

# Analysis of Decision of The Honorary Council of The Constitutional Court Number 2/MKMK/L/11/2023 Based on The Constitutional Court Regulation Number 1 of 2023 Concerning the Honorary Council of The Constitutional Court


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**Abstract:** The Constitutional Court's Honorary Council's decision was deemed wrong in imposing sanctions on the Chief Justice of the Constitutional Court, Anwar Usman. This study aims to determine how the implementation of the Constitutional Court Regulation of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court is carried out against the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 and to find out and understand what is the basis for consideration for the judges of the Honorary Council of the Constitutional Court in the decision Number 2/MKMK/L/11/2023. The type of research used in this study is normative legal research, using a research approach by examining and reviewing the object of research through laws and regulations by sharpening research data that aims to find out the problems being discussed, while the type of research is qualitative using descriptive analysis. The results of the study indicate that the Honorary Council of the Constitutional Court did not apply the Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court as it should so that in the decision of the MKMK Number 2/MKMK/L/11/2023 it cannot provide legal certainty. Therefore, the provisions governing the types of sanctions for reported judges who are proven to have committed ethical violations are not explained properly. However, the decision is final and binding internally on the Constitutional Court.

**Keywords:** Decision of the Honorary Council of the Constitutional Court; Decision of the Constitutional Court; Code of Ethics

## A. Introduction

The juridical consequences of the provisions that are final and binding on the decision of the Constitutional Court have had a clear legal effect since the pronouncement of the decision in a plenary session reading the decision which is open to the public, as a result there is no availability of legal remedies that can be done for the parties involved in litigating in the Constitutional Court.<sup>1</sup>

In the implementation of its authority and obligations, the Constitutional Court has constitutional judges whose appointment is determined by the President. Constitutional judges

<sup>1</sup> M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final Dan Mengikat Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 2 (July 11, 2019): 340–41, <https://doi.org/10.31078/jk1627>.



consist of nine people, three of whom are nominated by the Supreme Court (MA), three by the DPR, and three by the President. Then, to select the constitutional judges there is a "conditio sine qua non" as a requirement that must be owned by the constitutional judges. These requirements are such as statesmen who master the constitution and state administration, integrity, irreproachability and so on. Therefore, to achieve the realization of constitutional judges who are dignified, noble, irreproachable, accountable and impartial, it is necessary to limit the behavior of judges through a code of ethics. This consequence will later present an element of supervision of the code of ethics and the behavior of judges, both internal and external.<sup>2</sup>

In the Law of the Republic of Indonesia Number 7 of 2020 concerning the Constitutional Court which is the third amendment to the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court, the conditions for becoming a constitutional judge are specified in Article 15 paragraphs (1), (2) and (3). As follows: Constitutional judges must fulfill the following requirements: Have integrity and a personality that is beyond reproach; Fair; and Statesmen who master the constitution and state administration.

To be appointed as a constitutional judge, in addition to fulfilling the requirements as referred to in paragraph (1), a candidate for constitutional judge must fulfill the following requirements: Indonesian Citizen : Doctoral degree (strata three) with a bachelor's degree (strata one) with an educational background in the field of law; Fearing God Almighty and having noble character; At least 55 (fifty-five) years old; Physically and mentally capable of carrying out duties and obligations : Never been sentenced to imprisonment based on a court decision that has obtained permanent legal force; Not being declared bankrupt based on a court decision; and Have experience working in the field of law for at least 15 (fifteen) years and/or for judge candidates who come from the Supreme Court environment, not currently serving as a high judge or as a supreme judge.

In addition to the requirements as referred to in paragraph (1) and paragraph (2) candidates for constitutional judges must also fulfill the requirements for administrative completeness by submitting: A letter of intent to become a constitutional judge; Curriculum vitae; Submitting a legalized copy of the diploma by showing the original diploma : Report on the list of assets and sources of income of the candidate accompanied by valid supporting documents and has been approved by an authorized institution; and Taxpayer identification number (NPWP).

Likewise, in the Law of the Republic of Indonesia Number 7 of 2020 concerning the Constitutional Court which is the third amendment to the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court. The criteria for dismissal of constitutional judges are stipulated in Article 23 paragraphs (1) and (2), both respectful and dishonorable dismissal as follows : A Constitutional Judge shall be dismissed with honor on the grounds of : Death; Resigning at his/her own request submitted to the chairman of the Constitutional Court; Has reached the age of 70 (seventy) years; Remove; or Is physically or mentally ill continuously for 3 (three) months so that he/she cannot carry out his/her duties as evidenced by a doctor's certificate.

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<sup>2</sup> Wahyu Aji Ramadan, Irma Aulia Pertiwi Nusantara, and Tanti Mitasari, "Reformulasi Pengawasan Mahkamah Konstitusi Demi Meningkatkan Efektivitas Penegakan Kode Etik Hakim Konstitusi," *Journal of Studia Legalia* 3, no. 02 (November 21, 2022): 22, <https://doi.org/10.61084/jsl.v3i02.29>.

A Constitutional Judge shall be dishonorably dismissed if : Sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense punishable by imprisonment; Commits an act of disgrace; Failure to attend the trial which is his/her duty and obligation for five (5) consecutive times without a valid reason; Violating the oath or promise of office; Deliberately preventing the Constitutional Court from giving a decision within the time referred to in Article 7B paragraph (4) of the 1945 Constitution of the Republic of Indonesia; Violating the prohibition of concurrent positions as referred to in article 17; No longer qualifies as a constitutional judge; and/or Violating the code of ethics and code of conduct for constitutional judges

Violating the Code of Ethics and code of conduct for constitutional judges as referred to in Article 32 paragraph (2) letter (h) above is a violation commonly committed by constitutional judges. Lately we have been shocked by several cases of violations of the code of ethics committed by constitutional judges, therefore the presence of the Honorary Council of the Constitutional Court, hereinafter referred to as MKMK, as a supervisory institution for constitutional judges is considered important in order to protect the code of ethics and code of conduct of constitutional judges.

The fundamental amendment of the 1945 Constitution in the field of judicial power from the institutional side, gave birth to two institutions as actors of Judicial Power, namely the Supreme Court (MA) and the Constitutional Court (MK). When looking at the process of debate in the amendment of the 1945 Constitution, one of the important issues related to the Judicial Power is the need for supervision of judges. The importance of supervision of judges is then emphasized in Article 24B paragraph (1) of the 1945 Constitution on the Judicial Commission which states that, "The Judicial Commission is independent and has the authority to propose the appointment of judges and has other duties in order to uphold the honor, dignity and behavior of judges".<sup>3</sup>

Supervision of constitutional judges is an effort made to protect the honor and dignity and maintain the behavior of constitutional judges. Efforts to conduct supervision of constitutional judges were actually first carried out by the Judicial Commission based on the provisions of Article 20 of the Law of the Republic of Indonesia Number 22 of 2004 concerning the Judicial Commission in conjunction with Article 34 paragraph 3 of the Law of the Republic of Indonesia Number 4 of 2004 concerning Judicial Power which states that; "The Judicial Commission has the authority to supervise the behavior of judges in order to uphold the honor and dignity and maintain the behavior of judges". So does the authority of the Judicial Commission in this case also include the definition of constitutional judges?

The authority of the Judicial Commission in safeguarding and upholding the honor and behavior of judges has been invalidated by the Constitutional Court through its Decision Number 005/PUU-IV/2006 concerning the judicial review of Article 20 of Law of the Republic of Indonesia Number 22 of 2004 concerning the Judicial Commission against the 1945 Constitution. The Constitutional Court, which theoretically is the sole interpreter of the Constitution, in its consideration emphasized that. Considering:

*"As has been described in the section on the authority of the Constitutional Court that the petition filed by the petitioners in its formal form is a petition for judicial review of the Act against the Constitution. However, in essence, the substance of the petition contains nuances of constitutional authority disputes between the Supreme Court and the Judicial*

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<sup>3</sup> Wiryanto Wiryanto, "Penguatan Dewan Etik Dalam Menjaga Keluhuran Martabat Hakim Konstitusi," *Jurnal Konstitusi* 13, no. 4 (December 20, 2016): 1, <https://doi.org/10.31078/jk1342>.

*Commission as fellow state institutions whose authority is determined by the 1945 Constitution and at the same time approaches the constitutionality of authority. When viewed systematically and from an interpretation based on the "original intent" of the formulation of the provisions of the 1945 Constitution, the provisions regarding the KY in Article 24B of the 1945 Constitution are indeed not related to the provisions regarding the Constitutional Court which are regulated in Article 24B of the 1945 Constitution. From the systematic placement of the provisions of the judicial commission after the article governing the Supreme Court, namely article 24A and before the article governing the Constitutional Court, namely article 24C, it can be understood that the provisions regarding the judicial commission in article 24B of the 1945 Constitution are not intended to cover the object of the behavior of constitutional judges as regulated in article 24C of the 1945 Constitution. This does not include the definition of the behavior of constitutional judges in what is meant by the behavior of judges according to Article 24B paragraph 1 of the 1945 Constitution is also contained in the provisions of Law No. 22 on the Judicial Commission, in the Constitutional Court Law, for the function of supervision of the behavior of constitutional judges is determined by the existence of an honorary council which is regulated separately in Article 23 paragraph (3) of the Constitutional Court Law. Similarly, Article 34(3) of the Judicial Power Act does not specify that constitutional judges are the object of supervision by the Judicial Commission. In addition, unlike ordinary judges, constitutional judges are basically not judges as a permanent profession, but judges because of their position. Constitutional judges are only appointed for a period of five (5) years and after they no longer hold the position of constitutional judge, each of them returns to their original profession. In the overall mechanism of selection and appointment of constitutional judges set out in the 1945 Constitution there is also no involvement of the Judicial Commission at all".<sup>4</sup>*

Recently we were surprised by one of the monumental issues related to the decision of the Constitutional Court Number 90/PUU-XXI/2023 concerning the judicial review of Article 169 letter Q of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections, the decision of the Constitutional Court was considered problematic by various parties including academics in the field of law, this was because the decision was loaded with political interests. Therefore, the constitutional judges involved in deciding the case were then reported for allegedly violating the ethics and code of conduct of constitutional judges.

In the past week, the Constitutional Court received reports of alleged violations of the Code of Ethics by constitutional judges. In response to this, the Constitutional Court formed and officially inaugurated the Constitutional Court Honor Council, hereinafter referred to as MKMK. This is stated in Decree Number 10 of 2023 concerning the establishment and membership composition of the Honorary Council of the Constitutional Court (MKMK) dated October 23, 2023.<sup>5</sup>

The Honorary Council of the Constitutional Court (MKMK) has received 21 reports of alleged violations of the code of ethics and behavior of constitutional judges regarding the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning material testing of Article 169 letter Q of Law of the Republic of Indonesia Number 7 of 2017 concerning general elections. Based on the report, the Honorary Council of the Constitutional Court held an examination session. Until finally a decision was born, then the Honorary Council of the Constitutional Court divided the 21 reports into four decision classifications, namely MKMK Decision Number 02 / MKMK / 11/2023 on alleged violations of the Code of Ethics and

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<sup>4</sup> Putusan Mahkamah Konstitusi Nomor 005/PUU-IV/2006 (n.d.).

<sup>5</sup> "Surat Keputusan Nomor 10 Tahun 2023 Tentang Pembentukan Dan Susunan Keanggotaan Majelis Kehormatan Mahkamah Konstitusi (MKMK)," n.d.

Behavior of Constitutional Judges on the Report of the Chief Justice of the Constitutional Court Anwar Usman reported by Denny Indrayana et al; MKMK Decision Number 03/MKMK/L/11/2023 against Deputy Chief Justice Saldi Isra reported by Advokasi Rakyat Untuk Nusantara (ARUN), et al; MKMK Decision Number 04/MKMK/L/11/2023 against Constitutional Judge Arief Hidayat reported by Cipta Karya Keadilan Legal Aid Institute, et al; MKMK Decision Number 05/MKMK/L/11/2023 against Detained M. P. Sitompul, Enny Nurbaningsih, Wahiduddin Adams, Suhartoyo, Dainiel Yusmic P. Foekh, and M. Guntur Hamzah (Constitutional Judges) reported by the Indonesian Legal Aid and Human Rights Association (PBHI) et al.<sup>6</sup>

Regarding the four classifications of decisions that the author has described above, the author tends to analyze MKMK Decision 02/MKMK/L/11/2023 against the reported judge in the case of Anwar Usman. This is because the decision of the Honorary Council, in my opinion, is problematic. Because if it complies with the applicable provisions and is consistent with the statement of the Honorary Council regarding the evidence of serious violations committed by the reported judge, the Honorary Council should have imposed a sanction of dishonorable dismissal in accordance with the applicable provisions instead of imposing a sanction of dismissal from office as chairman of the Constitutional Court which is not in accordance with the criteria and types of sanctions stipulated in Constitutional Court Regulation Number 1 of 2023 concerning MKMK.

## B. Methodology

This research uses Normative research methods. The approach in this research uses a statute approach and case approach. Legal Materials used in this research are Primary Legal Materials including Legislation and judges' decisions; and Secondary Legal Materials consisting of Scientific Works and Legal Literature as well as documented opinions of legal experts. Techniques for obtaining legal materials are carried out by library research, namely reading, summarizing and recording materials or data obtained through various literature, essays by scholars in the form of scientific knowledge or new understanding of known facts and understanding of an idea in the form of books, research reports, theses, legislation, or other sources related to the problem. Furthermore, the data or legal materials obtained will be analyzed using a skintative analysis method.

## C. Results and Discussion

### **Application of the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court Against MKMK Decision Number 2/MKMK/L/11/2023**

Power without a supervisory mechanism, sooner or later the power is misused. According to Bagir Manan, there must be two aspects of assurance that the holder of power can run properly. The first is supervision of the possibility of judges abusing power. This supervision is related to the freedom of judges like a double-edged sword on the one hand the freedom of judges is a necessity. On the other hand, abuse of this freedom may occur. Supervision of judges can be distinguished between supervision in the performance of judicial duties and behavior in general. As long as it concerns the implementation of judicial duties. Secondly,

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<sup>6</sup> Sri Pujiarti, "MKMK Berhentikan Anwar Usman Dari Jabatan Ketua Mahkamah Konstitusi | Mahkamah Konstitusi Republik Indonesia," November 7, 2023, <https://www.mkri.id/index.php?page=web.Berita&id=19751&menu=2>.



guarantees and protection so that judges can freely, without fear, implement the principles of good law enforcement.<sup>7</sup>

Supervision in the context of the exercise of independent judicial power cannot be separated between the independence of judges and the independence of judicial bodies. The independence of the judiciary relates to impartiality and protection from all forms of contempt of court cases. The independence of the judiciary relates to the independence in managing the judiciary and the principles of good governance, which include. Transparency, fairness, impartiality, accountability.<sup>8</sup>

Judicial power does not exist in a vacuum and its independence is not absolute, judges are not perfect human beings and are very likely to make mistakes, therefore the independence of judges must be accompanied by responsibility. The solution to the dilemma between the principle of independence and judicial tyranny, must be the idea of accountability for judicial work carried out by judges both when carrying out the task of adjudicating and deciding a case and outside the courtroom must be seen as individual responsibility as a representative of God.<sup>9</sup>

This has led to the importance of supervision of the judicial power. Supervision of judges is not intended to reduce the independence of judges in carrying out their judicial functions, but to prevent judicial tyranny that leads to corrupt and collusive behavior which is a concrete form of deviation. Supervision of judges is an activity to find, assess and correct deviations that may occur or have occurred based on the applicable laws and regulations.<sup>10</sup>

The Constitutional Court, which is one of the actors of Judicial Power in addition to the Supreme Court, based on the provisions of Article 27A paragraph 2 of Law of the Republic of Indonesia Number 7 of 2020 concerning the Constitutional Court which is the third amendment to Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court, states that "To enforce the code of ethics and code of conduct for constitutional judges as referred to in paragraph (1), the Honorary Council of the Constitutional Court is established".<sup>11</sup>

Leaning on the provisions as mentioned, it can be seen that supervision of the Constitutional Court is carried out by the Honorary Council of the Constitutional Court. Following up on these provisions, on February 2, 2023 the Constitutional Court has stipulated the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court which is intended to regulate the procedural procedures and mechanisms of the Constitutional Court Honorary Council in exercising its authority as an ethical institution for constitutional judges.

Normatively, the definition of the Honorary Council of the Constitutional Court itself is determined in article 1 point 4 of the regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court which states that "The Honorary Council of the Constitutional Court, hereinafter referred to as

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<sup>7</sup> Bagir Manan, *Menegakkan Hukum Suatu Pencarian* (Jakarta: Asosiasi Advokat Indonesia, 2009), 174.

<sup>8</sup> Jenedjri M. Gaffar, *Politik Hukum Pemilu* (Jakarta: Konpress, 2012), 211–12.

<sup>9</sup> M. Fajrul Falaakh, "Sistem Kekuasaan Kehakiman Di Indonesia," in *Bunga Rampai: Potret Penegakan Hukum Di Indonesia* (Jakarta: Komisi Yudisial Republik Indonesia, 2009), 174.

<sup>10</sup> Bambang Widjojanto, "Reformasi Konstitusi: Perspektif Kekuasaan Kehakiman," *Jurnal Legislasi Indonesia* 7, no. 1 (2020): 58.

<sup>11</sup> Pasal 27 A ayat 2 "Undang-Undang Nomor 7 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi," accessed May 12, 2025, <http://peraturan.bpk.go.id/Details/147335/uu-no-7-tahun-2020>.

the Honorary Council, is a device established by the Court to maintain and uphold the honor, nobility, dignity and code of ethics and behavior of constitutional judges".<sup>12</sup>

Then on Monday 23/10/2023, the Constitutional Court formed the Constitutional Court Honor Council aimed at following up on the many reports related to alleged violations of the code of ethics of constitutional judges led by Anwar Usman. Constitutional judges are suspected of violating the code of ethics after deciding case Number 90/PUU-XXI/2023 concerning the judicial review of Article 169 letter Q of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections which regulates the age limit of candidates for President and Vice President.

The Honorary Council of the Constitutional Court then held the first hearing on alleged violations of the code of ethics and behavior of constitutional judges addressed to constitutional judges, one of whom was Anwar Usman, who was considered to have violated the ethics and behavior of Constitutional Judges. In the hearing with the preliminary examination agenda, the Honor Council presented four reporters including Denny Indrayana, Zico Leonard Djagardo Simanjuntak, LBH Yusuf, and representatives of 15 professors / academics who are members of the Constitutional and Administrative Law Society (CALS).

Anwar Usman is considered to have violated the principles of skill and fairness because he did not carry out leadership functions optimally and did not enforce procedural law as it should be, the absence of judicial leadership is related to his leadership when facing the handling of the case of material testing of article 169 letter Q of Law of the Republic of Indonesia Number 7 of 2017 concerning general elections.

According to Denny Indrayana, who is one of the parties who reported the chairman of the Constitutional Court. Denny said that the decision of the Constitutional Court was indicated to be the result of organized work so that it deserved to be said to be a family court mega scandal. Denny also considered that the chairman of the constitutional court, Anwar Usman, should have resigned when he found out about case number 90/PUU-XXI/2023 because it was directly related to his family, namely President Joko Widodo and his eldest son Gibran Rakabuming Raka. So with all the highest elements, it is not appropriate if the ethical violations and political crimes that occur are seen as mediocre violations.<sup>13</sup>

Departing from the problem as intended. So that the parties ask the Honorary Council to follow up the process of violating the code of ethics committed by the reported judge Anwar Usman who is the chairman of the Constitutional Court. After undergoing the initial hearing, up to the stage of the Honorary Council Meeting, it appears that the Honorary Council exercises its authority in accordance with the legal corridors attached to it by applying the Constitutional Court Regulations as it should. However, at the decision-making stage, the Honorary Council then left the established legal corridor. In this case the Honorary Council when imposing sanctions on the reported judge. Not in accordance with the types of sanctions that have been determined in Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court. Therefore, in the author's opinion, the Honorary Council should impose a sanction of dishonorable dismissal on the reported judge.

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<sup>12</sup> Pasal 1 angka 4 "Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023 Tentang Majelis Kehormatan Mahkamah Konstitusi," accessed July 12, 2025, [https://www.mkri.id/public/content/mkrmk/439\\_230206021702-2.pdf](https://www.mkri.id/public/content/mkrmk/439_230206021702-2.pdf).

<sup>13</sup> Sri Pujiarti, "MKMK Berhentikan Anwar Usman Dari Jabatan Ketua Mahkamah Konstitusi | Mahkamah Konstitusi Republik Indonesia."

Legally, Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court is a procedural rule or procedural law of the Honorary Council in terms of exercising its authority. Therefore, the Honorary Council should not get out of the legal corridors that have been determined. The discrepancy between the imposition of sanctions and the types of sanctions specified in the Constitutional Court Regulation as intended is a disregard for procedural rules or procedural law. This can be clearly seen in the ruling of Decision Number 2/MKMK/L/11/2023.

In the decision, the Honorary Council concluded that the reported judge, in this case Anwar Usman, was proven to have committed serious ethical violations by violating the 5 principles of Sapta karsa Utama stipulated in PMK/09/2006 concerning the Implementation of the declaration and code of ethics of constitutional judges. The 5 principles of Sapta Karsa Utama violated by the reported judge include:<sup>14</sup> Principle of Impartiality; Principle of Integrity; Principle of Proficiency and Equality; Principle of Independence; and Principles of Appropriateness and Decency.

The Honorary Council through its decision Number 2/MKMK/L/11/2023 then imposed a sanction of dismissal from office as chairman of the Constitutional Court to the reported judge because he was proven to have committed a serious violation. This means that the reported judge can still serve as a constitutional judge as he should. This indicates that the decision is not in accordance with what is stipulated in the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court. In fact, if you refer to the applicable legal provisions, namely Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court. The Honorary Council should have imposed a sanction of dishonorable dismissal on the reported judge.

The provisions of Article 41 in conjunction with Article 47 of the Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court which states as follows:

Article 41 sanctions for ethical violations can be in the form of: Verbal warning; Written warning; and Dishonorable dismissal. Article 47 which states that: In the event that the reported judge is proven to have committed a serious violation; The Honorary Council states that the reported judge is proven to have committed a serious violation; and imposes a sanction of dishonorable dismissal.

However, what has been decided by the Honorary Council is very much the opposite. This means that the honorary council did not implement the regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court consistently. Because it exceeds what is not its authority in terms of imposing sanctions on the reported judge.

Regarding decisions that are not coherent with legal facts in accordance with what the author has explained above, it clearly illustrates that the development of practical law is not running normally (abnormal). Every judge's decision must be based on clear facts, facts play an important role in every judge's decision. Even legal facts are a *conditio sine qua non* for

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<sup>14</sup> "Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 2/MKMK/L/11/2023," accessed July 12, 2025, [https://s.mkri.id/public/content/mkrmk/mkrmk\\_putusan\\_1699360420\\_3a09ab30a7a22aa9d99d.pdf](https://s.mkri.id/public/content/mkrmk/mkrmk_putusan_1699360420_3a09ab30a7a22aa9d99d.pdf).



the realization of a fair decision. Therefore, in deciding a case, the judge's decision will be fair if it is based on correct facts and is based on the application of clear legal norms.

Every judge's decision must be based on clear legal norms. Legal norms are statements that emphasize the aspect of what should be (dassolen) by including regulations on what should be done. Norms are also used as a benchmark for behavior in certain community groups which are generally in the form of orders and prohibitions. In order to carry out such functions, of course, norms must have legal force that is coercive and that coercion is directed at the community with the aim of obeying it.

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

Legal considerations are a stage that provides an explanation or argument used by the judge as a legal consideration that is the basis before deciding a case. This is in accordance with what has been determined in Article 39 paragraph 1 in conjunction with paragraph 2 letter f of the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court which states that:<sup>15</sup>

- a. "The pronouncement of the verdict is carried out in a hearing open to the public" then
- b. Letter f. "The verdict of the Honorary Council contains considerations regarding the facts revealed in the hearing and meeting as well as the defense of the reported judge or the alleged judge".

The judge's decision is the peak or end of a case that is being examined and tried in court. Therefore, the judge must pay attention to all aspects related to the case that will be tried. When the judge makes a decision, he must, as far as possible, apply norms that are in accordance with what has been done and proven in court, so that his decision is an embodiment of a sense of justice for the parties to the case in court, therefore. All reasons put forward must also be in accordance with the provisions of applicable laws and regulations.

Regarding case number 2/MKMK/L/11/2023 concerning violations of the code of ethics and the behavior of constitutional judges against the reported judge Anwar Usman, the Honorary Council then concluded that what the Reported Judge had done in this case, the violation of ethics committed by Anwar Usman, was part of a serious violation of ethics.

This can clearly be seen in the considerations and rulings of the Honorary Council, however, to assess and measure the categorization of the violations committed by the Reported Judge, whether they are minor or serious violations, is indeed not normatively determined by any regulation, including the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court, however, to assess and measure the issue of the severity of the violations committed by the Reported Judge is entirely returned to the Honorary Council.

This can be clearly seen in Article 46 in conjunction with Article 47 of the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court, which states that:<sup>16</sup> Article 46; "In the event that the Reported Judge or the Suspected Judge, according to the Honorary Council is proven to

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<sup>15</sup> Pasal 39 ayat 1 jo ayat 2 huruf f "Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023 Tentang Majelis Kehormatan Mahkamah Konstitusi."

<sup>16</sup> Pasal 46 jo pasal 47 "Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023 Tentang Majelis Kehormatan Mahkamah Konstitusi."

have committed a minor violation, the Honorary Council states: The Reported Judge is proven to have committed a minor violation; And the Reported Judge is given a sanction in the form of a verbal warning or a written warning.

Article 47; "In the event that the Reported Judge or Suspected Judge according to the Honorary Council is proven to have committed a serious violation, the Honorary Council shall state: The Reported Judge is proven to have committed a serious violation; and impose a sanction of dishonorable dismissal.

Based on the two provisions of the article above, it can be understood that to measure the standard of the violation committed whether it is a minor or serious violation is completely returned to the Honorary Council, in this context. If based on the opinion of the Honorary Council, the Reported Judge in this case Anwar Usman was actually proven to have committed a serious violation, and therefore, based on the provisions of article 47 as referred to, the Honorary Council should have imposed a dishonorable dismissal sanction on the Reported Judge. However, it is the opposite, the Reported Judge was sentenced to dismissal from his position as Chief Justice of the Constitutional Court, this can be seen in the verdict of the Honorary Council Number 2 / MKMK / L / 11/2023, this opportunity was used by the Honorary Council to provide a little leniency in the imposition of sanctions on the Reported Judge, even though the sanctions used by the Honorary Council are not specified in any legal regulations.

After reading the considerations of the Honorary Council above, the author can analyze that what has been considered by the Honorary Council is far from the provisions of the legislation that has been determined. In this case, it is the regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court which has determined the types of sanctions for judges who are proven to have committed ethical violations, especially serious violations.

From the verdict of the Honorary Council, it can be seen that Anwar Usman has been proven to have committed a serious violation, with the Honorary Council considering one of them being that he did not resign as a judge in a case involving his nephew, thus giving rise to a conflict of interest. This is closely related to the principle of impartiality as stipulated in the Sapta Karsa Utama.

If we look at this issue, it can be said that Anwar Usman has violated his oath of office as a constitutional judge because he did not fulfill his obligations properly. So Anwar Usman can basically be dismissed dishonorably, not only from the position of Chief Justice of the Constitutional Court. This has been clearly stated in Article 41 Jo Article 47 of the Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court.

In the author's opinion, the reported judge should have been given a dishonorable dismissal sanction, this is clearly in accordance with the provisions of the law that have been determined. Therefore, this issue has also been conveyed by one of the members of the Honorary Council, Bintan R. Saragih who stated a dissenting opinion against the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023, this is worthy of questioning what is the basis for the chairman of the Honorary Council in imposing the sanction, because in fact dismissal as chairman of the Constitutional Court is not regulated in any regulation related to the reported judge who is proven to have committed a serious violation.

Therefore, in the author's opinion, what has been decided by the Honorary Council has gone beyond the legal corridor that has been determined, whereas if it is consistent with the availability of existing legal regulations, the Honorary Council should make an article that is in accordance with the criteria for violations that have been determined, the law must be used as a basis for imposing sanctions for anyone who is proven to have violated its rules, in this case violations of the code of ethics and behavior of constitutional judges. This principle is in line with what we call a State of Law. In Indonesia itself, it is determined in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that; "The State of Indonesia is a State of Law". Departing from this principle, the Honorary Council should make the law the basis for imposing sanctions for judges who commit ethical violations, especially serious ethical violations.

The law must be used as a basis for measuring the validity of a court decision, including the ethical judicial institution in this case the Honorary Council of the Constitutional Court. The law is a means that can be used as a benchmark for determining sanctions for those who violate.

This is in line with what we call the legalism school which only recognizes written law. Written law is seen as covering everything, so that outside of written law there is no law anymore. Therefore, legal products must be able to make a sharp separation of things that are in accordance with the law and things that are not in accordance with the law. How far a person can act in a collectivity, solely, is based on things that have been outlined in written law. Breaking through it is seen as breaking through legal certainty which is one of the objectives of law. Judges must apply the law by adhering, firmly, to what has been determined. In this context, judges are merely the trumpets of the Law.<sup>17</sup>

The Honorary Council in its decision argued that they are obliged to make a legal breakthrough. In this case, the sanctions imposed need to consider the proportionality measure to ensure the suitability between the type of violation committed and the severity of the sanctions that need to be given. Regarding the violation of the Code of Ethics and Conduct of Judges that has been proven to have been committed by the Reported Judge, whereas according to the Honorary Council's assessment, the actions committed by the reported judge were deviations that deviated far from the straight corridor determined by Sapta Karsa Utama as its guidelines. Therefore, in the author's opinion, the Honorary Council should not impose sanctions that clearly deviate from the corridor of sanctions that have been determined.

On the other hand, the Honorary Council also considered that even though the Honorary Council considered that the violation committed by the reported judge was a serious violation, the Honorary Council should not have imposed a dishonorable dismissal sanction, this is because if the reported judge is given a dishonorable dismissal sanction. The reported judge still has the opportunity to defend himself before the Honorary Council of Appeals. And the Honorary Council's concern over the appeal filed by the reported judge will result in a different decision when the Honorary Council imposes sanctions.

Therefore, the Honorary Council then took a legal leap by taking a middle ground by imposing a sanction of dismissal from the position of Chief Justice of the Constitutional Court, this was intended so that the decision of the Honorary Council of the Constitutional Court could provide legal certainty because it was final.

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<sup>17</sup> Rachmat Baro, *Teori Hukum* (Jakarta: Intan Cendikia, 2010), 196–97.

Based on the above considerations. In the author's opinion, it is not appropriate because the Honorary Council should not take a shortcut by imposing a sanction of dismissal from the position of Chief Justice of the Constitutional Court. In the author's opinion, this actually ignores the principle of legal certainty because sanctions for serious violations have been clearly determined, the Honorary Council in imposing sanctions should be guided by the provisions that have been provided, not the opposite, imposing sanctions on the reported judge by dismissing him from his position as Chief Justice of the Constitutional Court, this is actually outside the corridor of the provisions of the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court.

In fact, speaking about the issue of sanctions for the Reported Judge who is proven to have committed a serious violation, it has been clearly determined in Article 41 in conjunction with Article 47 of the Regulation of the Constitutional Court of the Republic of Indonesia Number 1 of 2023 concerning the Honorary Council of the Constitutional Court and that is what should be used as a guideline by the Honorary Council in terms of imposing sanctions on the Reported Judge in the case of Anwar Usman.

#### D. Conclusion

The decision of the Constitutional Court Honorary Council (MKMK) in case Number 2/MKMK/L/11/2023 against Constitutional Justice Anwar Usman is considered inconsistent with the provisions of applicable laws and regulations, especially Constitutional Court Regulation Number 1 of 2023 concerning the Constitutional Court Honorary Council. The MKMK has determined that the person concerned was proven to have committed a serious ethical violation, but only imposed a sanction of dismissal from the position of Chief Justice of the Constitutional Court, not dishonorable dismissal as a constitutional judge as should be regulated in Article 41 in conjunction with Article 47 of the regulation. The inconsistency of the types of sanctions imposed shows that the MKMK did not fully apply the rules consistently, and instead created legal loopholes. The argument that this decision is an attempt at compromise or a "middle way" in order to maintain the finality of the decision is actually compliance with the principle of certainty and supremacy of law. In the context of a state of law as emphasized in Article 1 paragraph (3) of the 1945 Constitution, every action and decision of a state institution, including the MKMK, must be based on applicable positive law. Therefore, the sanction imposed on judges who are proven to have committed serious ethical violations should be dishonorable dismissal, as explicitly regulated in the Constitutional Court Regulations.

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