

## Ethical Violations Of Constitutional Judges: Study Of The Decision Of The Honour Panel Of The Constitutional Court (MKMK) Number : 2/MKMK/L/11/2023

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**Abstract:** This study examines the urgency of a code of ethics for Constitutional Court judges, the dichotomy of ethical considerations in the Honorary Council of the Constitutional Court's (MKMK) Decision Number: 2/MKMK/L/11/2023, and the considerations underlying this decision. Using a normative juridical approach through literature review, the research explores ethical violations by Constitutional Court judges based on sources such as books, journals, and online materials. The findings reveal that the code of ethics plays a crucial role in maintaining judges' independence, integrity, and professionalism. The MKMK decision separates ethical and legal aspects, emphasizing that ethical violations should not be equated with legal violations. In the case of Anwar Usman, a serious ethical breach led to his removal as Chief Justice of the Constitutional Court, although he was not dishonorably discharged as a judge. MKMK's considerations included legal facts, philosophical principles, and social impacts. This decision avoids legal uncertainty by imposing sanctions tailored to ethical, not legal, violations.

**Keywords:** Ethical Considerations, Ethical Violations, Constitutional Court

## Introduction

The judicial review of Article 169 letter (q) of Law Number 7 of 2017 on General Elections led the Constitutional Court to partially grant the petition. The Court declared that the provision requiring a minimum age of 40 years for election eligibility contradicts the 1945 Constitution and is invalid unless interpreted to include individuals who are at least 40 years old or have previously/currently held a position as a regional head. As a result, Article 169 letter (q) now reads: "A minimum age of 40 years or having previously/currently held a position elected through General Elections, including Regional Head Elections." However, in rendering Decision Number 90/PUU/XXI/2023, it was found that Judge Anwar Usman committed a serious ethical violation (Pirdaus et al., 2024). During the case review and decision process, he failed to withdraw from the proceedings despite a clear conflict of interest and nepotistic ties. These actions breached core ethical principles, including impartiality, integrity, competence, equality, independence, propriety, and decorum (Shetreet & McCormack, 2016).

Judicial disqualification or recusal, universally known as the principle of *nemo judex in causa sua*, asserts that a judge must not preside over cases where their interests are involved (Ojumu et al., 2022). This principle also prohibits judges from handling cases involving their own family members. Closely tied to the principle of judicial impartiality, it ensures that judges remain unbiased throughout the judicial process (Selfianus Laritmas & Ahmad Rosidi, 2024). In Indonesia, this principle is reinforced by Constitutional

Court Regulation Number 09/PMK/2006 on the Enforcement of the Code of Ethics and Conduct for Judges (*Sapta Karsa Hutama*), which underscores impartiality as a fundamental component of a constitutional judge's duties (Isra & Faiz, 2024). Judges are expected to demonstrate neutrality and a thorough understanding of the case's interests at every stage, from examination to decision-making, ensuring fair legal solutions for all parties and broader society. According to Article 41 of Constitutional Court Regulation Number 1 of 2023, sanctions for violations range from verbal and written warnings to dismissal with dishonor. For serious ethical breaches, the Honorary Council of the Constitutional Court (MKMK) sanctioned Anwar Usman by removing him from the position of Chief Justice of the Constitutional Court while allowing him to remain a judge, reflecting the gravity of his misconduct without imposing dishonorable dismissal (Lailam, 2020).

Research on ethical violations by judges has been previously conducted and can be categorized into three perspectives. The first focuses on legal sanctions against violations of judges' codes of ethics (Selfia et al., 2024). The second examines the role of the Judicial Commission in overseeing violations of the code of ethics and the code of conduct for judges (Handoyo, 2018); (Sundari & Retnowati, 2021); (Suka et al., 2022). The third explores legal analyses of judges' misconduct and breaches of professional ethics. This study aims to examine ethical violations by Constitutional Court judges (Appleby & Blackham, 2018); (Suka et al., 2022). Specifically, it investigates the urgency of the code of ethics for Constitutional Court judges, the dichotomy between ethics and law in the decision-making process of the Honorary Council of the Constitutional Court, and the council's considerations in Decision Number 2/MKMK/L/2023. This research employs an analytical approach by focusing on the decisions of the Honorary Council of the Constitutional Court regarding ethical violations committed by constitutional judges.

## Literature Review

### 1. Ethical Theory

Ethics is the study of morality that examines what is good and bad, as well as the rules or principles used to determine appropriate and inappropriate behavior, including one's obligations and responsibilities (Ciulla, 2020). Ethics is also closely tied to professions, particularly legal professions such as judges, lawyers, prosecutors, police, and other institutions authorized by law. Ethical principles are often abstract and not always codified in written form (Swain & Spire, 2020). Professional ethics reflect a worldview characterized by readiness to provide professional legal services to the public, full participation in the field, and a commitment to delivering expertise-driven services. In the context of professional duties, it emphasizes a dedication to society, particularly to those in need of legal assistance.

### 2. Legal Theory

Law is a set of rules, either written or unwritten, consisting of commands or prohibitions and including sanctions for violations (Yasir et al., 2022). From a normative perspective, law serves as an instrument to uphold justice, functioning as a behavioral guideline with its primary purpose being the regulation of human conduct (Timasheff, 2017).

### 3. Judicial Power

According to Article 24 of the 1945 Constitution of Indonesia, judicial power is an independent authority tasked with administering justice to uphold law and fairness, ensuring the realization of a legal state within the Republic of Indonesia (Widayati et al., 2023). Judicial power in Indonesia has undergone several transformations, each significantly influencing the legal framework, including amendments to legislation. These changes underscore the judiciary's pivotal role in upholding justice. Judicial power is fundamental and serves as a central axis of authority with the primary function of ensuring justice. Under the revised structure of state power in the 1945 Constitution, the judiciary is positioned independently, free from the influence of other powers. Judicial authority is exercised by the Supreme Court and its subordinate courts, which include general courts, religious courts, military courts, administrative courts, and by the Constitutional Court.

#### 4. Siyāsah Qaḍhā'iyyah (Judicial Power)

Siyāsah qaḍhā'iyyah also known as sulṭah al-qaḍhā'iyyah or judicial power, refers to judicial authority. In Indonesian, sulṭah al-qaḍhā'iyyah is commonly referred to as the judiciary or judicial power (Hidayat, 2024). This relates to the functions and powers of the judiciary relating to the resolution of cases, both civil and criminal, as well as administrative disputes involving the state. This includes determining the validity of laws before they are enacted, especially through constitutional review. The primary role of siyāsah al-qaḍhā'iyyah is to enforce the laws and statutes passed by the legislature, ensuring their implementation in accordance with justice and constitutional principles (Harahap & Tarigan, 2024).

#### Method

This study employs a normative juridical legal research approach, focusing on ethical violations by Constitutional Court judges based on the analysis of the Honorary Council of the Constitutional Court's (MKMK) Decision Number: 2/MKMK/L/11/2023. Data for the research were collected through literature reviews and the examination of MKMK decisions. The primary data sources include legislation, codes of ethics, and professional conduct guidelines for judges, supplemented by secondary sources such as books and journal articles. The data collection technique involved downloading relevant regulations and decisions, as well as seeking and analyzing books and journals related to the research subject of ethical violations by Constitutional Court judges. The data analysis process begins with examining and understanding the collected information, classifying data into categories, and gathering information from various sources. Once the data is classified, it is described in precise terms relevant to the study's focus. Finally, key findings are synthesized to draw accurate conclusions about ethical violations in the MKMK Decision Number: 2/MKMK/L/11/2023.

#### Results and Discussion

##### 1. Urgency of a Code of Ethics for Constitutional Court Judges

The urgency of a code of ethics for Constitutional Court judges is outlined in the Regulation of the Constitutional Court of the Republic of Indonesia Number 9 of 2006 concerning the Enforcement of the Declaration of the Code of Ethics and Conduct for Constitutional Judges, known as *Sapta Karsa Utama*. This code emphasizes the importance of maintaining judicial independence, impartiality, integrity, decency, equality, competence, and wisdom (Sutrisno et al., 2022). Judicial independence ensures that judges are free from external interference, while impartiality guarantees fair treatment for all parties, fostering public trust. Integrity is a cornerstone that upholds the credibility of judicial decisions, and decency reflects appropriate behavior in both professional and personal interactions. Equality ensures non-discriminatory treatment for all individuals, reinforcing justice. Competence and diligence enhance the credibility of the judiciary through sound legal analysis and equitable treatment, while wisdom requires judges to act in accordance with societal norms, balancing legal principles and the broader implications of their decisions. Together, these principles form the foundation for a fair, impartial, and trustworthy judiciary.

##### 2. The Code of Ethics and Legal Dichotomy in the Decision Process of the Constitutional Court Honour Council

The dichotomy between the code of ethics and legal aspects in the decision-making process of the Honorary Council of the Constitutional Court (Majelis Kehormatan Mahkamah Konstitusi) is clearly illustrated in Decision No. 2/MKMK/L/11/2023. This decision emphasizes the separation of ethical violations from legal considerations. The Honorary Council focuses solely on ethical conduct without evaluating the legal substance of Constitutional Court decisions. In the case of Anwar Usman, who was accused of violating the code of ethics in Decision No. 90/PUU-XXI/2023, the Council found him guilty of an ethical breach but not of violating the law. Consequently, he was sanctioned by being removed from his position as Chief Justice of the Constitutional Court but was not dismissed dishonorably from his role as a Constitutional Court judge. This outcome reflects the

distinction that ethical violations, as stipulated under the Court's code of ethics, do not necessarily equate to legal infractions (Nemeth, 2022).

The legal framework, including Law No. 7 of 2020 and Regulation of the Constitutional Court No. 1 of 2023, outlines that dishonorable dismissal requires a violation of both the code of ethics and the accompanying legal provisions. Article 23(2)(h) of Law No. 7 of 2020 stipulates that a judge may be dishonorably dismissed if found to have violated the Code of Ethics and Conduct for Constitutional Judges. Similarly, Article 47 of Regulation No. 1 of 2023 specifies that the Honorary Council may impose dishonorable dismissal for severe ethical breaches. However, the decision against Anwar Usman demonstrates how these regulations maintain a clear boundary between ethical accountability and legal culpability (Zainab, 2024). This distinction underscores the principle that ethical violations pertain to the professional standards and integrity required of Constitutional Court judges, as outlined in Article 27A of Law No. 7 of 2020, which mandates adherence to the code of ethics to uphold judicial integrity, fairness, and statesmanship.

### **3. Consideration of the Constitutional Court Honour Panel (MKMK) towards Decision Number: 2/MKMK/L/11/2023**

The Honorary Council of the Constitutional Court (MKMK), established under the Constitutional Court Regulation (PMK) No. 1 of 2023, is authorized to address serious violations committed by constitutional judges. In Decision No. 2/MKMK/L/11/2023, the MKMK, consisting of three judges – Jimly Asshiddiqie, Wahiduddin Adams, and Bintan R. Saragih – ruled that Anwar Usman, then Chairperson of the Constitutional Court, was found guilty of serious ethical violations. The judicial considerations underlying this decision included breaches of impartiality, integrity, competence, and confidentiality of proceedings. Anwar Usman failed to withdraw from handling Case No. 90/PUU-XXI/2023 despite a clear conflict of interest, violating the principle of impartiality as stipulated in Law No. 48 of 2009. He was also found to have violated his oath of office and failed to meet the requirements of a constitutional judge as per Law No. 8 of 2011.

The evidence presented during the proceedings included the related decision, media reports, opinion articles, and expert opinions from constitutional law scholars. The complainants requested the MKMK to annul Decision No. 90/PUU-XXI/2023 and impose a dishonorable dismissal on Anwar Usman. However, the MKMK clarified that its authority is limited to enforcing judicial ethics and does not extend to overturning Constitutional Court decisions. In considering the sanctions, the MKMK also took into account philosophical and sociological aspects. Philosophically, the MKMK acknowledged Anwar Usman's contributions and achievements as Chairperson of the Constitutional Court, which warranted recognition. Consequently, the sanction imposed was his dismissal from the position of Chairperson without dishonorable discharge. Sociological considerations reflected the effort to maintain public trust in the judiciary. The MKMK deemed that a proportional sanction would prevent further damage to the integrity of the Constitutional Court while ensuring stability and public confidence (Larasati et al., 2024). Additionally, Anwar Usman was prohibited from participating in cases with potential conflicts of interest in the future. Thus, the MKMK's decision represents an effort to uphold the ethical standards and professionalism of the Constitutional Court without creating legal uncertainty or negative public perceptions.

### **4. Ethical Violations Of Constitutional Judges: Study Of The Decision Of The Honour Panel Of The Constitutional Court (MKMK) Number : 2/MKMK/L/11/2023**

With the enforcement of this code of ethics, constitutional judges are expected to carry out their responsibilities with integrity, objectivity, independence from conflicts of interest, and impartiality in decision-making, thereby fostering justice in Indonesia (Wibisana, 2023). This code of ethics applies to all constitutional judges, covering their conduct both within and outside the Constitutional Court. Its implementation is overseen by the Constitutional Judges' Ethical Council and the Honorary Council of the Constitutional Court.

Through the code of ethics, constitutional judges are required to uphold the independence of their institution. The significance of this code lies in its ability to establish a positive reputation for the judiciary by preventing external influences that could compromise fair and objective decisions. Adherence to the code of ethics enhances the credibility of the Constitutional Court as a fair and transparent legal institution, elevating the dignity and integrity of judges. Thus, the code of ethics serves as an internal guideline and a vital tool to maintain the institution's dignity, the judges' integrity, and public trust in the constitutional justice process. Without a code of ethics, judges may act subjectively in carrying out their duties. The code serves as a guide for judges to act fairly, objectively, and professionally. It protects against the misuse of power and ensures that decisions are based on facts and law, rather than personal preference or external influence. Public trust and the integrity of the judicial system are safeguarded through the code of ethics. Additionally, the code stipulates that judges must recuse themselves from cases where conflicts of interest arise, ensuring impartiality in decision-making (McIntyre, 2019).

From an ethical theory perspective, adherence to ethics and morality ensures that judges remain aware of their responsibilities. A code of ethics without a strong ethical foundation would be merely a set of empty, meaningless rules. Ethics provide the moral basis for a code of ethics, ensuring its relevance. This aligns with legal theory, where a code of ethics serves as a guideline for legal professionals like judges to perform their duties while upholding ethical and moral values. The aim is to ensure that legal processes are conducted fairly, objectively, and accountably, free from conflicts of interest and misuse of power. Then, the dichotomy between the code of ethics and law in the decisions of the Constitutional Court's Honorary Council reflects the interplay between moral considerations and legal norms. Ethics deal with moral principles, while law pertains to formally recognized rules. In Constitutional Court decisions, the Honorary Council must consider judicial ethics, such as integrity and professionalism, alongside applicable legal provisions. Balancing these aspects is crucial to ensure decisions that are morally and legally justifiable. This dichotomy is essential for ensuring fair and consistent legal applications while ethics maintain integrity and morality.

From a judicial power theory perspective, the dichotomy between ethics and law in the decisions of the Constitutional Court's Honorary Council plays a critical role in maintaining the balance and effectiveness of the judiciary system. A code of ethics is rooted in moral values and the professionalism upheld by the judiciary, while law is based on binding formal regulations with explicit sanctions for violations. The code of ethics is flexible and adaptive, while law is rigid and definitive, offering limited interpretative scope. The enforcement of ethical codes is managed by professional internal bodies like the judicial ethics council, providing educational and corrective sanctions, whereas law enforcement involves formal mechanisms with strict penalties. The code of ethics complements and strengthens legal norms by emphasizing moral and professional aspects, while law serves as the fundamental framework that the code of ethics must respect (Ulum & Sukarno, 2023).

In the context of Islamic judicial theory, this issue falls under the realm of *al-mazhalim* because it pertains to an independent judicial body (N. P. P. Sari & Maghfira, 2021). *Al-mazhalim* is a special judicial institution dealing specifically with injustices committed by state officials, nobles (sultans), affluent individuals, and the caliph's family. Historically, *al-mazhalim* was led by an independent judge with extensive authority to enforce justice, even against high-ranking officials. In relation to the analyzed case involving ethical violations in the Constitutional Court's decision, *al-mazhalim* would have jurisdiction since the perpetrators in this matter are legal enforcers (constitutional judges) (W. G. Sari & Zainuddin, 2021). The authority of *al-mazhalim* includes supervising the behavior of rulers and their families to prevent violations and dishonesty, examining and controlling the misconduct of officials responsible for state finances, restoring the rights of the people unlawfully taken by state officials or others imposing their will, thoroughly examining the management and distribution of waqf, zakat, infaq, and alms, as well as other public interests,

overseeing and executing judicial decisions that lower courts cannot enforce due to their limited authority, and monitoring cases beyond the scope of ordinary courts and *hisbah* concerning public welfare. In the Islamic context, *al-mazhalim* refers to a judicial system addressing public grievances against government officials suspected of injustice or abuse of power (Wulandari et al., 2024). Independent from rulers and political interference, *al-mazhalim* bases its rulings on Islamic law and justice, even imposing sanctions on rulers and officials proven guilty, including the caliph.

## Conclusion

The research revealed the urgency of the code of ethics for constitutional judges, which includes several key aspects. Judges must maintain independence by adjudicating without external influence or pressure from any party, ensuring impartiality by not siding with any party in a case, and avoiding personal interests or familial relationships in their decisions. Integrity is essential, requiring judges to act honestly and fairly, as this strengthens public trust in the law and supports the realization of justice for all. Judges must also maintain propriety and courtesy, avoiding actions that could damage social relationships or public trust in the judiciary while demonstrating calmness, patience, and respect during proceedings. Equality is vital, ensuring that everyone appearing before the court is treated equally regardless of race, religion, ethnicity, gender, or other statuses, and that all parties have equal opportunities to present their arguments and receive legal defense. Competence and thoroughness are required, as judges must think logically, critically, and systematically, ensuring that their reasoning and decisions are clearly communicated and understood by all parties. Wisdom and prudence are equally important, with judges needing a deep understanding of the law and principles of justice, objectively considering evidence, and striving for fair and appropriate solutions for all parties involved. The dichotomy between the code of ethics and the law in the decision of the Honorary Council of Constitutional Judges (MKMK) Number 2/MKMK/L/11/2023 reflects a clear distinction between ethical violations and legal aspects. This decision emphasized that the MKMK does not evaluate the legal substance of Constitutional Court decisions but focuses solely on ethical considerations for constitutional judges. Anwar Usman, reported for an alleged ethical violation in ruling on Case Number 90/PUU-XXI/2023, was found guilty of violating the code of ethics, not the law, and was sanctioned with removal from his position as Chief Justice of the Constitutional Court without dishonorable dismissal as a constitutional judge, as his violation pertained only to ethical breaches. The MKMK's considerations in Decision Number 2/MKMK/L/11/2023 included legal aspects, such as facts revealed in court, evidence, and expert testimonies; philosophical considerations based on fundamental principles and values; and sociological considerations, which accounted for social impacts. Ultimately, it was concluded that the sanctions imposed on Anwar Usman, proven to have violated the code of ethics, aimed to maintain legal certainty by avoiding potential appeals that could result in uncertainty regarding the MKMK's decision.

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