

## JURIDICAL ANALYSIS AGAINST THE DISMISSAL POSITION OF CHAIRMAN THE CONSTITUTIONAL BASED ON THE RULING OF HONORARY COUNCIL OF THE CONSTITUTIONAL COURT NUMBER: 2/MKMK/L/11/2023

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**Abstract:** Artikel ini mengkaji tentang putusan yang di lakukan oleh majelis kehormatan Mahkamah Konstitusi terkait dengan laporan pelanggaran kode etik hakim konstitusi yang dibuat oleh Deni Inriyani terhadap ketua Mahkamah Konstitusi Anur Usman yang merupakan adik ipar dari Presiden Republik Indonesia yaitu Bapak Jokowi. Sebelumnya ketua Mahkamah Konstitusi telah mengeluarkan Putusan Nomor 90/PUU-XXI/2023 yang isinya putusannya Menyatakan Pasal 169 huruf q Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum (Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109) yang menyatakan, “berusia paling rendah 40 (empat puluh) tahun” bertentangan dengan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan tidak mempunyai kekuatan hukum mengikat, sepanjang tidak dimaknai “berusia paling rendah 40 (empat puluh) tahun atau pernah/sedang menduduki jabatan yang dipilih melalui pemilihan umum termasuk pemilihan kepala daerah”. Penelitian ini merupakan penelitian hukum normative dengan pendekatan kasus yang dilakukan pada tahun 2023 sampai dengan tahun 2024. Dari hasil penelitian ini diketahui ketua Mahkamah Konstitusi RI dinyatakan telah melanggar kode etik hakim dan dicopot sebagai ketua Mahkamah Konstitusi dan dilarang untuk memeriksa sengketa pemilihan Presiden dan Wakil Presiden tahun 2024.

**Keywords:** Pemberhentian, Jabatan Ketua, Hakim Konsistitiusi RI

**Abstract:** This article examines the decision made by the honorary panel of the Constitutional Court regarding reports of violations of the code of ethics for constitutional judges made by Deni Inriyani against the chairman of the Constitutional Court, Anur Usman, who is the brother-in-law of the President of the Republic of Indonesia, namely Mr. Jokowi. Previously, the chairman of the Constitutional Court issued Decision Number 90/PUU-XXI/2023, the contents of which stated Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 6109 ) which states, “at least 40 (forty) years of age” is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as “at least 40 (forty) years of age or has/is occupy positions elected through general elections, including regional head elections.” This research is a normative legal research with a case approach carried out from 2023 to 2024. From the results of this research it is known that the chairman of the Indonesian Constitutional Court was declared to have violated the judge's code of ethics and was removed as chairman of the Constitutional Court and was prohibited from examining disputes over the election of the President and Deputy President. in 2024.

**Keywords:** Dismissal, Position of Chairman, Constitutional Judge of the Republic of Indonesia

### INTRODUCTION

The Honorary Council of the Constitutional Court of the Republic of Indonesia on Tuesday, of November seventh, Two Thousand and Twenty Three (7-11-2023) read out the Decision of the Honorary Council of the Constitutional Court Number: 2/MKMK/L/11/2023 in the Plenary Session, the decision was read out directly by three Members of the Honorary Council of the Constitutional Court, namely Jimly Asshiddiqie as Chairman and Member, Wahiduddin Adams, as Secretary and Member, and Bintan R. Saragih, as Member.[1]

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The Honorary Council of the Constitutional Court, which was formed based on the Decree of the Chairman of the Constitutional Court of the Republic of Indonesia Number 10 of 2023 concerning the Establishment and Membership of the Honorary Council of the Constitutional Court, dated 23 October 2023, to examine, adjudicate and decide on reports of alleged violations of the Code of Ethics and Conduct of Constitutional Judges.[2]

The case for reporting violations of the code of ethics by the chairman of the Indonesian Constitutional Court began with reports made by 16 reporters consisting of:

**Table 1.** Reporting violations of the code of ethics by the chairman of the Indonesian Constitutional Court.[3]

Number	Name of the Complainant
1	Denny Indrayana Occupation: Advocate, Senior Partner at INTEGRITY Law Firm Address: Jalan A. Yani Km. 36, Gang Purnama No. 4, RT 001/RW 006, Komet Village, Banjarbaru District, Banjarbaru City, South Kalimantan Province
2	Individual citizens who are members of the Indonesian Advocates Movement (PEREKAT Nusantara) and the Indonesian Democracy Defense Team (TPDI)
3	Individual citizens who are members of the Election Care Advocacy Team (TAPP)
4	Individual citizens who are members of the Civil Youth Association
5	Indonesian Legal Aid and Human Rights Association (PBHI)
6	Individual citizens who are members of the Indonesian Legal Care Advocacy Team
7	Legal Aid Institute for the Path of Change Volunteers
8	Professor and Lecturer in Constitutional Law/State Administrative Law who is a member of the Constitutional Administrative Law Society (CALs)
9	Individual citizens who are members of the Constitution Guard Advocates
10	Yusuf Legal Aid Institute (LBH).
11	Individual citizen: Name : Zico Leonardo Djagardo Simanjuntak, S.H. Occupation: Advocate Address: Jalan Aries Asri VI E16/3, Kembangan, West Jakarta Hereinafter referred to as Reporter Zico.
12	Independent Election Monitoring Committee (KIPP)
13	Individual citizen: Name : Tumpak Nainggolan, S.H. Occupation: Advocate Address: Block C3 BTN Perum Sahbandar Permai RT.02 RW.11 Bojong Village, Kec. Karangtengah, Kab. Cianjur, West Java. Hereinafter referred to as Reporting Party Tumpak Nainggolan
14	UNUSIA Student Executive Board
15	Individual citizens: Name : Alamsyah Hanafiah, S.H., M.H. Occupation: Advocate Address: Jl. Lt. Gen. R. Suprpto, Ruko Cempaka Mas, West Cempaka Mas, Block C Number 7, Central Jakarta
16	Individual citizens who are members of the Indonesian Democracy Advocates Association (PADI)

Meanwhile, the person reported is the Chairman of the Constitutional Court of the Republic of Indonesia, namely: Name: Anwar Usman 2. Place/Date of Birth: Bima, 31 December 1956 3. Position: Chairman of the Constitutional Court/Constitutional Judge 4. Address: Constitutional Court Building Jl. Medan Merdeka Barat Number 6, Jakarta 10110.[4]

The issue of reports of violations of the code of ethics carried out by the Chief Justice of the Republic of Indonesia's Constitutional Court cannot be separated from the Republic of Indonesia's Constitutional Court Decision Number 90/PUU-XXI/2023 where this decision was directly led by the chairman of the Republic of Indonesia's Constitutional Court, Anwar Usman, who read out the court's decision with the following ruling:

**Judge:**

1. Grant the Petitioner's request in part;
2. Declare Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) which states, "at least 40 (forty) years of age" is contradictory with the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "at least 40 (forty) years of age or has/is

currently holding a position elected through general elections including regional head elections". So that Article 169 letter q of Law Number 7 of 2017 concerning General Elections in full reads "be at least 40 (forty) years old or have/are currently holding positions elected through general elections including regional head elections";

3. Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.[5]

The case was filed by a student named ALMAS TSAQIBIBIRR RE A, who lives on Jalan Awan 123, Ngoreasan RT.01/RW.22 Kelurahan Jebres, Surakarta.[5]

The object of the application is related to the age limit for presidential candidates and vice presidential candidates as regulated in Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections which reads: "The requirements for becoming a presidential candidate and vice presidential candidate are: q. low 40 (forty) years;" So based on the provisions of Article 169, the requirements for becoming a presidential candidate and vice presidential candidate for Indonesia are:

- a. *have faith in God Almighty;*
- b. *Indonesian citizen since birth and has never accepted another citizenship of his own free will;*
- c. *the husband or wife of the presidential candidate and the husband or wife of the vice presidential candidate are Indonesian citizens;*
- d. *never betrayed the country and never committed a crime of corruption or other serious crimes;*
- e. *spiritually and physically able to carry out duties and obligations as president and vice president and free from narcotics abuse;*
- f. *live in the territory of the Unitary State of the Republic of Indonesia;*
- g. *has reported his assets to the agency authorized to examine state administrators' wealth reports;*
- h. *does not currently have debt obligations individually and/or as a legal entity for which he/she is responsible which is detrimental to state finances;*
- i. *not being declared bankrupt based on a court decision;*
- j. *never committed any disgraceful act;*
- k. *not being nominated as a member of the DPR, DPD or DPRD;*
- l. *registered as a voter;*
- m. *has a taxpayer identification number and has carried out the obligation to pay taxes for the last 5 (five) years as proven by an annual individual taxpayer income tax notification letter;*
- n. *have not served as president or vice president for 2 (two) terms in the same position;*
- o. *loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika;*
- p. *has never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more;*
- q. *aged at least 40 (forty) years;*
- r. *have at least a high school diploma, madrasah aliyah, vocational high school, vocational madrasah aliyah, or other equivalent school;*
- s. *not a former member of the banned Indonesian Communist Party organization, including its mass organizations, or not someone directly involved in G.30.S/PKI; and has a vision, mission and program in implementing the government of the Republic of Indonesia.[6]*

Apart from that, the applicant also has his own views on an inspiring figure in government in the current era, who also served as Mayor of Surakarta in the 2020-2025 period. It is clear that during Gibran Rakabuming Raka's reign, economic growth in Solo rose to number 6, 25 percent, when he first served as mayor, economic growth in Solo was minus 1.74 percent.

Therefore, the Petitioner is an admirer of the Mayor of Surakarta in the 2020-2025 period, namely Gibran Rakabuming Raka. During Gibran Rakabuming Raka's administration, economic growth in Surakarta increased by 6.25 percent from when he was Mayor, economic growth was minus 1.74. percent. Economic growth in Surakarta exceeds two big cities, namely Yogyakarta and Semarang, as we know, Solo is not a provincial capital like Central Java or Yogyakarta, and Solo is only a small city which has a geographical area measuring +/- 44 KM and even Gibran Rakabuming Raka who is still 35 years old has been able to build and advance the city of Surakarta with honesty, moral integrity and obediently serving the interests of the people and the state.[5]

## METHODS

This research begins in November 2023 to March 2024 and uses normative and empirical juridical methods that are qualitative in evaluative form with a case study approach [7,8]. The data sources in this research consist of primary, secondary and tertiary data. Data collection techniques using literature reviews, qualitative juridical data analysis. This researcher examines the decision of the Honorary Council of the Constitutional Court Number: 2/MKMK/L/11/2023.

## RESULTS and DISCUSSION

Based on the report of the reporter Denny Indrayana dated 27 August 2023 and 23 October 2023, which has been recorded in the Electronic Violation Reports or Findings Registration Book (e-BRLTP) with the Deed of Registration of Violation Reports or Findings (ARLTP) Number 1/MKMK/L/ARLTP/10 /2023 on 25 October 2023, as added and corrected in the Additional Report dated 23 October 2023 and Corrected Report with letter number 0395/EXT/INTEGRITY/X/2023 dated 30 October 2023.[3]

Regarding the alleged violation of the Code of Ethics and Behavior of Constitutional Judges on behalf of Anwar Usman, which basically describes the following matters:

The Reporting Party delivers an initial introduction as the essence of the arguments for the report on alleged ethical violations by the Reported Judge. The reporter wrote this preamble with a sad and painful heart, thinking about how the Constitutional Court of the Republic of Indonesia, an institution that we both love and hope for, has recently turned into an institution that has questioned and questioned the credibility and integrity of its institutions and constitutional judges. For this reason, the Rapporteur makes every effort to maintain the honor of the Constitutional Court, even by conveying criticism and input, which is often easily misunderstood. Decision Number 90/PUU-XXI/2023 is one of the toughest tests faced by the Court. Namely, when contesting the 2024 Presidential Election, the Constitutional Court courtroom becomes a fighting ground, which unfortunately is not always sincere in the interests of the nation and state.

So what emerges is the political interest of victory, without paying attention to Indonesian politics. Supposedly, as an institution charged with protecting the constitution and democracy (the guardian of constitution and democracy), especially filled with constitutional judges who are conditionally statesmen, the Court should be resistant to the temptation of intervention in the form of power or wealth. However, unfortunately, in the view of the Reporter of Decision Number 90/PUU-XXI/2023, it shows how the Court has been subordinated to the interests of winning power, by changing the rules of law, which should not be wise and should not be done. Moreover, the change in regulations regarding the age requirements for presidential and 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. This interest is no longer indisputable because it has become a legal fact, with the registration of Gibran Jokowi as a running mate for vice president with the General Election Commission, one of which is taking advantage of the new provisions regarding age requirements in Decision Number 90/PUU-XXI/2023 which has just been decided by the Court.

Not only is this decision contrary to the principle of impartiality where the Reported Judge should have resigned according to the concept of disqualification, but what is more disturbing is that Judicial Decision Number 90/PUU-XXI/2023 is indicated to be the work of a planned and organized crime).

So it is appropriate for the Reporter to be considered a "Mega-Scandal of the Family Court". Because the level of ethical violations and political crimes committed are very damaging and undermine the pillars of the authority of the Constitutional Court. The Mega-Scandal of the Family Court involves the three highest elements, namely: 1. Person number one, namely the 1st Chief Justice, Chairman of the Constitutional Court; 2. For the direct political interests of his family, namely the 1st Family, the family of the President of the Republic of Indonesia Joko Widodo, and his son Gibran Rakabuming Raka; and 3. For the sake of occupying a position in the Presidential Institution, namely the 1st Office , Office of the President of the Republic of Indonesia.

So, with all these highest elements, it is not appropriate if the ethical violations and political crimes that occur are seen as just ordinary violations and crimes, and only ethical

sanctions should be imposed. The damage caused was too devastating, so the principle that the Constitutional Court's decision must be respected as final and binding, this time the exception option must be opened, precisely in order to maintain the authority, honor and nobility of the Constitutional Court itself. In such important and critical conditions, the role of the Honorary Council of the Constitutional Court must be used as an entry point, to make basic corrections. Not only by imposing ethical sanctions in the form of dishonorable dismissal of the Reported Judge, but what is more important is to assess and open room for correction of Decision Number 90/PUU-XXI/2023, which has been engineered and manipulated by the Reported Judge and the power of power that designed the crime which is planned and organized (planned and organized crime). That is why, the Rapporteur humbly prays that the Honorable Council of the Honorable Court will be willing to use the mandate that now rests on the shoulders of the Honorable Council to not only save the Constitutional Court, or the 2024 Presidential Election, but furthermore, save the Indonesian State of Law.

The Reporting Party proposes that Decision Number 90/PUU-XXI/2023 should not be exploited, or benefited from, by parties who have deliberately taken advantage of the kinship relationship between the Reported Judge and President Joko Widodo. Such use of family relations is not only corruptive, collusive and nepotistic, but has also degraded and humiliated the institution of the Court which should be protected with all its power and honor. For this reason, the Reporting Party proposes that Decision Number 90/PUU-XXI/2023 should not be used as a basis for competing in the 2024 Presidential Election. There needs to be a provisional decision to postpone the implementation of Decision Number 90/PUU-XXI/2023 which violates constitutional reason and morals. . Furthermore, by implementing constitutional restorative justice, the Honorable Council of Honor may be pleased to declare Decision Number 90/PUU-XXI/2023 invalid, or at least order the Constitutional Court to re-examine the case of Decision Number 90/ PUU-XXI/2023, with a different composition of judges, without a Reported Judge. Furthermore, to avoid the Honorary Council's decision not being implemented within the very narrow presidential election deadline, and to avoid the appeal being misused to delay the execution, the Reporting Party requested that the Honorary Council's decision be implemented, even though there is a legal appeal (uitvoerbaar bij voorraad). The reporter really understands the dilemma and how difficult it is to carry out such judicial activism. However, when we are faced with ethical violations and extraordinary crimes, extraordinary law enforcement measures are also needed (for extraordinary crimes, we need extraordinary law enforcement). Finally, the Rapporteur prays that the Honorary Council of the Constitutional Court will be given strength, calm and health of mind physically and mentally, to be able to decide on this report wisely and fairly. It is unimaginable how much pressure and threats the Honorary Council might receive, may Allah SWT protect and open the way.[3,5]

#### **CONCERNING LEGAL STANDING**

Based on Article 15 PMK 1/2023, "Reporters... are individuals, groups of people, institutions or organizations that have a direct interest in the substance being reported.[9]" As stated in the letter dated 27 August 2023, the Reporting Party is an individual Professor of Constitutional Law, Advocate, DPR RI Candidate from the Democratic Party for Electoral District II of South Kalimantan. The reporter is an individual who has long studied and advocated for constitutional and electoral law issues. Therefore, in connection with cases related to the age requirements of presidential and vice-presidential candidates, the Rapporteur has a direct interest in ensuring that the Constitutional Court can present a decision that confirms the principles of the Indonesian rule of law, honest, fair and democratic elections.

The reporter was active as Secretary General and then became Chair of the Indonesian Court Monitoring from its founding in 2000 to 2008. The reporter was also appointed as Secretary of the Legal Mafia Eradication Task Force during the era of President Susilo Bambang Yudhoyono (2009-2011).[10]

Because he is concerned with constitutional, electoral and anti-mafia legal issues, the Reporter is often actively involved in various trials at the Constitutional Court, either as an expert or as the applicant's attorney. That is also what causes the Rapporteur to push for positive public control—not interventionist, for the Constitutional Court. Mainly because in the view and reading of the Rapporteur, several constitutional judges in the last period had problems related to the prerequisites for statesmanship, including in avoiding conflicts of interest in handling cases.



The reporter has a direct interest in upholding the ethical discipline and behavior of constitutional judges, so as not to handle cases that have a conflict of interest with him; save the honor, dignity and honor of the Constitutional Court institution; upholding the pillars of the Indonesian rule of law.

As a candidate for the Democratic Party, a participant in the 2024 legislative elections, the Reporter's direct interest in the substance of the report is that the constitutional judges at the Constitutional Court truly uphold professionalism and integrity in deciding cases, especially disputes over election results. Because, the reporter has the opportunity to submit a dispute over the legislative election results to the Constitutional Court.[3]

#### **CONCERNING ETHICS VIOLATIONS AND CONDUCT OF CONSTITUTIONAL JUDGE**

The ethical violations committed by the Reported Judge were actually visible and clear, especially when he did not resign from handling cases that contained conflicts of interest with his family, brother-in-law Joko Widodo and nephew Gibran Rakabuming Raka.

As someone who holds public office with the highest constitutional requirements, namely "Statesman", and carries out the mandate as Chief Justice of the Constitutional Court, it is only natural and obligatory for the Reported Judge to set the best role model, namely to withdraw from handling cases that contain a conflict of interest.

As a universal concept, the resignation of a judge from handling a case because there is a conflict of interest, is known as "judicial disqualification", or "recusal", or in Latin there is the principle, "nemo iudex in causa sua", in loose translation, a judge does not may examine matters related to their own interests. The prohibition on examining due to such a conflict of interest is closely related to the principle of impartiality in trials (judicial impartiality), which is one of the main foundations for the presence of a fair trial.

Regarding the principle of impartiality, of course it is an inseparable part of the judge's code of ethics, and therefore has become a universal principle as stated in the "Bangalore Principles", which in section 2.5 states: "A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially."

Regarding the requirement to withdraw from handling a case because it relates to the interests of the judge's family, the "Bangalore Principles" are regulated, in point 2.5.3, namely that a judge withdraws from a case when: "the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy.

This principle of impartiality was then adopted in Constitutional Court Regulation Number 9 of 2006, specifically the Principle of Impartiality, in the application of Point 5 letter b which regulates: "Constitutional judges unless the quorum for conducting a trial is not fulfilled must resign from examining a case if the judge does not can or is considered unable to act impartially for the reasons below: ... b. The constitutional judge or his family members have a direct interest in the decision.

As a statesman, especially the Chief Justice of the Constitutional Court, the Reported Judge should really understand that the case related to the constitutionality test of the age requirements for presidential candidates is closely related to the direct interests of his family, namely his brother-in-law Joko Widodo and his nephew Gibran Rakabuming Raka's opportunity to advance in the 2024 presidential election. There is no excuse for not complying, because the language of the regulations is, "must resign".

There are no exceptions to this norm, for example: unless the applicant is not his own family, as is often argued by some groups who defend the Reported Judge's non-retirement from the case regarding the age requirements for presidential candidates.

In short, the Reported Judge committed various very basic ethical and behavioral violations, and therefore deserves heavy sanctions, in the form of dishonorable dismissal, of course if through the MKMK examination it is proven that these ethical violations are proven and undeniable.[3]

**PETITUM**

The request for the report is as follows:

1. Receive the Whistleblower's report in its entirety;
2. Imposing sanctions in the form of dishonorable dismissal on Reported Judge Anwar Usman, because he was proven to have committed serious violations of the Code of Ethics and Behavior of Constitutional Judges, in particular not resigning from cases where his family members have a direct interest in the decision;
3. States that in the decision-making process in case number 90/PUU-XXI/2023, not only did ethical violations occur, but also planned and organized interventions and crimes which damaged the dignity and honor of the Constitutional Court of the Republic of Indonesia;
4. Declare Decision Number 90/PUU-XXI/2023 to be invalid, as regulated in Article 17 paragraph (6) of the Judicial Power Law. OR:
5. Order the Constitutional Court of the Republic of Indonesia to immediately re-examine case number 90/PUU-XXI/2023 with a different composition of the panel of constitutional judges, without the Reported Judge, as regulated in Article 17 paragraph (7) of the Judicial Power Law;
6. Declare that Decision Number 90/PUU-XXI/2023 does not apply until a decision is made by the Constitutional Court of the Republic of Indonesia based on the re-examination of case Number 90/PUU-XXI/2023;
7. Order that this decision can be executed first (uitvoerbaar bij voorraad) even though there are legal appeals. Or if the Honorary Council of the Constitutional Court has another opinion, please make a decision that is as fair as possible (ex aequo et bono).[3]

The evidence submitted by the reporter is as follows:

**Table 2.** list of the reporter's evidence

Number	Name of Evidence
1	Article entitled Jimly Affirms that MKMK Only Handles Judges' Ethics Cases, Cannot Change Decisions, accessed via <a href="https://apps.detik.com/detik/https://news.detik.com/berita/d7006038/jimly-tegaskan-mkkm-just-handle-cases-ethicsjudge-can't-change-the-decision">https://apps.detik.com/detik/https://news.detik.com/berita/d7006038/jimly-tegaskan-mkkm-just-handle-cases-ethicsjudge-can't-change-the-decision</a> . [11]
2	Screenshot of the Provisional List of Democratic Party Candidates for the Electoral District (Dapil) of South Kalimantan II, accessed via <a href="https://infopemilu.kpu.go.id/Pemilu/Dcs_dpr">https://infopemilu.kpu.go.id/Pemilu/Dcs_dpr</a> . [12]
3	Police Criminal Investigation Letter Number B/47/VII/RES.1.1.1./2023/ Dittipidsiber regarding Notification of the start of an investigation into the Reported Party Denny Indrayana Evidence. [13]
4	Press Release from the Central Leadership Council of the Indonesian Advocates Congress (KAI) dated 17 July 2023 Evidence. [14]
5	Defendant's Answer in KAI Ethics Case Number 01/DK.JKT/VIII/2023 with the title "Fighting for Noble Advocates and Knights". [15]
6	Video entitled "MK Scandal and Palace Maneuvers" by TEMPODOTCO in the BOCOR ALUS series, accessed via <a href="https://www.youtube.com/watch?v=z30vDjd1s3U">https://www.youtube.com/watch?v=z30vDjd1s3U</a> . [16]
7	Tempo Magazine Edition 30 October - 5 November 2023. [17]
8	DKPP Decision No. 83/DKPP-PKEII/ 2013 and Number 84/DKPPPKE-II/2013. [18]
9	DKPP Decision No. No. 56/DKPP-PKE-IV/2015 and No.81/DKPP-PKE-IV/2015. [19]
10	The book is entitled "DKPP RI: Enforcing the Ethics of Organizing Elections with Dignity. [20]
11	The book is entitled "DKPP RI: Enforcing the Ethics of Organizing Elections with Dignity. [20]

**LEGAL AND ETHICAL CONSIDERATIONS**

Authority of the Honorary Council to Assess Constitutional Court Decisions. Whereas based on the provisions of the Constitutional Court Law and Article 1 number 4 PMK 1/2023, the Honorary Council is an instrument formed to maintain and uphold the honor, nobility, dignity and Code of Ethics and Behavior of Constitutional Judges; Whereas based on the a quo provisions, the authority

of the Honorary Council actually extends to and includes all efforts to maintain and uphold the honor, nobility, dignity and Code of Ethics and Behavior of Constitutional Judges.[9]

That although the authority of the Honorary Council extends to and includes all efforts to maintain and uphold honor, nobility, dignity as well as the Code of Ethics and Behavior of Constitutional Judges, there is no authority of the Honorary Council to carry out legal assessments of Constitutional Court Decisions, let alone question their validity or invalidity. a Constitutional Court Decision;

Whereas if the Honorary Council declares that it has the authority to assess the Constitutional Court's Decision, then at the same time, the Honorary Council is not carrying out all efforts to maintain and uphold the honor, nobility, dignity and Code of Ethics and Behavior of Constitutional Judges, but has far exceeded the limits of its authority by seating the Honorary Council as if it had certain legal superiority over the Constitutional Court;

That the position of the Honorary Council with certain legal superiority over the Constitutional Court will be the same as the Honorary Council insulting the principle of independence inherent in the Constitutional Court as an actor of judicial power as well as violating the final and binding nature of Constitutional Court Decisions as confirmed by Article 24C paragraph (1) of the Constitution Republic of Indonesia of 1945 (1945 Constitution), as described in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as most recently amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 2003 concerning the Constitutional Court.[21,22]

That is true, in the formulation of the norms of Article 24C paragraph (1) of the 1945 Constitution, there is no phrase that states "cetho welo-welo" (expressis verbis) that the Constitutional Court's decision is final and binding. This final nature can be found in the formulation of Article 24C paragraph (1) of the 1945 Constitution, namely that "the Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to review laws against the Constitution...". Meanwhile, the word "binding" is not contained in the formulation of the text of the 1945 Constitution, but rather in the Elucidation of Article 10 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (UU 8/2011), which states: "... Final nature "The decision of the Constitutional Court in this Law also includes binding legal force (final and binding)." Although, the provisions of the Elucidation to Article 10 of Law 8/2011 have been declared contrary to the 1945 Constitution and have no binding force through the Constitutional Court Decision Number 49/PUU-IX/2011 which was pronounced in a plenary session open to the public on October 18 2011. Based on the Decision Constitutional Court Number 105/PUU-XIV/2016 which was stated in a plenary session open to the public on September 28 2017, "...judicial review decisions are binding and must be obeyed by everyone, including state administrators...".[23,24]

That, whether for reasons regulated only in the Explanation of the Law, Law, or Decision of the Constitutional Court, and not explicitly in the 1945 Constitution, then the final and binding nature of the decision of the Constitutional Court can then be questioned, distorted, or interpreted to allow for exceptions, however made. very carefully and casuistically? According to the Honorary Council, reading the law regarding the final and binding nature of the Constitutional Court's decision in this way is evidence that shows how to read legal norms in mere semicolons, without being accompanied by an understanding of the essence of the ideas or big ideas behind the legal norms themselves. The final and binding nature of Constitutional Court decisions has become a universal principle and doctrine practiced by Constitutional Courts throughout the world that no longer needs to be questioned, let alone disputed, especially for reasons that simply prioritize where the provisions are regulated, whether in the Explanation of the Law, in the Law, in the Decision of the Constitutional Court, or in the 1945 Constitution;

That based on the logic and arguments as described above, and any other arguments, the Honorary Council is of the opinion to reject or at least not consider the issue in the report of alleged violation of the Code of Ethics and Conduct of Constitutional Judges as long as it is related to the request of the Reporting Party to carry out an assessment, including in the form of cancellation , correction, or review, of the Constitutional Court Decision, in casu Constitutional Court Decision Number 90/PUU-XXI/2023. Also included in this case, the Honorary Council will not enter into an assessment of the judicial technical aspects of the Constitutional Court, in particular



Constitutional Judges who are the embodiment of the implementation of the principle of independence of constitutional judges as the 9 (nine) pillars of the constitution and the independence of judicial power as an institution (independence of the judiciary ).

#### **Authority of the Honorary Council**

Considering that before the Honorary Council considers allegations of violations of the Code of Ethics for Constitutional Judges, the Honorary Council needs to first explain the scope of its authority. In relation to the scope of authority, the Honorary Council refers to the provisions in Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, Article 27A paragraph (2) states, "To Enforce the Code of Ethics and Guidelines The conduct of Constitutional Judges was established by the Honorary Council of the Constitutional Court." [22]

Regarding the membership composition of the Honorary Council, it is further regulated in Article 4 paragraph (1) PMK 1/2023. Law Number 48 of 2009 concerning Judicial Power (UU 48/2009), especially Article 44 paragraph (1) and paragraph (2), which states "(1) Supervision of constitutional judges is carried out by the Honorary Council of Constitutional Judges. (2) Supervision as intended in paragraph (1) is regulated by law." The systematic arrangement of the existence of a quo provisions is in Chapter VI of Law 48/2009. This section consists of 6 articles (Article 39 to Article 44). There is only one article, in that section, which regulates supervision of Constitutional Judges, namely Article 44 of Law 48/2009 while the rest are regulations regarding supervision within the Supreme Court. This shows that supervision of Constitutional Judges can only be carried out by an institution, namely the Honorary Council of the Constitutional Court.

Further regulations regarding the implementation of the supervisory function of Constitutional Judges are regulated by Law 7/2020. The definition of the Honorary Council of the Constitutional Court is explained in Law 7/2020 that "The Honorary Council of the Constitutional Court is a device established by the Constitutional Court to monitor, examine and recommend actions against Constitutional Judges who are suspected of violating the Code of Ethics and Code of Conduct for Constitutional Judges."

Thus, the supervisory function of Constitutional Judges as regulated in Law 48/2009 is outlined in Law 7/2020 in the form of monitoring, examining and providing recommendations regarding the form of action that must be taken against Constitutional Judges who violate the Code of Ethics. Monitoring of objects which are the basis for the Honorary Council to exercise its authority is based on 2 (two) things, namely (1) Reports, and/or (2) Findings (vide Article 11 PMK 1/2023). What is called a Report is a letter of alleged report submitted by the Reporter to the Honorary Council regarding alleged violations of the Code of Ethics and Code of Conduct for Constitutional Judges committed by the Reported Judge (vide Article 12 paragraph (1) PMK 1/2023). Meanwhile, what are called Findings are allegations of violations of the provisions of the Code of Ethics and Code of Conduct for Constitutional Judges obtained through mass media reports, both print and electronic and/or from the wider public (vide Article 13 paragraph (1) PMK 1/2023). [2,22]

Considering that regarding the alleged violation of the Code of Ethics committed by the Reported Judge, the Honorary Council has received and carefully read the report on the alleged violation of the Code of Ethics and Behavior of Constitutional Judges as described in the Case Sitting and Media Information section in this Decision. Thus, the Honorary Council concluded that based on the report received by the Council and the findings found and verified by the Council, the Council had the authority to examine and decide on alleged violations of the Code of Ethics alleged against the Reported Judge.

#### **Legal Position of the Reporting Party**

Based on Article 1 number 8 in conjunction with Article 15 paragraph (1) PMK 1/2023, those who can submit a report are individuals, groups of people, institutions or organizations that have a direct interest in the substance being reported.

That the Reporting Party, Denny Indrayana, is an individual who has the status of an advocate at INTEGRITY Law Firm. The reporter claims to have a direct interest in the substance being reported, so in relation to this provision the following matters need to be explained:

The reporter is a Professor of Constitutional Law, Advocate, (provisional) DPR RI legislative candidate from the Democratic Party for Electoral District II of South Kalimantan. As an academic, the Reporter has an interest in providing input and being appreciative or critical of the progress of cases at the Constitutional Court. As an Advocate, the Reporter is often a party either as a Direct Petitioner or legal representative in cases at the Constitutional Court. Therefore, there is a direct interest in maintaining the ethics and behavior of Constitutional Judges, in order to maintain the honor and authority of the Constitutional Court. As a politician and (provisional) Democratic Party legislative candidate, the Reporting Party has an interest in ensuring that Oemilu, especially the 2024 Presidential election, runs in accordance with the principles of honesty and justice.[3]

That currently there are three cases underway at the Constitutional Court related to the review of Law Number 7 of 2017 concerning General Elections (UU Election) which tests the constitutionality of the age requirements for presidential and vice presidential candidates, which are regulated in Article 169 letter (q) of the Election Law. The three cases are petitions Case Number 29/PUU-XXI/2023, Number 51/PUUXXI/2023, and Number 55/PUU-XXI/2023, which essentially question the constitutionality of the phrase the age requirement for presidential and vice-presidential candidates "Be at least 40 (four twenty) years".[25,26,27]

In these three cases, the Reporting Party has a direct interest, whether as a Professor of Constitutional Law, an Advocate, or a (provisional) Democrat Party Candidate, so that the Constitutional Court's decision does not violate the Code of Ethics and Conduct of Constitutional Judges, especially the "Principle of Impartiality". Especially when there is a case that has a conflict of interest between the constitutional judge and his family, the constitutional judge must withdraw from handling such a case, because of the concept of judicial disqualification or recusal.

#### **Principal of the Whistleblower's Report**

Considering that after carefully examining the reports and statements of the Reporters, the Honorary Council discovered the fact that of the 16 (sixteen) reports of alleged violations of the code of ethics and behavior of Constitutional Judges that had been received and examined as follows. 1. Reported Judges reported separately, 11 reports; 2. The Reported Judge was reported together with 2 (two) other Constitutional Judges, namely Manahan MP Sitompul and M. Guntur Hamzah, 2 reports; 3. The Reported Judge was reported together with 4 (four) other Constitutional Judges, namely Manahan MP Sitompul, M. Guntur Hamzah, Enny Nurbaningsih, and Daniel Yusmic Pancastaki Foekh, 2 reports; 4. Reported Judge together with 8 (eight) or all other Constitutional Judges, 1 report.[3]

Considering that after carefully examining the reports and statements of the Complainants, the statements, explanations and defenses of the Reported Judges, the statements of Experts and the statements of Witnesses, as well as the evidence presented, the Honorary Council found as many as 9 (nine) issues or problems of alleged violations of the Code of Ethics and the Code of Conduct for Constitutional Judges by the Reported Judge which is considered relevant for consideration is as follows: 1. The Reported Judge does not resign from the process of examining and making Constitutional Court Decision Number 90/PUU-XXI/2023; 2. Violation of procedures in the process of canceling the withdrawal of the case based on the order of the Reported Judge; 3. The Reported Judge lied regarding the reasons for his absence from the decision-making RPH: avoiding conflict of interest or illness; 4. The Reported Judge deliberately delayed the formation of the Honorary Council of the Constitutional Court; 5. The Reported Judge as Chairman of the Constitutional Court did not carry out his judicial leadership function optimally; 6. The Reported Judge deliberately opened up space for intervention by outside parties in the process of making Decision Number 90/PUU-XXI/2023; 7. The Reported Judge speaks in a public space regarding the substance of the case currently in the examination process; 8. The Reported Judge cannot maintain confidential information or information in closed Judge Deliberation Meetings; 9. The Reported Judge should not be included in the examination of Case Number 141/PUU-XXI/2023.[28]

#### **JUDGE'S OPINION**

Considering that based on the description of the Case Sitting, the Facts Revealed in the Preliminary Examination Meeting and Session, the Follow-up Examination Session which contains the Defense of the Reported Judge, the Statements of Experts and Witnesses, as well as the Legal and Ethical Considerations above, it can be concluded as follows:

1. The Honorary Council has no authority to assess the decision of the Constitutional Court, in casu Constitutional Court Decision Number 90/PUU-XXI/2023. 2. Article 17 paragraph (6) and paragraph (7) of Law 48/2009 cannot be applied in decisions regarding judicial review of the 1945 Constitution by the Constitutional Court. 3. The argument that compares the DKPP decision related to the KPU decision with the Constitutional Court Honorary Council decision regarding the decision on a judicial review case is incorrect. 4. The Honorary Council did not find sufficient evidence to state that the Reported Judge ordered a procedural violation in the process of canceling the withdrawal of the petition for case Number 90/PUU-XXI/2023. 5. The Honorary Council did not find evidence that the Reported Judge had lied regarding the reason for his absence from the RPH for decision-making in cases Numbers 29/PUU-XXI/2023, 51/PUU-XXI/2023, and 55/PUU-XXI/2023, but that the Reported Judge did not feel that there is a real conflict of interest. 6. The Reported Judge who did not resign from the process of examining and making Decision Number 90/PUU-XXI/2023, was proven to have violated Sapta Karsa Utama, the Principle of Impartiality, Application of number 5 letter b, and the Principle of Integrity, Application of number 2. 7. Honorary Council did not find sufficient evidence regarding the motive for delaying the formation of a permanent MKMK, so it should be ruled out. 8. The Reported Judge as Chairman of the Constitutional Court was proven not to have carried out his leadership function (judicial leadership) optimally, thereby violating Sapta Karsa Utama, the Principle of Competence and Equality, Application of number 5. 9. The Reported Judge was proven to have deliberately opened up space for intervention by outside parties in the decision making process. Decision Number 90/PUU-XXI/2023, thereby violating the Sapta Karsa Utama, Principle of Independence, Application of numbers 1, 2, and 3. 10. The Reported Judge's lecture regarding youth leadership at the Sultan Agung Islamic University Semarang is closely related to the substance of the case regarding the conditions the age of the Presidential and Vice Presidential Candidates, so it is proven that they have violated the Sapta Karsa Utama, the Principle of Impartiality, Application of number 4. 11. The Reported Judge and all Constitutional Judges have been proven unable to maintain confidential information or information in closed Judge Deliberation Meetings, thereby violating the Principle of Appropriateness and Politeness, Application of number 9. 12. The request of the BEM UNUSIA Reporter not to include the Reported Judge in the examination of case Number 141/PUU-XXI/2023 can be justified; 13. Reported Judges are not permitted to be involved or involve themselves in examinations and decision making in cases of disputes over the results of the Presidential and Vice Presidential Elections, the Election of Members of the DPR, DPD and DPRD, as well as the Election of Governors, Regents and Mayors which have the potential for conflicts of interest.[3]

#### **JUDGE'S RULING**

Remembering Law Number 24 of 2003 concerning the Constitutional Court which has been most recently amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court and Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court , Decided, Declared:

1. The Reported Judge is proven to have committed a serious violation of the Code of Ethics and Behavior for Constitutional Judges as stated in the Sapta Karsa Utama, the Principle of Impartiality, the Principle of Integrity, the Principle of Competence and Equality, the Principle of Independence, and the Principle of Appropriateness and Decency;
2. Imposing a sanction of dismissal from the position of Chief Justice of the Constitutional Court on the Reported Judge;
3. Order the Deputy Chief Justice of the Constitutional Court to within 2 x 24 hours of this Decision being pronounced, lead the election of new leadership in accordance with statutory regulations;
4. The Reported Judge is not entitled to nominate or be nominated as head of the Constitutional Court until the Reported Judge's term of office as Constitutional Judge ends;
5. Reported Judges are not permitted to be involved or involve themselves in examinations and decision making in cases of dispute over the results of the Presidential and Vice Presidential Election, the Election of Members of the DPR, DPD and DPRD, as well as the Election of Governors, Regents and Mayors which have the potential for a conflict of interest.[3]

### DIFFERENT OPINIONS

Regarding the decision of the Honorary Council, there is a different opinion (dissenting opinion) from 1 (one) Member of the Honorary Council, namely Bintan R. Saragih who stated the following: Regarding the decision on sanctions by the Honorary Council against the Reported Judge, I submit a dissenting opinion as stated in above (meaning in the Decision). The basis for my giving a different opinion is "disrespectful dismissal" of the Reported Judge as a Constitutional Judge, in casu Anwar Usman, because the Reported Judge was proven to have committed serious violations. The sanction for "serious violations" is only "disrespectful dismissal" and there are no other sanctions as regulated in Article 41 letter c and Article 47 of Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court. One thing that makes me happy is that in the meetings of the Honorary Council which discussed reports regarding alleged violations by the Reported Judge, and the facts revealed in the hearings and meetings, the defense of the Reported Judge, the statements of witnesses (including other Constitutional Judges whose statements were heard ). Our opinions on all of this were almost the same, and there was a very substantive discussion, but mutual respect accompanied by mutual smiles. However, in making conclusions and determining sanctions against Reported Judge Anwar Usman we are different so I have to give a dissenting opinion. In my opinion, perhaps because of my background as a legal academic, throughout my career I have continued to work as an academic, namely a lecturer. I was a lecturer at the University of Indonesia (UI) for 35 years (1971-2006), and a lecturer at Pelita Harapan University from 2003 until now (20 years). As a lecturer, I also put my knowledge into practice as a member of the Ethics Council for Constitutional Judges from 2018 to 2020, still being appointed based on my academic criteria, so that in my soul and mind my scientific nature is intact. The way I think and argue is always consistent as a scientist or academic. Therefore, in viewing and assessing a problem, event, situation, existing symptoms, always based on what it is (just the way it is). That is why in giving a decision on violations of the Code of Ethics and Behavior of Constitutional Judges a quo, I gave a decision in accordance with the applicable regulations, and the level of violations of the Code of Ethics that occurred and were proven, namely sanctions for the Reported Judge in the form of dishonorable dismissal as a Constitutional Judge. I am happy that in making this decision, the three of us acted in an understanding manner and were in a mood full of smiles which ended with a mutual handshake. May God Almighty bless us all.[3]

### CONCLUSION

Based on the results of the discussion, it can be concluded that the chairman of the constitutional court as the reported party has been proven to have committed a serious violation of the Code of Ethics and Behavior of Constitutional Judges as stated in the Saptas Karsa Utama, the Principle of Impartiality, the Principle of Integrity, the Principle of Competence and Equality, the Principle of Independence, and the Principle of Appropriateness and Politeness.

Imposing a sanction of dismissal from the position of Chief Justice of the Constitutional Court on the Reported Judge; Order the Deputy Chief Justice of the Constitutional Court to within 2 x 24 hours of this Decision being pronounced, lead the election of new leadership in accordance with statutory regulations.

And the Reported Judge is not entitled to nominate or be nominated as head of the Constitutional Court until the Reported Judge's term of office as Constitutional Judge ends and the Reported Judge is not permitted to be involved or involve himself in examinations and decision making in cases of dispute over the results of the Presidential and Vice Presidential Election, the Election of DPR Members. , DPD and DPRD, as well as the election of governors, regents and mayors which have the potential for conflicts of interest.

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