alleged violations by constitutional judges. This regulation also regulates the formation of the Constitutional Court Honorary Council (MKMK). If allegations of serious violations are found, the Ethics Council can propose the formation of a Constitutional Court Honorary Council to the Constitutional Court in writing, including recommendations for the release of judges who are reported or suspected of committing serious violations.³

Several months ago, Indonesia was shocked by the decision issued by the Constitutional Court in case number 90/PUU-XXI/2023, which stated that the Constitutional Court granted part of the request regarding age limits for presidential candidates (capres) and vice presidential candidates (cawapres). provided that candidates must have previous experience as state officials when elected through general elections, including regional head elections (pilkada). This decision sparked a stir in the world of politics and caused strong reactions from

² Ni'matul Huda, *HUKUM TATA NEGARA INDONESIA*, ed. Rajawali Pers, Edisi Revi (Depok: PT. Raja Grafindo Persada, 2019).

³ Novianto Murti Hantoro, "Periode Masa Jabatan Hakim Konstitusi Dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman (Term of Office for Constitutional Justices and Its Implications against Judicial Independence)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 2 (2020): 191–210, <https://doi.org/10.22212/jnh.v11i2.1705>.

various groups of society.⁴ Many people are of the view that the decision has a conflict of interest, this is because the Chief Justice of the Constitutional Court and the judge handling the case has a family relationship with Gibran Rakabuming, whose uncle is Anwar Usman.⁵ However, looking further, based on Article 24C paragraph (5) of the 1945 Constitution of the Republic of Indonesia and Article 27A of the Constitutional Court Law, Law no. 7 of 2020 equally regulates Constitutional Judges who must have integrity in accordance with the norms and ethics stipulated in the code of ethics and behavioral guidelines for judges. Thus, even though judges have freedom or independence in carrying out their duties, this freedom must still be accompanied by responsibilities that are limited and under supervision.⁶

The Constitutional Court has oversight in the internal field, namely through the Honorary Council of the Constitutional Court. This supervision system is carried out by the Honorary Council of the Constitutional Court which originally consisted of a Constitutional Judge, and one of the Judicial Commission (KY), a DPR representative, a government official in the legal sector, and a Supreme Court Judge. However, the membership of elements of the Judicial Commission, People's Representative Council and Supreme Court Justices was later revoked based on Constitutional Court Decision Number 49/PUU/2011.⁷

Regarding decision number 90/PUU-XXI/2023, the Honorary Council of the Constitutional Court has received reports regarding allegations of violations of the code of ethics and behavior of constitutional judges, and after the Honorary Council of the Constitutional Court followed up by carrying out every examination

⁴ Rio Subandri, "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Persyaratan Batas Usia Pencalonan Presiden Dan Wakil Presiden," *Jaksa: Jurnal Kajian Ilmu Hukum Dan Politik* 2, no. 1 (2024): 135–53, <https://doi.org/10.51903/jaksa.v2i1.1512>.

⁵ Trisya Frida, "Hubungan Gibran Rakabuming Dengan Ketua MK Anwar Usman," *viva.co.id*, 2023, <https://www.viva.co.id/berita/nasional/1648009-hubungan-gibran-rakabuming-dengan-ketua-mk-anwar-usman>.

⁶ Wahyu Aji Ramadan, Irma Aulia Pertiwi Nusantara, and Tanti Mitasari, "Reformulasi Pengawasan Mahkamah Konstitusi Demi Meningkatkan Efektivitas Penegakan Kode Etik Hakim Konstitusi," *Jurnal Studia Legalia* 3, no. 02 (2022): 21–43, <https://doi.org/10.61084/jsl.v3i02.29>.

⁷ Ramadan, Nusantara, and Mitasari.

process and other matters, the Honorary Council of the Court The Constitution states that the Chief Justice of the Constitutional Court was proven to have violated the code of ethics and behavior of constitutional judges (Sapta Karsa Utama). This was conveyed through a decision issued number 2/MKMK/L/11/2023 on November 7 2023. In the decision, it was stated that Anwar Usman was dismissed as chief judge of the Constitutional Court, not only that, he was also given sanctions in the form of being prohibited from running for office or being re-nominated as head of the Constitutional Court until his term of office ends and was prohibited from being involved or taking part in adjudicating disputes over election results. heads of government (President, Vice President, Governor, Regent, Mayor) and the election of legislative members (DPR, DPD and DPRD) who have the potential to lead to a conflict of interest. Furthermore, the Honorary Council of the Constitutional Court ordered the Deputy Chief Justice of the Constitutional Court to immediately preside over the election of new leadership within 2 x 24 hours after the decision was read, in accordance with the applicable statutory provisions. This violation committed by Anwar Usman is considered to tarnish the integrity of the Constitutional Court, his non-neutrality which gives rise to a conflict of interest also damages public confidence in the Constitutional Court's ability to carry out its constitutional duties fairly and impartially. If a judge is dismissed or appointed only based on political interests or group interests, then the independence of the judiciary can be compromised.⁸ However, what is quite confusing is that Constitutional Court judge Anwar Usman was only dismissed as chief judge, not dishonorably dismissed in accordance with applicable regulations.

Legal expert from the University of Lampung (Unila), Prof. Rudy Lukman believes that the Honorary Council of the Constitutional Court is trying to take careful steps by imposing sanctions on Anwar Usman in the form of dismissal

⁸ Brendah Veldrin Pua and Jeane Neltje Saly, "THE AUTHORITY OF THE HOUSE OF REPRESENTATIVES IN THE DISMISSAL OF CONSTITUTIONAL COURT JUDGES BASED ON THE CONSTITUTION OF THE REPUBLIC OF INDONESIA" 08, no. 01 (2024): 127–31.

from the position of chairman of the Constitutional Court. According to him, Anwar Usman should have been fired from his position as constitutional judge. Prof. Rudy also said that in Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court, there are three choices of sanctions that can be imposed on judges who violate them, namely an oral warning, a written warning, or dishonorable dismissal.⁹ This is stated in article 41 letter C and article 47 of the Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court¹⁰ where the sanction imposed by the Honorary Council of the Constitutional Court was dishonorable dismissal. So what did the Honorary Council of the Constitutional Court consider doing to impose the only sanction of dismissal as chief judge? Has it fulfilled a sense of justice for society? This is what makes the author interested in raising this issue. The author will examine all the reasons and considerations that made the Honorary Council of the Constitutional Court impose sanctions in this decision, only dismissal as chief judge. It is hoped that this article can provide an overview, knowledge insight and other legal opinions outside the ruling of the Honorary Council of the Constitutional Court.¹¹ Therefore, the researcher formulated it in the title "Legal Review of the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 concerning the Dismissal of the Chief Judge of the Constitutional Court."

B. RESEARCH METHODS

The method used by the author in this research is normative legal research, where this research is library research by examining library materials related to the object being studied and in this research the author also uses a statutory

⁹ Aru Lego Triono, "Pakar Nilai MKMK Main Aman : Harusnya Anwar Usman Di Copot Dari Hakim Konstitusi," NU Online, 2023, <https://www.nu.or.id/nasional/pakar-nilai-mkmk-main-aman-harusnya-anwar-usman-dicopot-dari-hakim-konstitusi-85mdz>.

¹⁰ Mahkamah Republik Indonesia Konstitusi, "Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023," 2023, 1/36.

¹¹ Noverdi Puja Saputra, "Sudah Tepatkah Putusan Majelis Kehormatan Mahkamah Konstitusi Mengenai Pemberhentian Ketua Mk?," *Info Singkat* 15, no. 22 (2023): 6–10.

approach. The legal materials used in this research are primary, secondary and tertiary legal materials which are used to study existing problems and focus on literature studies.¹²

C. DISCUSSION

Legal Review of the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 concerning the Dismissal of the Chief Judge of the Constitutional Court

The 1945 Constitution of the Republic of Indonesia affirms that sovereignty lies in the hands of the people and is implemented in accordance with the provisions of the Constitution. In addition, it is also emphasized that Indonesia is a country based on law. One of the main principles of this constitutional state is the guarantee for the implementation of free and independent judicial power, without interference from other powers to organize trials that uphold law and justice. As part of the constitutional principle, an important change in the 1945 Constitution is the establishment of the Constitutional Court as a state institution that resolves certain cases in the constitutional field, to ensure that the 1945 Constitution is implemented responsibly in accordance with the wishes of the people and the ideals of democracy. The presence of the Constitutional Court also functions to maintain the stability of the state government, as well as a correction to previous constitutional experiences caused by multiple interpretations of the constitution. To ensure that the constitution is implemented correctly and not violated, it is necessary to ensure that every legal regulation under the auspices of the constitution is in line with the fundamental principles contained in the constitution. This can be done by providing the authority to test and cancel legal regulations that are not in accordance with the constitution. Based on this, the Constitutional Court was established through the Third Amendment to the 1945 Constitution as regulated in Article 24 paragraph (2), Article 24C, and Article 7B. On August 13, 2003, the President ratified Law Number 24 of 2003 concerning the

¹² Ahmad Rosidi, M Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (2024): 48–49.

Constitutional Court, which was later amended by Law Number 8 of 2011, and that date was designated as the birth date of the Constitutional Court. The recruitment of constitutional judges involving three state institutions, namely the DPR, the President, and the MA, carried out a selection process according to their respective mechanisms, which then determined three candidates for constitutional judges from each institution, the results of which were determined by the President. The first nine constitutional judges were appointed on August 15, 2003, and they took their oath on August 16, 2003 at the State Palace.¹³

In the early days of the Constitutional Court, supervision of the behavior of constitutional judges was under the authority of the Judicial Commission in accordance with Article 24B paragraph (1) of the 1945 Constitution. However, the authority of the judicial commission to supervise constitutional judges was limited after the issuance of Constitutional Court Decision Number 005/PUU-IV/2006 on August 23, 2006. This decision was the result of a judicial review of Law Number 22 of 2004 concerning the Judicial Commission, which was submitted by 31 Supreme Court justices. In the decision, the Constitutional Court stated that the expansion of the definition of "judge" in Article 24B paragraph (1) of the 1945 Constitution to include constitutional judges was unconstitutional. Thus, constitutional judges were no longer included in the category of judges supervised by the Judicial Commission. One of the reasons for this decision was that the Judicial Commission's supervision of constitutional judges was considered to have the potential to interfere with the independence of the Constitutional Court as an institution tasked with resolving disputes over authority between state institutions. As a result, supervision of constitutional

¹³ Triningsih Anna Sumadi Ahmad Fadlil, Subiyanto Achmad Edi, *HUKUM ACARA MAHKAMAH KONSTITUSI Perkembangan Dalam Praktik*, ed. Hayati Yayat Sri, Cetakan ke (Depok: PT RajaGrafindo Persada, n.d.).

judges became entirely an internal responsibility through the Constitutional Court's Honorary Council.¹⁴

If we examine the Constitutional Court has the authority to try at the first and last level where the decision of the Constitutional Court is final for cases :

- a. Testing laws against the Constitution,
- b. Disputes over the authority of state institutions whose authority is granted by the Constitution;
- c. Deciding on the dissolution of political parties;
- d. Deciding on disputes regarding the results of general elections;
- e. Deciding on the opinion of the DPR regarding alleged violations by the President and/or Vice President, including violations of the law in the form of treason against the state, corruption, bribery, other serious crimes, immoral acts, and/or ineligibility to serve as President or Vice President as regulated in the Constitution.¹⁵

In addition, the Constitutional Court applies a number of principles in the regulations on the code of ethics and conduct of constitutional judges. These principles include independence, impartiality, integrity, propriety and courtesy, equality, competence, accuracy, and local values that reflect the wisdom and prudence of the Indonesian people.¹⁶The principles of the code of ethics for constitutional judges can be described as follows :

- a. Principle of Independence

The independence of constitutional judges is a fundamental element in realizing a just rule of law, as well as a guarantee for the upholding of law and justice. This principle must be clearly visible in every

¹⁴ Melkianus Umbu Deta, I Nyoman Suandika, and Ida Bagus Anggapurana Pidada, "Kewenangan Majelis Kehormatan Mahkamah Konstitusi Mengadili Hakim Mahkamah Konstitusi (Dalam Pelanggaran Kode Etik Hakim Mahkamah Konstitusi)," *Student Research Journal* Vol. 2, no. 4 (2024): 51–52.

¹⁵ Sumadi Ahmad Fadlil, Subiyanto Achmad Edi, *HUKUM ACARA MAHKAMAH KONSTITUSI Perkembangan Dalam Praktik*.

¹⁶ Deta, Suandika, and Pidada, "Kewenangan Majelis Kehormatan Mahkamah Konstitusi Mengadili Hakim Mahkamah Konstitusi (Dalam Pelanggaran Kode Etik Hakim Mahkamah Konstitusi)."

stage of examination and decision-making on the cases handled. This independence is closely related to the independence of the Constitutional Court as a judicial institution that has authority, integrity, and trust from the community that is free from all forms of external influence.

b. Principle of Impartiality

Impartiality is a fundamental principle that is at the core of the function of constitutional judges, this principle includes a neutral attitude and a deep understanding of the importance of maintaining a balance between the various interests involved in the case. This impartiality must be clearly visible throughout the entire process of examining the case, from the initial stage to decision-making. That way, the decision made by the Court can be a fair legal solution, not only for the parties to the case, but also for the community in general.

c. Principle of Integrity

Integrity is a basic value that describes the harmony and consistency in the personality of a constitutional judge, both in his capacity as an individual and as a state official when carrying out his responsibilities. Unity of personality includes honest, loyal, and sincere attitudes in carrying out professional responsibilities, as well as determination to reject and avoid temptations in any form, such as position, wealth, popularity, or other temptations.

d. Principle of Appropriateness and Politeness

This principle is an ethical norm related to personal behavior and interpersonal relationships, which is reflected in the attitude of constitutional judges, both as individuals and as state officials in carrying out their professional duties. This norm builds respect, authority, and trust. Appropriateness is reflected in the judge's ability to position themselves appropriately, such as in choosing a certain time, place, appearance, words, or movements. Meanwhile, politeness is manifested in an attitude

of respecting others and avoiding belittling in all forms of interaction, both verbally and in writing.

e. Principle of Equality

Equality is a principle that ensures that all people are treated fairly and equally (equal treatment) based on just and civilized human values. This principle rejects all forms of differences based on religion, ethnicity, race, skin color, gender, physical condition, socio-economic status, age, or political views, or reasons that can cause other discrimination.

f. Principle of Competence and Fairness

The competence and fairness of constitutional judges can be seen from the professional abilities of constitutional judges obtained through education, training, and/or experience in carrying out their duties. Meanwhile, fairness is a personal attitude that reflects accuracy, caution, precision, perseverance, and seriousness in carrying out professional duties without delaying the decision-making process.

g. Principle of Wisdom and Discretion

Constitutional judges must act according to wisdom and prudence, considering the situation and circumstances available at that time. Judges are also expected to be able to consider the impact of each decision taken, be patient, but remain firm and clear.¹⁷

Then in the Constitutional Court Regulation Number 1 of 2023 there are rules on sanctions for Constitutional Court Judges who violate, the sanctions for these violations are classified into the following levels :

- a. Verbal warning
- b. Written warning, or
- c. Dishonorable dismissal

¹⁷ Engelbertus Tobu, Godeliva M.G. Mabilani, and Dwityas Witarti Rabawati, "Penegakan Kode Etika Profesi Hakim Konstitusi," *HUMANITIS: Jurnal Homaniora, Sosial Dan Bisnis* 2, no. 1 (2024): 78–87, <https://humanisa.my.id/index.php/hms/article/view/84>.

So if we look at the types of sanctions listed in the Constitutional Court Regulation Number 1 of 2023 if the reported judge is proven to have committed a serious violation, the sanction that applies is only dishonorable dismissal and there are no other options regulated by law from the regulation.¹⁸

Then the Constitutional Court Regulation Number 2 of 2014 explains that the Honorary Council of the Constitutional Court is an institution established by the Constitutional Court to maintain and uphold the honor, dignity and code of ethics of Constitutional Judges, especially regarding reports of serious violations committed by Reported Judges or Suspected Judges as stated in the Constitutional Court Regulation Number 2 of 2014. submitted by the Ethics Council. Then, based on article 4 of Constitutional Court Regulation No. 1 of 2023 regarding the membership of the Honorary Council of the Constitutional Court, it consists of :

- a. 1 (one) Constitutional Justice
- b. 1 (one) community figure;
- c. 1 (one) academic with a background in the legal field.

Membership of the Honorary Council is permanent and has a term of office of 3 (three) years or is ad hoc as determined at the Judges Consultative Meeting.¹⁹The three members were selected based on criteria that included integrity, honesty, fairness, a minimum age of 60 years, and having broad insight.²⁰

The authority and duties of the Honorary Council of the Constitutional Court in Article 3 of Constitutional Court Regulation No. 1 of 2023 are as follows :

- a. Maintaining the dignity and honor of the Court

¹⁸ Konstitusi, “Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023.”

¹⁹ Ghazian Muhtadi Andria, “Dualisme Pengawasan Kode Etik Hakim Di Indonesia Studi Majelis Kehormatan Mahkamah Konstitusi Dan Komisi Yudisial,” *Madania: Jurnal Hukum Pidana Dan Ketatanegaraan Islam*. 13, no. 2 (2023): 74–75.

²⁰ Zunita Putri, “MAJELIS KEHORMATAN MK PERMANEN RESMI DIBENTUK,” detikNews, n.d., <https://news.detik.com/berita/d-7099394/majelis-kehormatan-mk-permanen-resmi-dibentuk-ini-3-anggotanya>.

- b. Examining and deciding on alleged violations of the Code of Ethics and Conduct of Constitutional Judges
- c. Alleged violations of the Code of Ethics and Conduct of Constitutional Judges can be examined and decided no later than 30 (thirty) working days since the report is recorded in e-BRLTP

If the examination has not been completed within 30 (thirty) days, it can be extended for a maximum of 15 (fifteen) working days.²¹ The Honorary Council has the primary authority to propose the dismissal of constitutional judges suspected of committing serious violations. This includes the task of receiving reports, arranging terms of office, managing trial processes, examining evidence, hearing defenses, and determining verdicts. All of these authorities are regulated in Constitutional Court Regulation Number 1 of 2023.²²

On October 23, 2023, the Constitutional Court's Honorary Council conducted an examination, trial, and decision-making regarding reports of alleged violations of the code of ethics and behavior of constitutional judges submitted by 16 reporters, both collectively and individually, to be followed up according to procedure. The reporters submitted two reports, namely on August 27, 2023 and October 23, 2023. In the report, the reporter highlighted the role of the Constitutional Court as an institution tasked with safeguarding the constitution and democracy (the guardian of constitution and democracy) whose members are expected to be able to avoid all forms of intervention, either in the form of power or wealth. However, according to the reporter, Decision 90 shows that the Constitutional Court has submitted to the interests of power by changing laws and regulations, an action that is considered unwise and should not have been done. Moreover, the change in the rules regarding the age requirements for

²¹ Andria, "Dualisme Pengawasan Kode Etik Hakim Di Indonesia Studi Majelis Kehormatan Mahkamah Konstitusi Dan Komisi Yudisial."

²² Bayu Kurnia Nazarrudin Qolyubby and Syofyan Hadi, "Pengaturan Kedudukan Majelis Kehormatan Mahkamah Konstitusi Di Dalam Sistem Hukum Tata Negara Indonesia," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 3, no. 3 (2024): 240–45, <https://doi.org/10.55681/seikat.v3i3.1359>.

presidential and vice presidential candidates involved the Reported Judge, who should have resigned due to a direct conflict of interest with his family, namely President Joko Widodo and his son Gibran Rakabuming Raka. This decision is considered contrary to the principle of impartiality which requires the Reported Judge to resign. based on article 75 paragraph (1) b and (3) c of Constitutional Court Regulation Number 2 of 2021 concerning procedural procedures in judicial review cases, an application that has been withdrawn cannot be submitted again. However, in fact, the applicant in case number 90 was withdrawn on September 29, 2023 but then the withdrawal was canceled on September 30, 2023, he considered that there was sufficient reason for the Court to reject the letter of cancellation of the case withdrawal and grant the withdrawal of the applicant's case because the applicant was not serious and sincere in submitting the application and could be suspected of playing with the authority and dignity of the Constitutional Court.²³

In the Decision of the Honorary Council of the Constitutional Court Number 02/MKMK/L/11/2023, it was stated that the Reported Judge was proven to have committed a serious violation of the Code of Ethics and Guidelines for the Conduct of Constitutional Judges, as regulated in the Sapta Karsa Utama, which includes the Principle of Impartiality, the Principle of Integrity, the Principle of Competence and Equality, the Principle of Independence, and the Principle of Appropriateness and Courtesy. Based on these violations, the Reported Judge was given a sanction in the form of dismissal from his position as Chief Justice of the Constitutional Court.²⁴

²³ “Legal Standing Almas Putra Boyamin Yang Gugatannya Dikabulkan MK,” CNN Indonesia, n.d., <https://www.cnnindonesia.com/nasional/20231017162700-12-1012393/legal-standing-almas-putra-boyamin-yang-gugatannya-dikabul-mk>.

²⁴ Meydianto Mene, “Penerapan Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023 Tentang Majelis Kehormatan Mahkamah Konstitusi Dalam Putusan MKMK NOMOR: 2/MKMK/L/11/2023,” *Ensiklopedia Education Review* 5, no. 3 (2023): 382–86, <https://jurnal.ensiklopediaku.org/ojs-2.4.8-3/index.php/education/article/view/2247/2316>.

The facts show that the Reported Judge knew, or at least was aware, that the examination and resolution of the case related to the constitutionality test of the age limit norm as regulated in Article 169 letter q of the Election Law, had the potential to create advantages for his nephew who had the opportunity to run as a presidential or vice presidential candidate. Therefore, the case related to the testing of the age limit norm clearly has the potential to cause a conflict of interest due to the kinship between the Reported Judge and his wife's nephew.²⁵

However, the position of the Constitutional Court has caused polemics in society. Harjono's opinion is in line with this, stating that the function of enforcing ethics and the behavior of judges cannot be carried out by an ad hoc institution because it is a permanent function that should be carried out by a permanent institution.²⁶ However, the decision of the Honorary Council of the Constitutional Court can be final and binding even though its position is ad hoc, this is because the Honorary Council of the Constitutional Court has the authority regulated by law to enforce the code of ethics and behavior of constitutional judges based on Constitutional Court Regulation Number 1 of 2023, in which the Honorary Council of the Constitutional Court itself has permanent legal force since it was pronounced so that the decision taken is final.

Considerations of the Honorary Council of the Constitutional Court in Deciding Decision Number 2/MKMK/L/11/2023

The legal profession has a responsibility to oversee relations between individuals and between society and the state, so that the interests and rights of each are carried out fairly to achieve the noble goals and ideals of the legal

²⁵ Fikra Mulazi Ibna, "Conflict of Interest Dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Pengujian Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum" 2, no. 2 (2023): 179–90.

²⁶ Michelli Pingky Manembu, Deine Rike Ringkuangan, and Meiske Mandey, "Penegakan Hukum Terhadap Hakim Yang Melanggar Kode Etik Dan Pedoman Perilaku Hakim Dalam Memutus Perkara Menurut Undang-Undang Nomor 48 Tahun 2009," *Lex Administratum* 12, no. 4 (2024).

profession. Every legal practitioner is obliged to carry out his duties with professionalism.²⁷ Judges have three types of responsibilities when exercising judicial authority, namely :

- a. Moral responsibility requires judges to comply with the norms that apply in their work environment, both personally and in an institutional context.
- b. Legal responsibility means that officers or officials are required to carry out their duties in accordance with applicable legal regulations. Legal responsibility for the profession of judges is regulated in various laws, such as Law No. 48 of 2009 concerning Judicial Power, which explains the duties and obligations of judges.
- c. Technical responsibility of the profession requires officers or officials to carry out their duties professionally, by following relevant technical criteria in their professional field, both general and specific in judicial institutions. The application of constitutionalism and the principle of good governance is considered the best approach to building a judicial institution that has integrity, is accountable, and maintains independence and impartiality.²⁸

The issues that we need to pay attention to in law enforcement are its effectiveness and social impact. On the other hand, Jerome Frank, also talks about various factors that are involved in the law enforcement process. Some of these factors, in addition to legal norms, also include political, economic, moral prejudices, and personal sympathies and antipathies.²⁹ Therefore, judges are allowed to use their conscience in making a decision, which has the same

²⁷ Aprita Serlika, *ETIKA PROFESI HUKUM*, Pertama (Bandung: PT.Refika Aditama, 2019).

²⁸ Edo Maranata Tambunan et al., “Analisis Eksistensi Etika Hakim Mahkamah Konstitusi Dalam Mewujudkan Peradilan Berintegritas Dan Akuntabel (Putusan Mk No. 90/Puu-Xxi/2023),” *Iblam Law Review* 4, no. 2 (2024): 50–61, <https://doi.org/10.52249/ilr.v4i2.406>.

²⁹ Muhammad Gazali Rahman, “Penegakan Hukum Di Indonesia,” *Jurnal Al-Himayah* 4, no. Vol. 4 No. 1 (2020): Al Himayah (2020): 142–59, <http://journal.iaingorontalo.ac.id/index.php/ah/article/view/1625>.

perspective as the statement made by Sudikno Mertokusumo, "judges are free to judge based on their conscience and beliefs without being influenced by any party". Judges have the freedom to examine, prove, and decide cases based on their conscience and the facts found during the trial process.³⁰

In its decision, the Honorary Council of the Constitutional Court firmly stated that the Reported Judge was proven to have violated the Sapta Karsa Utama, the Principle of Impartiality (Implementation point 5 letter b), and the Principle of Integrity (Implementation point 2). In every stage of handling case number 90/PUU-XXI/2023, it was shown that the Constitutional Court was inconsistent with the applicable rules, which reflected carelessness in carrying out the judge's professional duties. Therefore, the Honorary Council of the Constitutional Court is of the opinion that the Reported Judge, whether intentionally or not, had taken inappropriate actions. One of the oddities in the process of handling this case was when the Applicant had withdrawn his application and then canceled the withdrawal the following day on a holiday, namely Saturday, September 30, 2023. Based on Article 75 paragraph (1) letter b and paragraph (3) letter c of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Cases of Judicial Review, an application that has been withdrawn cannot be resubmitted.

Due to the serious violations of the Code of Ethics committed by the Reported Judge, the Honorary Council of the Constitutional Court imposed sanctions that took into account proportionality measures.³¹ Legal considerations in a case decision are a form of the judge's accountability.³² Therefore, in making a decision, a judge will consider various legal matters. In accordance with the theory

³⁰ Heri Purawata, "Putusan Hakim Yang Adil, Sesuai Hati Nurani," Jogpaper.net, Pendidikan Yogya Indonesia, n.d., <https://www.jogpaper.net/putusan-hakim-yang-adil-sesuai-hati-nurani/>.

³¹ Irma Handayani, *Penegakan Pelanggaran Kode Etik Hakim Di Mahkamah Konstitusi Republik Indonesia (Analisis Putusan Majelis Kehormatan Mahkamah Konstitusi No. 01/MKMK-SPP/II/2017)*, 2018.

³² Endri Endri, Suryadi Suryadi, and Pery Rehendra Sucipta, "Proporsionalitas Putusan Hakim Berdasarkan Ide Keseimbangan," *Jurnal Selat* 7, no. 2 (2020): 199–222, <https://doi.org/10.31629/selat.v7i2.2391>.

of legal considerations put forward by Ahmad Rifai, every judge's decision must consider various existing aspects, both legal, philosophical, and sociological, all of which play a role in realizing the expected justice, namely legal, moral, and social justice.³³

The Honorary Council of the Constitutional Court, when referring to the textual approach based on Constitutional Court Regulation Number 1 of 2023, the type of sanction that can be imposed for proven serious violations is dishonorable dismissal in accordance with Article 47 of Constitutional Court Regulation Number 1 of 2023. The choice of sanctions listed seems unbalanced because the choice for serious violations is only dishonorable dismissal, while minor violations are verbal and written warnings. So that the Honorary Council of the Constitutional Court considers the principle of proportionality to make a breakthrough in determining the form of sanctions that are more appropriate and can be imposed, but still adheres to the guidelines of Constitutional Court Regulation Number 1 of 2023. In fact, it does not only consider the principle of proportionality to ensure that the type of violation committed is in accordance with the severity of the sanctions given.³⁴ However, the judge's legal considerations in a decision are also influenced by various external factors which not only include statutory regulations, but also legal values and the sense of justice that develop in society.³⁵ The imposition of this sanction is not only aimed at providing a warning to the Constitutional Judge individually, but also to maintain the dignity and honor of the Constitutional Court institution.

Regarding the position of the Reported Judge as Chief Justice of the Constitutional Court, it can be a consideration to reduce sanctions for his violations but can also be an aggravating factor. An award for the services

³³ Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika (Jakarta: Sinar Grafika, 2018).

³⁴ Majelis Kehormatan Mahkamah Konstitusi, "Putusan Majelis Kehormatan Mahkamah Konstitusi Republik Indonesia Nomor 2/MKMK/L/11/2023," *Putusan*, 2023, 1–385.

³⁵ Endri, Suryadi, and Sucipta, "Proporsionalitas Putusan Hakim Berdasarkan Ide Keseimbangan."

rendered by the Reported Judge during his tenure as Chief Justice of the Constitutional Court is certainly appropriate, and these services can be used as a basis for granting leniency. However, on the other hand, his position as Chief Justice of the Constitutional Court also increases the negative impacts that can arise from his violation of the Code of Ethics.

If the Honorary Council of the Constitutional Court imposes a sanction of dishonorable dismissal, then we can see it through Constitutional Court Regulation Number 1 of 2023 which gives the Reported Judge the right to appeal to the Honorary Appeal Council. So this raises questions about the final nature of the decision of the Honorary Council of the Constitutional Court. In addition, there are administrative problems because until now there have been no regulations regarding the formation or procedures for the Honorary Appeal Council which should be stated in the Constitutional Court Regulation. This can cause the decision of the Honorary Council of the Constitutional Court to be delayed or without certainty of the time of completion, considering the purpose of establishing the Honorary Council of the Constitutional Court in accordance with Constitutional Court Regulation Number 1 of 2023, namely to maintain and uphold the honor and dignity of the Constitutional Court in accordance with Articles 2 and 3 of the Constitutional Court Regulation, the Honorary Council of the Constitutional Court imposes the sanction, namely dismissal as chief justice of the Constitutional Court.

D. CONCLUSION

Based on a legal review of the decision of the Constitutional Court's Honorary Council, there are decisions issued that are not in accordance with Articles 41 and 47 of Constitutional Court Regulation Number 1 of 2023, which should be standard law and must be obeyed by all law enforcers including the Constitutional Court's Honorary Council. However, it cannot be denied that Constitutional Court Regulation Number 1 of 2023 has weaknesses and does not provide more detailed stages for sanctions for reported judges who commit serious violations for which there is no classification in it. Because every sanction

given must be based on the legal basis and facts found in the trial, the Constitutional Court's Honorary Council provides sanctions based on the principle of proportionality and facts obtained in the process. The considerations of the judges of the Constitutional Court's Honorary Council in deciding this decision have their own risks, although as a judge must have an independent principle, every decision to be issued must have a strong legal basis. So that it will have a positive impact on society and restore public trust in the Constitutional Court. However, a judge must also be able to consider the surrounding conditions. It was the time constraint that made the Honorary Council of the Constitutional Court take a decision with a new breakthrough and the impacts that will be experienced in the future, but still not ignoring the regulations that should be applied.

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