



The Extension of the Honorary Council of the Constitutional Court in Safeguarding the Integrity of Constitutional Court Judges

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ABSTRACT

This research is entitled the extension of the Constitutional Court Honorary Council in maintaining the integrity of Constitutional Court judges with the aim of finding out the existence of the Constitutional Court Honorary Council and the ideal concept of the Constitutional Court Honorary Council in maintaining the code of ethics of Constitutional Court Judges. This research uses normative juridical research methods. The results of this research show that first, the existence of the Honorary Council of the Constitutional Court is still very weak, this is proven by many Constitutional Court judges who have been proven to have violated ethics. Second, the ideal concept for the Honorary Council of the Constitutional Court in the future can be implemented by strengthening the position and authority as well as procedures for selecting members of the Honorary Council of the Constitutional Court, and by restoring the authority of the Judicial Commission as an external supervisory institution that will supervise Constitutional Court judges.

INTRODUCTION

Judicial power is a branch of state power which has an orientation towards bringing justice to society. One of the branches of judicial power in Indonesia as stated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia) is the Constitutional Court. The establishment of the Constitutional Court as a judicial institution that confirms the supremacy of the constitution as the main prerequisite for a rule of law based on the constitution.

The important role of the Constitutional Court in the Indonesian constitutional system means that the judges of the Constitutional Court are people who are selected with proven quality, professionalism and integrity. This is confirmed in Article 24C of the 1945 Constitution of the Republic of Indonesia that a Constitutional Court judge is a person of quality, integrity, and is a fair statesman who has control over state administration. A statesman is a "finished person" and does not have any interests, except serving the nation and state. Thus, the integrity aspect is also an important parameter for Constitutional Court judges.

The aspect of integrity as a constitutional prerequisite for Constitutional Court judges is actually a realm of strengthening ethical aspects. Ethics is an instrument with an ethical and internal dimension to prevent disgraceful actions from Constitutional Court judges.

In the Pancasila legal state, according to Tahir Azhari, Pancasila is not only a source of law, but also a source of ethics. Ethical values as contained in Pancasila have been standardized through the Decree of the People's Consultative Assembly Number VI of 2001 concerning Ethics in National Life.

The discourse of thought regarding legal and moral education is reviewed from the perspective of legal thought centered on the conflict of thought between positivism and natural law. For countries resulting from the annexation of "Rechtsstaat" legal empires, it cannot be avoided that the teachings of positivism are the main official reference for the state in developing law. When there is a question about what the content of the law is, positivism answers that the content of the law is positive norms set by the sovereign, which are in written form, contain orders and prohibitions and any violation thereof is subject to strict sanctions, with the aim of establishing order and pursuing legal certainty. For legal positivism, it must be kept away from non-legal factors, such as politics, economics, religion and morals. According to positivists, law is neither moral nor a social fact, the sanctity of law must be seen to be pure from the mixture of extra-legal elements, so valid law is formalized law.

While delivering lectures, Jimly often spoke about the importance of the rule of ethics as one of the foundations of the nation and state. This thinking seems to be the culmination of several previous thoughts, to realize this thesis, the fifth amendment to the 1945 Constitution should be a momentum to institutionalize a court of ethics and/or utilize existing state institutions such as the judicial commission.

The shift in human orientation and perspective in solving life's problems causes changes in applicable values and ethical standards. In reality, we know

that an individual's existence is not solely a product of himself, but also of his social environment. Humans essentially have a monopluralist dimension and are part of their social environment, so they have different levels of awareness about the value of life. Humans as actors are also moral critics, both as a consequence of intolerance towards others and the existing system of life.

LITERATURE REVIEW

On October 16 2023, the Constitutional Court decided on a case related to testing the constitutionality of the provisions of Article 169 letter q. Law 7/2017 concerning Elections, which provides an age limit of 40 years for Presidential Candidates and Vice Presidential Candidates. However, all of them were rejected, except Decision No. 90/PUU-XXI/2023. Request that the 40 year age requirement for presidential and vice presidential candidates be waived if they have previously served as regional heads. As a result of the Constitutional Court decision no. 90/PUU-XXI/2023 caused various groups to report MK judges for alleged ethical violations. Today's decision of the Honorary Council of the Constitutional Court (MKMK) proves that all the reported judges violated the code of ethics. The ethical turmoil at the Constitutional Court since the reading of MK decision No.90/PUU-XXI/2023 shows that there is no effort to monitor ethics to prevent conflicts of interest.

The fact is that through the MKMK decision all constitutional judges ewuh pakewuh in order to prevent conflicts of interest, negligence occurred. Why does neglect occur? This can be said to be due to weak internal ethical supervision of MK judges. As a result of the weak internal monitoring function of Constitutional Court judges, in its development the ethical turmoil of Constitutional Court judges has become negative and a bad precedent that has undermined the dignity of the Constitutional Court.

Research regarding the extension of the Honorary Council of the Constitutional Court has been carried out by several previous studies including: i). research conducted by Fradhana Putra Disantara, Febri Falisa Putri, Sylvia Mufarrochah, and Elsa Assar regarding "Extensification of the Authority of the Honorary Council of the Constitutional Court in strengthening the idea of Constitutional Ethics" which focuses on the urgency of the idea of constitutional ethics in maintaining the code of ethics of judges of the Constitutional Court, and Extensification of authority MKMK is an implementation of the idea of constitutional ethics in optimizing efforts to maintain the code of ethics for judges at the Constitutional Court. ii). research conducted by Mitasari et al. (2022), one of the recommendations of which is an effort to optimize the safeguarding of the code of ethics for Constitutional judges, namely to restore the main authority of the Judicial Commission as an institution that supervises the code of ethics of judges of the Supreme Court and judges of the Constitutional Court.

Of the two studies above, this research focuses more on actual issues which specifically discuss the existence of the MKMK after the Constitutional Court Decision No. 90/PUU-XXI/2023 which contains a lot of controversy. This study has not been widely conducted so this research is original research. This research aims to answer two legal issues. First, how does the Constitutional Court's Honorary Council exist in maintaining the integrity of the Constitutional

Court? Second, what is the ideal concept of the Constitutional Court Honorary Council in optimizing efforts to maintain the code of ethics for Constitutional Court judges.

METHODOLOGY

This research uses normative juridical research methodology. The normative juridical method is a method that examines, examines and analyzes established legal and ethical norms. In this research, apart from legal norms, codes of ethics are also conceptualized as standard rules that are considered appropriate as norms that regulate human behavior. By applying normative juridical methods, the research sources for this research come from primary and secondary legal materials.

This research uses a statutory approach (statute approach) Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court. MK Decision Decision No. 90/PUU-XXI/2023 and MKMK decision Number: 2/MKMK/L/11/2023 and a conceptual approach in the form of law books, legal journals, internet articles that are relevant to this research. The analysis of this research is descriptive by analyzing the existence of the MK Honorary Majelsi and the facts contained in this writing. The analysis in this research was carried out using a behavioral phenomenon approach of Constitutional Court judges based on cases obtained from secondary data sources and analysis based on the existing code of ethics.

RESEARCH RESULT AND DISCUSSION

3.1 The existence of the Honorary Council of the Constitutional Court in Maintaining the Integrity of the Constitutional Court

- **Ethical Tempests of the Constitutional Court**

After the Constitutional Court's decision on October 16 2023 regarding the age limit for presidential and vice presidential candidates, there have been various polemics. And according to Harmoko, after the decision, there was an ethical turmoil at the Constitutional Court. The Constitutional Court not only decided one case, but eleven decisions at once, related to testing the constitutionality of the provisions of Article 169 letter q. Law 7/2017 concerning Elections, which provides an age limit of 40 years for Presidential Candidates and Vice Presidential Candidates. However, all of them were rejected, except Decision No. 90/PUU-XXI/2023. Request that the 40 year age requirement for presidential and vice presidential candidates be waived if they have previously served as regional heads.

Decision No. 90/PUU-XXI/2023 looks inconsistent if a comparative analysis is carried out against other decisions. One decision that can be compared is the decision in case no. 29/PUU-XXI/2023. This case was filed by the Indonesian Solidarity Party (PSI), which asked the Constitutional Court to return the age requirement for presidential candidates to 35 years as regulated in the previous Presidential Election Law. The Petitioner believes that Article 169 letter q. This is discriminatory, unscientific, and contrary to the original intent of the formation of the 1945 Constitution.

After Constitutional Court Decision No. 90/PUU-XXI/2023 various academic circles, lawyers and NGOs reported the Constitutional Court judges to the Constitutional Court Honorary Council. Today's decision of the Honorary Council of the Constitutional Court (MKMK) proves that all the reported judges violated the code of ethics. The ethical turmoil at the Constitutional Court since the reading of MK decision No.90/PUU-XXI/2023 shows that there is no effort to monitor ethics to prevent conflicts of interest.

The fact is that through the MKMK decision all constitutional judges ewuh pakewuh in order to prevent conflicts of interest, negligence occurred. Why does neglect occur? This can be said to be due to weak internal ethical supervision of MK judges. As a result of the weak internal monitoring function of Constitutional Court judges, in its development the ethical turmoil of Constitutional Court judges has become negative and a bad precedent that has undermined the dignity of the Constitutional Court.

Referring to Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court, the MKMK is a device established by the MK to maintain and uphold honor, nobility and dignity. Apart from that, the MKMK was formed to maintain the Code of Ethics and Behavior of Constitutional Judges. The membership of prospective MKMK members consists of three different people. The composition is one active constitutional judge (Wahiduddin Adams), one community figure (Prof. Jimly Asshidiqie), and one academic with a legal background (Bintan Saragih). This membership is permanent for a term of three years or ad hoc as determined through the Judges' Consultative Meeting (RPH). However, after the MKMK trial at that time, the MK formed the MKMK permanently by appointing judge Ridwan Mansyur, community leader I Gede Palguna, and Andalas University academic Yuliandri.

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- **Weak Ethical Oversight Function of the Constitutional Court**

The ethical turmoil as referred to above occurred because of the weak internal monitoring function of Constitutional Court judges. According to Benny Ramdhany, the internal supervisory system still has problems so it cannot work effectively and was formed by the MK itself through the PMK. It is the absence of supervision and means of control outside the MK that can create abuse of power, for example in the case of Akil Mochtar and Patrialis.

According to Wahyu Aji Ramadan, Irma Aulia Pertiwi Nusantara, and Tanti Mitasari found practical problems with the Constitutional Court's internal supervision, namely; First, the ineffectiveness of the case handling mechanism which is relatively long and lengthy, because the Ethics Council has limited authority to impose sanctions in the form of verbal or written warnings for cases that are determined to be minor violations. Meanwhile, when there is a decision on a serious violation, it will be delegated to the MKMK. Second, the position and formation of the Ethics Council which was formed through the PMK has the implication of giving the impression that the Constitutional Court's ethics institution is used to protect the Constitutional Judges themselves and has the potential to trigger a conflict of interest. Third, the Ethics Council is passive in handling cases of alleged ethical violations by Constitutional Judges, because its authority is limited to only being able to wait for reports from the public.

According to the author, the condition of ethical supervision of Constitutional Court judges today is very weak, in fact the MKMK is passive or waits for public reports to come in and then follows up with the formation of the MKMK. Then the legal basis for the formation of the MKMK is through Constitutional Court Regulation Number 1 of 2023, and the position is internal. Based on this, according to the author, the effectiveness of MKMK's performance is very weak.

Weak supervision of constitutional judges is proven by the occurrence of several cases involving all MK judges as stated in MKMK decision Number: 2/MKMK/L/11/2023, where in the decision all MK judges were proven to have violated ethics. A similar case has occurred before, as revealed by Refly Harun in an article entitled "MK is still clean?" published in the daily Kompas in 2010, conveyed allegations that there were case brokers at the Constitutional Court. Through this article, Refly said that: "I have seen with my own eyes US dollars worth Rp. 1 billion, which according to the owner will be handed over to one of the Constitutional Court judges."

The problem of inefficient enforcement of ethical violations. There is the potential for inefficiency in this enforcement process as a result of several provisions related to MKMK. First, there is the potential for an inefficient enforcement process for ethical violations due to the authority being limited to giving verbal warning sanctions and the nature of the MKMK as an internal tool to fill the authority to give sanctions if there are serious violations. These two things make enforcing violations, especially serious violations, take a long time

and go through many processes. Second, in carrying out its duties and authority, MKM also has the potential to not be independent and impartial in enforcing existing ethical violations. According to the author, this is related to the formation of the MKMK being the MK and also having an internal position within the MK.

3.2 Ideal Concept of the Honorary Council of the Constitutional Court in optimizing efforts to maintain the code of ethics for judges of the Constitutional Court

In the beginning, ethics was only seen as something private and was always associated with religion, but in the course of history, ethics experienced quite significant developments, the philosopher Auguste Comte in evolutionary theory was more inclined to see that the social changes that occurred were a linear process, meaning that everything Society develops through the same sequence of development and starts from the initial and final stages of development.

Describing the development of ethics from stage to stage, Prof. Jimly borrows terms used by Auguste Comte and is also used by Prof. Jimly in a completely different sense to describe the stages of development of an ethical system. According to Prof. Jimly Ashidiqee, the development of ethics has gone through several phases of development as follows:

- a) Theological ethics;
- b) Ontological ethics;
- c) Positivist Ethics;
- d) Closed Functional Ethics;
- e) Open Functional Ethics Even,

Looking for the ideal formulation or concept is one step that can maximize the performance and supervisory function of MKMK. This is due to several considerations that have been explained in previous discussions. Starting from the legal basis of the MKMK which is too weak because it is only regulated in the PMK, to the problem of limited authority. Therefore, the research will outline the concept of supervision and enforcement of the Constitutional Court in the future.

• Pros and Cons of Internal and External Ethics Monitoring and Enforcement Systems

These supervisory and ethical enforcement institutions have different forms and authorities. This institution can be an organ attached to the organization/institution it supervises (internal) or stand alone as a separate institution (external). Debates began to arise when the lack of uniformity in the institutional form of supervisors and enforcers of the code of ethics was considered to affect the procedures and quality of the supervision of ethics enforcement itself.

According to Fauziah Suci Angraini, supervision by internal institutions is pro-forma in nature and has a tendency to prioritize the interests of community groups bound by the code of ethics itself, not the general public whose interests have the potential to be harmed due to ethical violations. According to Yusuf, supervisory institutions and code of ethics enforcers are more effective outside

the supervised institutions, because society currently demands transparency and accountability.

- **Concept of Future Supervision of Constitutional Court Judges.**

Finding the ideal concept for supervision of Constitutional Court judges in the future is not an easy task, because every system has its strengths and weaknesses. Currently, the system of monitoring and enforcing the code of ethics for Constitutional Court judges is carried out by the MKMK, recently the Chief Justice of the Constitutional Court, Suhartoyo, permanently formed the MKMK by officially appointing three members of the permanent MK Honorary Council, namely judge Ridwan Mansyur, community leader I Gede Palguna, and academics from Andalas University. Yuliandri. Regarding the future concept, the author suggests strengthening and reformulating the supervisory institution for Constitutional Court judges as follows:

- Strengthening the Honorary Council of the Constitutional Court

In "the Advantage of Integrity", Adrian Gostick and Dana Telford, researchers from Harvard University defines integrity as strict adherence to a code, especially certain moral values or artistic values. Based on the above, a judge's integrity is related to obedience and obedience to existing values, in this case a code of ethics. Jeffrey M. Sharman in "Judicial Ethics: Independence, Impartiality, and Integrity" emphasizes that the principle of integrity in judicial institutions (especially those of judges) is very important. Therefore, the existence of a Code of Ethics functions to direct judges to respect and obey the law.

Almost all countries regulate the integrity requirements that their judges must have. In New Zealand in the New Zealand Government, Crown Law Office, 'Judicial Appointments Protocol' of 2013 it is regulated that a judge must fulfill the qualities of character (personal honesty and integrity; impartiality, open mindedness and good judgment; patience, social sensitivity and common sense; the ability to work hard). In El Salvador, judges must have 'well-known morality and competence', while in Ghana, a judge must have 'high moral character and proven integrity. Therefore, to support Constitutional Court judges with integrity, it must be supported by an independent ethical institutional infrastructure. So the existence of MKMK today still leaves various problems, and therefore needs to be strengthened. To strengthen the supervision of MK judges, the author suggests strengthening the existence of the MKMK. The concept is as follows. First, MKMK membership selection. MKMK membership selection must be carried out openly, independently and accountably. And the membership is selected through a selection committee consisting of 1 (one) former Constitutional Justice, 1 (one) professor in the field of law and 1 (one) public figure, each of whom is recognized and has an impeccable personality, and each of the three -Each of them is elected by the Constitutional Court so that their position is still internal. Furthermore, to cover allegations of not being independent and allegations that Constitutional Justices are protected by their internal supervisory institutions, the composition of the expert panel and members of

the MKHK must be filled by people who have a good track record and are trusted by the public.

Second, the authority of the MKMK must be designed as a supervisory and ethical justice institution that actually has active authority, meaning that the institution does not just wait for reports from the public to take action. Regarding the authority of the MKMK, the inspection must be carried out openly, because so far it has been carried out behind closed doors. Closed inspections do not guarantee transparency and public participation in monitoring the implementation of the inspection. For this reason, researchers believe that it is necessary to regulate the implementation of open examinations. This opinion is based on the premise that without transparency and public accountability, it is impossible to guarantee quality control over an ethical enforcement process that is independent, honest and fair. If the examination and trial process is carried out behind closed doors, the degree of objectivity, integrity and independence cannot be accounted for.

Third, the MKMK institution should have its own secretariat so that all matters relating to its administration and institutional governance are independent. Currently the institution is still internal to the MK so institutionally this position does not rule out the possibility of disrupting the institutional independence of the MKMK itself.

- Returning the Judicial Commission as the Constitutional Court's External Supervisory Institution

Great power in the realm of judicial power without being balanced by equal supervision will trigger judicial corruption and other abuses of power which can give rise to oppression in the life of the nation and state. Another consideration why there is a need for supervision by external institutions in addition to internal institutions is because even though Constitutional Judges have an independent nature, this independence or freedom cannot be said to be absolute. This is in line with opinion. The International Court of Jurists states that, "Independence does not mean that a judge is entitled to act in an arbitral manner".

Historically, the Constitutional Court has been an object supervised by the KY. However, this authority was amputated by the MK in MK decision no. 005/PUU-IV/2006 with several considerations, including stating that, "Systematically and from the interpretation of "original intent", the provisions of Article 24B of the 1945 NRI Constitution do not cover the objects of behavior of Constitutional Judges as regulated in Article 24C of the 1945 NRI Constitution.

To realize external supervision, the author provides recommendations for solutions and mechanisms for the problems and discussions that have been presented. The recommendations are: First, carry out normative reconstruction of the ethics supervisors of Constitutional Judges through the revision of the Constitutional Court Law. This idea was aimed at forming a new institution called MKHK. Second, returning the role of the Judicial Commission, adjusting its authority to complete the supervision of Constitutional Justices. Harmoko M.said also said that amidst the weakness

of the MK's supervisory function, he was encouraged to return KY as the MK's external supervisor.

By involving the Constitutional Court again in supervising constitutional judges, this type of supervision model is called the dual supervision model as applied to the supervision of judges within the Supreme Court which is supervised by internal and external parties. Even though such a model does not reflect the modern judicial process, which is built on the spirit of simpler procedures and less bureaucracy. Therefore, ethical enforcement by external institutions is still the best choice when compared to the other two models.

Based on the description above, the author agrees with the establishment of an external supervisor by restoring the authority of the KY as an institution that supervises the behavior of Constitutional Court judges. Apart from that, another option is to strengthen the position and authority of the MKMK as a supervisory institution and enforcer of the Constitutional Court's code of ethics by revising the Constitutional Court Law.

CONCLUSIONS AND RECOMMENDATIONS

Based on the description of the research results and discussion above, the following conclusions can be drawn from this research: first, the effectiveness of the Honorary Council of the Constitutional Court in maintaining the ethics of Constitutional Court judges is still less effective, this is proven by the many violations of the Code of Ethics and Code of Conduct for Constitutional Judges committed by Constitutional Justice. These violations resulted in the collapse of the MK's authority and public trust in the MK. One of the causes of the many practices of abuse of authority carried out by Constitutional Justices is the lack of effective internal supervision of Constitutional Justices. Second, the ideal concept of the Honorary Council of the Constitutional Court in optimizing efforts to maintain the code of ethics for judges of the Constitutional Court is carried out in this way. 1). Strengthen the MKMK membership selection pattern and strengthen the authority of the Honorary Council of the Constitutional Court which is active, not passive as it is currently. As well as strengthening the MKMK institution itself 2). Restore the authority of the KY as an external supervisor of the Constitutional Court by revising the Constitutional Court Law.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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