



THE IMPACT OF VIOLATIONS OF THE CODES OF ETHICS IN CONSTITUTIONAL COURT DECISIONS ON PUBLIC TRUST

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Article	Abstract
<p>Keywords:</p> <p><i>Constitutional Court, severe breaches, drastic decline</i></p> <p>Article History Received: Jan 19, 2022; Reviewed: Jan 21, 2022; Accepted: Jan 22, 2022; Published: Feb.10, 2022</p>	<p>This research explores the impacts resulting from severe breaches of ethical codes in the decisions of the Constitutional Court that have led to a drastic decline in public trust. This decline is considered a significant barrier to the progress and sustainability of Indonesia's constitution in the future. These impacts not only affect the constitutional system but also permeate specific elements within society. It is a serious issue that can damage the integrity of the Constitutional Court, an institution that should uphold honesty and transparency in carrying out its duties and authorities. The Constitutional Court, which should be a fully trustworthy institution, is now perceived to have tarnished its own image. Various new perspectives have emerged, measuring the breakdown of integrity within the Constitutional Court. The diminishing trust from the public signifies a wavering authority and independence of this institution. There have been numerous actions by the public showing signs of disappointment and regret towards the Constitutional Court. This calls for a comprehensive evaluation to eradicate the roots that have damaged the core of this institution. Such efforts need to be undertaken by all layers of society, accompanied by contributions and sacrifices, to safeguard and oversee that our constitution remains unharmed and leads to a better and sustainable constitutional future.</p>

1. INTRODUCTION

Toward the closing of registration for the 2024 Presidential and Vice Presidential Candidates for the 2024 Election, the Constitutional Court issued a new decision regarding the age limit for Presidential Candidates. Anwar Usman, as chairman of the Constitutional

Court, determined the MK decision Number 90/PUU-XXI/2023¹ which was later reported as controversial. The Constitutional Court decided that the minimum age limit for Presidential Candidates is 40 years and that they have previously served or are currently serving as regional head. This, of course, benefits one of the participants, Gibran Rakabuming, the son of President Joko Widodo as Mayor of Solo who wants to run as Prabowo Subianto's Vice Presidential Candidate. The root of this problem is the blood relationship between the Chief Justice of the Constitutional Court, Anwar Usman, and Gibran Rakabuming, which then contradicts Law No. 48, Article 17 Paragraph 3², concerning Judicial Power.

Public trust in the Constitutional Court is starting to be questioned. Public trust is crucial in maintaining stability in the legal and justice system. This trust becomes the necessary basis for recognizing and implementing the decisions of the Constitutional Court. Without trust from the public, the effectiveness of the institution can be disrupted in its task of carrying out its constitutional control function. This can result in a loss of public confidence in justice and the firmness of the law.

2. RESEARCH METHODS

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library materials or library legal research, through searching for books, laws, literature, and other legal materials.³

3. RESULTS AND DISCUSSION

3.1 IMPACT

Violation of the code of ethics by institutions that should serve as pillars of justice and good governance have detrimental impacts on society at large. These impacts encompass both positive and negative aspects:

Negative Impacts:

- 1) Decline in Public Trust: When institutions meant to safeguard people's interests breach ethical standards, it erodes public trust in the government and involved institutions.
- 2) Disruption to Social Stability: Tension and conflicts in society can seriously disrupt

¹https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_9332_1697427438.pdf. Constitutional Court of the Republic of Indonesia, *Putusan Number 90/PUU-XXI/2023* (2023, October 03), Accessed 18 Dec. 2023.

²<https://legal.isha.or.id/index.php/legal/article/view/572>. Subrata, Tedy., Title And Judiciary Power Based On Law Number 48 Of 2009, (2022, November 28) Vol. 11 Number 5 2022: December, Accessed 18 Dec. 2023.

³ Soerjono soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (RajaGrafindo Persada, Jakarta, 2011, hal.12)

stability, especially when perceived unfair or corrupt leaders or institutions trigger protests or riots.

- 3) **Damage to the Rule of Law:** The principles of the rule of law, essential for a fair legal system, can be undermined, leading to inconsistent law enforcement or disregard by authorities.
- 4) **Increased Public Dissatisfaction:** Dissatisfaction within society towards these institutions can create prolonged political and social instability.

Positive Impacts:

- 1) **Opportunities for Youth Leadership:** Such conflicts might open avenues for the younger generation to become future leaders.
- 2) **Legal Reforms:** Ethical violation cases can stimulate discussions and reforms in legal regulations and procedures, encompassing changes in judge's codes of ethics, supervisory rules, or judicial institutions' governance.
- 3) **Enhanced Supervision Systems:** Ethical breaches may prompt improvements in internal and external supervision systems for judges, strengthening oversight mechanisms to more effectively identify and respond to ethical violations.

While these positive impacts may arise, it's crucial to remember that violations of judge's code of ethics remain a serious problem that threatens the integrity of the judiciary and public trust. Therefore, appropriate and firm actions need to be taken to address ethical violations and ensure that judges adhere to high ethical standards.

3.2 CONSEQUENCES OF SHORT TERM

Violations of the code of ethics by Constitutional Court Judges can jeopardize the public's perceptions of the court as the guardian of the constitutions, its ability to uphold the constitution, and its authority to annul laws deemed unconstitutional. These laws of trust may lead to reduced compliance with legal rulings, an erosion of public trust in democratic institutions, and even fuel legal challenges to decisions perceived as legitimate, ultimately creating legal uncertainty and weakening the democratic system.

3.3 CONSEQUENCES OF LONG TERM

The future of the Indonesian constitution stands precariously balanced on the shoulders of the Constitutional Court. Violation of the code of ethics by its judges not only erodes public trust in this vital institution but also creates cracks in the very foundation of the democratic system. The constitution's authority hinges on the Court's unwavering commitment to impartiality and integrity. When these principles are compromised, the risk of constitutional violations and the potential unraveling of democratic norms become

alarmingly real.

3.4 THE ROLE OF RECOVERY AND REFORM

The idea of Indonesia as a State of Law regards the rule of law as supreme in the operations of state governance. The Republic of Indonesia's 1945 Constitution (UUD NRI 1945), Article I, paragraph (3), affirms this idea by stating that the State of Indonesia is a State of Law.⁴ The idea of the Division of Powers is one of the traits of a legal system. The division of power in Indonesia is based on the idea of *trias politica*, which divides authority into three branches: the executive branch, which is headed by the President and Vice President; the judicial branch, which is headed by the Supreme Court (MA) and the Constitutional Court (MK); and the legislative branch, which is handled by the People's Consultative Assembly (MPR) and the People's Representative Council (DPR).⁵

The Constitutional Court followed the establishment of the Republic of Indonesia's 1945 Constitution, as stipulated in Article 24 paragraph (2) and Article 24C. The Constitutional Court Law No. 7 of 2007 contains further regulations pertaining to this organization. Parliamentary supremacy was superseded by the paradigm of constitutional supremacy as a result of this shift. As a state institution, the Constitutional Court is tasked with protecting the constitution and has the power to make initial and final decisions. Among the many responsibilities of this organization is the examination of legislation that conflict with the Republic of Indonesia's 1945 Constitution.⁶ As a result, the MK is crucial in protecting the state's ideology and the constitution. Every action taken by the government and other state institutions must be in compliance with the constitution, as guaranteed by the Constitutional Court⁷

Justices of the Constitutional Court are expected to abide by several standards of ethics. The purpose of this code of ethics is to govern the conduct that constitutional judges are supposed to exhibit while performing their official duties as such. Constitutional Court judges are required to adhere to a number of principles outlined in Constitutional Court

⁴<https://www.bkn.go.id/wp-content/uploads/2014/06/UUD-1945.pdf>. Constitution of the Republic of Indonesia 1945, *After Amendment 4, Article 1 Paragraph (3)*. Accessed 18 December 2023

⁵ <https://tirto.id/6-jenis-konsep-pembagian-kekuasaan-di-indonesia-secara-horizontal-giPy>. Yahya, Rizal Amril, 6 Jenis Konsep Pembagian Kekuasaan di Indonesia Secara Horizontal. (2021, September 03). Accessed 18 December 2023

⁶ https://pusdik.mkri.id/materi/materi_80_MK%20dlm%20Sistem%20Hukum%20Ketatanegaraan.pdf. Wibowo, Mardian, *Mahkamah Konstitusi Dalam Sistem Hukum Ketatanegaraan Republik Indonesia*. (Bogor. 2019, March 15), [13]. Accessed 18 December 2023.

⁷ *Mahkamah Konstitusi sebagai Pengawal Konstitusi - Kompasiana.com*. Ala, Ahmad Nuuron Zidni, *Mahkamah Konstitusi sebagai Pengawal Konstitusi*. (2021, December 02). Accessed 18 December 2023.

Regulation Number 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Behavior of Constitutional Judges (PMK 09/2006). These principles include independence, impartiality, integrity, propriety and politeness, proficiency, equality, similarity, wisdom, and prudence.⁸ According to PMK 09/2006, the Constitutional Court should be an impartial and independent body serving as the custodian of the constitution. But views in Indonesian society lately seem to be at odds with the Constitutional Court's rulings.

On March 15, 2023, for instance, Anwar Usman was chosen to serve as the Constitutional Court's Chief Justice. He was previously wed to President Jokowi's sister, Idayati. There could be a serious conflict of interest here because the Chief Justice and I are both meant to be independent judges on the Constitutional Court.⁹

Trias politica is a cornerstone of the Indonesian government administration system within the framework of the country's constitutional dynamics. But in the dynamics of constitutional politics, the Constitutional Court's decision to grant Case Number 90/PUU-XXI/2023¹⁰ is an inconsistent and illogical phenomenon. This can include the Constitutional Court's independence, impartiality, and professionalism as well as demonstrating the judicial branches' engagement in the exercise of political power, particularly with regard to their propensity to uphold political dynasties. All societal segments need to keep a close eye on this occurrence in order to ensure that the Constitutional Court continues to fulfill its role as the custodian of the constitution. Decisions demonstrating the Constitutional Court's lack of consistency have the potential to erode public confidence in this highest court.

The ruling of the Constitutional Court is an element of the legal system that needs to be adhered to. Recovery and reform measures—such as increased openness, public involvement, and fortifying oversight institutions to guarantee election fairness—are required to win back the people's faith. Rebuilding public trust can be facilitated by concentrating on conducting impartial elections, creating lucid regulations, and fortifying

⁸https://www.mkri.id/public/content/pmk/PMK_PMK_09.pdf. Constitutional Court of the Republic of Indonesia, Peraturan Mahkamah Konstitusi Republik Indonesia Nomor 09/PMK/2006. (Jakarta. 2005, October 17). Accessed 18 December 2023.

⁹ <https://news.detik.com/berita/d-6620612/terpilih-jadi-ketua-mk-anwar-usman-dilantik-pekan-depan>. Muliawati, Anggi, Terpilih Jadi Ketua MK, Anwar Usman Dilantik Pekan Depan. (Jakarta. 2023, March 15). Accessed 18 December 2023.

¹⁰ Op.Cit., https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_9332_1697427438.pdf. Constitutional Court of the Republic of Indonesia. Salinan Putusan Nomor 90/PUU-XXI/2023. (Jakarta. 2023, October 16). Accessed 18 December 2023.

law enforcement agencies.

Through their ability to vote, the people will ultimately decide Indonesia's future and act as its judges. However, in accordance with Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the people must also exercise their sovereignty by monitoring, defending, and overseeing the conduct of elections, including presidential elections, to ensure that they continue to be conducted honestly and fairly. This has tremendous credibility and can lead to better election results, including presidential elections.¹¹

3.5 ETHICAL CONSIDERATIONS AND PROFESSIONALISM

In the process of resolving judicial cases, the role of judges across all levels of the judiciary holds a highly central position. It is within this central role that they are expected to uphold the law in accordance with a sense of justice. Only judges who possess moral commitment and integrity towards the law are anticipated to deliver judgments that align with the principles of fairness. There are various perspectives on the criteria for a good and integrity-driven judge, including having legal expertise, adequate experience, integrity, good health, reflecting societal representation, possessing sound reasoning, having broad vision, language proficiency, and writing skills. Additionally, they should be capable of upholding the laws of the state while acting independently and impartially, and demonstrating administrative efficiency.¹²

The code of ethics for judges constitutes written rules that every judge in Indonesia must adhere to while carrying out their professional duties. The ethics of the judicial profession, the code of ethics, moral, and religious principles. It doesn't just teach what a judge knows (knowledge) or what they can do (technique), but also what a judge with good character ought to be. Ethics serve as the foundation that a professional, including a judge, must uphold in executing their duties. When a judge delivers a judgment, they are not bestowing justice. Hence, every decision made by a judge must be based on the law.^{13,12}

The code of ethics is necessary to safeguard and uphold the honor, dignity, and behavior of judges. It forms the core of the judicial profession as it is the code of conduct

¹¹ Sesalkan Putusan MK Kabulkan Gugatan Terkait Usia Cawapres, HNW: Ingatkan Pentingnya Kenegarawan dan Rakyat Pemilik Kedaulatan (mpr.go.id). The People's Consultative Assembly of the Republic of Indonesia, Sesalkan Putusan MK Kabulkan Gugatan Terkait Usia Cawapres, HNW: Ingatkan Pentingnya Kenegarawan dan Rakyat Pemilik Kedaulatan. (2023, October 17). Accessed 18 December 2023.

¹² Mardiyah, Nuzul Qur'aini, The Supervision Behavior Judge of Constitutional Court by Ethics Committee. (Jakarta Pusat: Mahkamah Konstitusi Republik Indonesia, 2017), [29]. Accessed 18 December 2023.

¹³ *Ibid*, [31]

that encompasses ethical and more values. The code of ethics guides judges to act with integrity and professionalism. Adhering to ethics means upholding the code of ethics. The code stands tall when judges, as representatives of justice, behave professionally and with integrity.¹⁴

From various substantive tests regarding the need for oversight of Constitutional Court judges, it's important to understand that an action is governed not only by one type of norm but several norms, simultaneously, where a reprehensible act is prohibited by legal, ethical, and religious norms. When multiple norms apply simultaneously, it emphasizes the urgency for regulations concerning the ethics and conduct of judges and the procedures for their supervision and enforcement in a Code of Ethics and Conduct for Judges as a benchmark for oversight. The code of ethics, within the professional sphere, is established and ratified by the professional organization itself, in this case, by the Constitutional Court.¹⁵

The Constitutional Court is also expected to enhance oversight, especially by being more open in responding to criticism, expectations, and suggestions from various parties. The principles of a judge's independence should be understood as an obligation to realize fair trial procedures, which are a prerequisite for upholding the rule of law. Therefore, within the principle of judicial independence, there exists an obligation for judges to free themselves from persuasion, pressure, coercion, threats, or fear of reprisal due to specific political or economic interests from the government, prevailing political powers, specific groups or factions, in exchange for or promised benefits such as positional advantages, economic gains, or other forms. They should not misuse the principle of judicial independence as a shield to evade oversight.

Efforts to monitor the behavior and ethics of Constitutional Court judges by other institutions are evident in instances where several laws have been nullified through judicial review that doesn't render Constitutional Court judges 'immune' from oversight. Therefore, alongside the revision of the Constitutional Court Law in the National Legislation Program, it's important to strengthen the institutional framework of the Ethics Council and solidify the position of the Honorary Council of the Constitutional Court to conduct oversight and examination of violations regarding the professional code of ethics

¹⁴ *Ibid*, [32]

¹⁵ *Ibid*, [37]

and conduct of Constitutional Court judges.¹⁶

3.5 EFFORTS TO STRENGTHEN PUBLIC TRUST

The high level of public trust serves as an indicator of the success of judicial services. Absence of corruption, high-quality and comprehensible verdicts, along with timely case handling, will elevate public trust in the judiciary. A high level of public trust not only creates a reliable judicial process but also strengthens confidence in the enforcement of the law. A superior judiciary systematically measures the level of trust and confidence the public has in the judicial institution and its personnel, even comparing it with the trust levels in other institutions.¹⁷

To realize its vision, fulfill its mission, and achieve its objectives, the Constitutional Court has identified 3 (three) strategic targets to be accomplished within the next 5 (five) years:¹⁸

1) Increased Quality of Constitutional Judiciary Management Support that is Clean and Trustworthy

This strategic target is aimed at achieving the first objective, namely, “Establishing a clean and trustworthy constitutional judiciary system”. To realize this goal, efforts are made to enhance the quality of management support for the implementation of Constitutional Court (CC) procedures. This involves developing and strengthening governance and implementation practices in the line with current needs and developments. The focus lies in enhancing CC’s governance and procedures supported by the utilization and optimization of the latest ICT-based tools. Consequently, there are two achievements: first, ICT tools in judicial management support streamline and enhance the acceleration and quality of CC’s performance: secondly, they allow for transparent public involvement and monitoring throughout the process.

2) Increased Public Awareness of Pancasila and the Constitution

This target aims to achieve the second objective, “Fostering a society aware of Pancasila and the Constitution”. In pursuit of this goal, the aim is to position the CC as an institution truly capable of safeguarding citizens’ constitutional rights. Efforts to

¹⁶ *Ibid*, [39]

¹⁷ Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, *Rencana Strategis Mahkamah Konstitusi Republik Indonesia*, (Jakarta: Mahkamah Konstitusi, 2020), [86]. Accessed 18 December 2023.

¹⁸ *Ibid.*, [91]

enhance public knowledge, understanding, and awareness of constitutional developments, their constitutional rights, and methods to fight for and defend these rights are among the CC's efforts to uphold the constitution in Indonesia. The success indicator for this strategic target is the index of Improved Understanding of Pancasila, the Constitutional, and Citizens' Constitutional Rights.

3) Enhance Quality of Verdicts and Case Handling

This strategic target is directed towards achieving the third objective, "Realizing high-quality and implementable verdicts". Continual efforts to strengthen the case-handling process are ongoing, starting from refining procedural laws to enhancing the quality of substantive case management. Externally, the CC continues to advocate for increased public understanding of their constitutional rights, solidifying societal awareness of Indonesia as a law-based democratic state, thereby facilitating the CC in executing its authority.

2) CONCLUSION

The research examines the impact of severe breaches of ethical codes in the Constitutional Court's decisions, leading to a drastic decline in public trust. This decline is a significant barrier to the progress and sustainability of Indonesia's constitution, as it affects the constitutional system and certain elements within society. The Constitutional Court's integrity is damaged, and the diminishing trust from the public signifies a wavering authority and independence of the institution.

The root of this problem is the blood relationship between the Chief Justice of the Constitutional Court, Anwar Usman, and Gibran Rakabuming, which contradicts Law No. 48, Article 17 Paragraph 3, concerning Judicial Power. Public trust in the Constitutional Court is questioned, as it is crucial for maintaining stability in the legal and justice system. The negative impacts of violating the code of ethics include a decline in public trust, disruption to social stability, damage to the rule of law, and increased public dissatisfaction. On the other hand, the positive impacts include opportunities for youth leadership and the development of a more transparent and accountable judiciary.

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