

Quo Vadis Honorary Council of the Constitutional Court in Enforcing the Idea of Constitutional Ethics for Constitutional Judges in Indonesia

Feiruz Rachmita Alamsyah, Martitah

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TABLE OF CONTENTS

Abstract	
Introduction	
Method	
History of Constitutional Judge Supervision in Indonesia	
a. Comparison of the substance of supervision of constitutional judges	
a) Comparison of Honorary Council of the Constitutional Court regulations in Law no. 24 of 2003 and Law no. 11 of 2011	
b) Comparison of the Regulations Honorary Council of the Constitutional Court in Law No. 8 of 2011 and Law No. 4 of 2014	
Implementation of Ethics Council and Honorary Council of the Constitutional Court Supervision of Constitutional Judges	
Reformulation of Constitutional Judge Ethics Monitoring through the Honorary Council of Constitutional Judges in Enforcing Constitutional Ethics	
a. Supremacy of the Constitution in Reformulating the Supervision of the Code of Ethics for Constitutional Judges	
b. Efforts to Increase Supervision of Constitutional Judges By Reformulation of Supervision of the Code of Ethics for Constitutional Judges Through the Honorary Court of Constitutional Judges	
Conclusion	
References	

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ABSTRACT. The oversight is carried out by the Ethics Council and The Honorary Council of the Constitutional Court, hereinafter referred to as MKMK, where the Ethics Council is responsible for enforcing breaches of the code of ethics and maintaining the dignity and integrity of Constitutional Court judges. The existence of the Ethics Council is currently in a status quo, seemingly in a state of limbo because, on the one hand, the Constitutional Court has legally explained that the enactment of Law No. 7 of 2020 marks the end of the Ethics Council's existence. However, on the other hand, Constitutional Court Rules, hereinafter referred to as PMK, PMK No. 2 of 2014 which serves as a guideline for the supervision of the Ethics Council, has not yet been revoked by a new PMK. As a result, the mechanism for overseeing the code of ethics for Constitutional Court judges is in a vacuum and cannot function effectively. Attempts to explain how the oversight of the MKMK is viewed from both a historical and practical perspective within Indonesia's constitutional system. It then compares it with other countries and examines the issues surrounding the implementation of oversight over the Ethics Council and MKMK, how to more effectively enforce the code of ethics for judges, and how the oversight mechanisms interact with descriptive-qualitative methods. The findings are numerous, including the ineffectiveness in handling ethical cases because no authority has been delegated to the Ethics Council, and MKMK is formed on an ad hoc basis. The creation of PMK for the formation of the Ethics Council is affected by conflicts of interest, and passive oversight by Constitutional Court judges occurs because the Ethics Council examines allegations of code of ethics violations based on reports from the public. Therefore, the author proposes a normative reformulation to restore the role of Judicial Commission, hereinafter referred to as KY as the external overseer of the Constitutional Court to maintain and enforce the honor, dignity, and proper conduct of Constitutional Court judges.

KEYWORDS. Honorary Assembly, Constitutional Judge, Constitutional Ethics

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Feiruz Rachmita Alamsyah, Martitah Martitah*

Introduction

The judicial power, as explained by Nurhayati (2022)¹, is an essential component of the separation of powers within a state, aimed at providing justice to society.² In Indonesia, one of the components of judicial power, in accordance with Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UD NRI 1945), is the Constitutional Court. The Constitutional Court was established after a tumultuous reform period, where one of the key focuses of the constitutional amendments was to ensure an independent judiciary committed to moral justice within society. Therefore, the creation of the Constitutional Court is considered a step toward providing substantial constitutional justice for society.³

* Feiruz Rachmita Alamsyah (Universitas Negeri Semarang), Martitah Martitah (Universitas Negeri Semarang). Corresponding email: feiruzrachmita21@students.unnes.ac.id. This research actually developed from my undergraduate thesis at Faculty of Law Universitas Negeri Semarang. I would like to thank to Prof. Dr. Martitah, M.Hum who constantly gives a lot of invaluable comments, suggestions, and inputs for this research and LP2M UNNES who have provided material support in this research.

¹ Margono, *Asas Keadilan, Kemanfaatan & Kepastian Hukum Dalam Putusan Hakim* (Jakarta: Sinar Grafika, 2019).

² Martitah, "Why Legitimacy Matters in Times of Uncertainty: A Critical Study of the Success Story of the Constitutional Court of Indonesia," *Asia-Pacific Social Science Review* 19, no. 1 (2019).

³ Nuzul Qur'aini Mardiya, "PENGAWASAN PERILAKU HAKIM MAHKAMAH KONSTITUSI OLEH DEWAN ETIK / THE SUPERVISION BEHAVIOR JUDGE OF

Ethical dimensions play a crucial role in upholding the integrity of Constitutional Court judges, as mandated by the constitution. This serves as a tool to prevent potential misconduct by judges. The code of ethics for Constitutional Court judges is often referred to as the ethical framework within which judges perform their duties, underscoring the importance of this code in demonstrating the independence and integrity of the Constitutional Court. To ensure adherence to this code, the Constitutional Court established the Honorary Council of the Constitutional Court.⁴ The establishment of the Honorary Council of the Constitutional Court is reinforced by Law No. 8 of 2011, which amends the Constitutional Court Law, in conjunction with Article 27A paragraph (4) of Law No. 4 of 2014, which further amends the Constitutional Court Law. These legal provisions affirm the Constitutional Court's commitment to upholding the integrity of its judges and enforcing the code of ethics for Constitutional Court judges.⁵ The Honorary Council Of The Constitutional Court, hereinafter referred to as MKMK, is crucial not only in ensuring that Constitutional Court judges adhere to the code of ethics but also in maintaining public confidence in the Constitutional Court's primary role of interpreting the constitution and protecting constitutional rights.⁶

The significance of the MKMK's role in enforcing ethical standards among Constitutional Court judges can be illustrated by a particular incident involving alleged changes to a Constitutional Court Decision by certain individuals within the Court. This incident pertains to Constitutional Court Decision No. 103/PUU-XX/2022, where a discrepancy arose between the judge's statement and the actual content of the Decision. Although the change only involved substituting the phrase "therefore" with "in the future," the legal implications were substantial. Consequently, suspicions arose regarding the potential manipulation of the Constitutional Court's decisions by individuals within the Court, shifting the focus to MKMK's authority. Article 1, point 4 of Constitutional Court Regulation No. 1 of 2023, ensures

CONSTITUTIONAL COURT BY ETHICS COMMITTEE," *Jurnal Hukum Dan Peradilan* 6, no. 1 (2017), <https://doi.org/10.25216/jhp.6.1.2017.189>.

⁴ James M. Durant, "Constitutional Ethics, Human Rights and Responsible Leadership," in *Responsible Leadership: Essential to the Achievement of the UN Sustainable Development Goals*, 2022, <https://doi.org/10.4324/9781003129189-5>.

⁵ PPPUU1/2013 et al., "Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun 2013 Tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi," *Presiden Republik Indonesia* 135, no. 4 (2013).

⁶ Paula Baptista et al., "EFEKTIFITAS PENGAWASAN HAKIM KONSTITUSI OLEH DEWAN ETIK DAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI," *Photosynthetica* 2, no. 1 (2018).

that the MKMK has the necessary authority to uphold the dignity and honor of the Court and to impose sanctions for any ethical violations committed by Constitutional Court judges. However, Regulation No. 1 of 2023 has yet to elaborate in detail on the role of the MKMK as an "intermediary" in situations where ethical violations by Constitutional Court judges impact criminal cases involving those judges, as in the case of the alteration in Decision No. 103/PUU-XX/2022.⁷

Given this, it is clear how essential the Honorary Council of the Constitutional Court is in maintaining integrity and ethics within the institution. In the judicial context, a judge's integrity is the primary foundation that ensures public trust in the decisions made. The Honorary Council of the Constitutional Court acts as a strategic body for overseeing and evaluating the ethical conduct of Constitutional Court judges.⁸

With the presence of the MKMK, there is a formal mechanism to address allegations of ethical violations by Constitutional Court judges. This council has the authority to investigate cases involving the judge's code of ethics and, if necessary, to impose appropriate sanctions. The existence of the MKMK also provides protection for judges from potentially unfounded accusations while enhancing accountability and transparency in carrying out judicial duties. Thus, the MKMK serves as a guardian of ethics and honor, supporting the Constitutional Court's credibility as an institution that plays a central role in upholding justice and constitutionality. This creates a solid foundation for maintaining the dignity of the institution and ensuring that its decisions are fair, independent, and aligned with high legal principles and ethical standards.

From various backgrounds so that a vacuum arises, "Quo Vadis" which literally means "where are you going?" is used in this article as a critical reflection on the direction and future of the ethical supervision system for Constitutional Judges in Indonesia. A comprehensive discussion will be distributed into several issues can be identified as follows: 1) How effective is the function of the Honorary Council of the Constitutional Court under the applicable provisions in Indonesia? 2) What recommendations could

⁷ Fradhana Putra Disantara et al., "EKSTENTIFIKASI KEWENANGAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI DALAM MEMPERKUAT GAGASAN CONSTITUTIONAL ETHICS," *LITIGASI* 24, no. 1 (2023), <https://doi.org/10.23969/litigasi.v24i1.7232>.

⁸ Hafizatul Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan," *Unizar Law Review* 6, no. 2 (2023), <https://doi.org/10.36679/ulr.v6i2.60>.

optimize the authority of the Honorary Council of the Constitutional Court in upholding the concept of Constitutional Ethics?.

This term describes the conditions of uncertainty and institutional vacuum after the ineffective functioning of the Ethics Council. The question of Quo Vadis in this context is not only rhetorical, but demands normative and institutional answers to the vacuum of the role of ethical institutions that are very vital in guaranteeing the integrity of Constitutional Judges.

Method

The method in this study uses the method of normative juridical analysis with qualitative research methods. Qualitative research is research that produces analytical procedures that do not use statistical analysis procedures or other quantification methods. The legal materials obtained were collected by tracing the sources of legal materials in official documents issued by the government,⁹ which means the focus of the study is directed at tracing positive legal norms and legal documents as the main sources. The tracing was carried out on laws and regulations governing the Constitutional Court, including Law No. 24 of 2003, Law No. 8 of 2011, Law No. 7 of 2020, and related Constitutional Court Decisions, such as Decisions No. 005/PUU-VI/2006 and No. 1-2/PUU-IX/2014.

In addition, this study analyzes secondary documents in the form of official MK news, statements by officials (for example, MK spokespersons), scientific journal articles, and opinions of constitutional law experts. Data collection techniques are carried out through document studies (documentary research) and literature studies from relevant legal literature and court decisions, that focuses on the ideas contained in theory. Depending on the research topic and type of problem at hand, in the three (3) major method categories above, this research will use library research or literature study methods.¹⁰ Data collection techniques are carried out through document studies (documentary research) and literature studies from relevant legal literature and court decisions. In terms of analysis, the author uses content analysis of MK regulations and decisions to identify institutional patterns and developing ethical supervision norms. This study also conducts a comparative legal analysis of similar institutions in other countries and other

⁹ et al. Fauzi, *Metode Penelitian* (Jakarta: Pena Persada, 2022).

¹⁰ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011).

national ethics institutions such as the DKPP and KY, in order to find best practices that are relevant to the reformulation of the ethical supervision system for Constitutional Judges, discovering what is important and what is learned, and deciding what can be told to others.¹¹

History of Constitutional Judge Supervision in Indonesia

The Constitutional Court, hereinafter referred to as MK, as one of the judicial power institutions in Indonesia is supervised by the Judicial Commission as an external overseer as mandated by the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as UUD NRI 1945. Article 24B paragraph (1) of the UUD NRI 1945 states that in order to maintain and uphold the honor, dignity, and behavior of judges, the Judicial Commission is granted other authorities. This authority is further regulated in Law No. 22 of 2004 concerning the Judicial Commission hereinafter referred to as UU KY.¹² Article 13 of the UU KY stipulates that the KY has the authority to propose the appointment of Supreme Court Justices and to uphold the honor and dignity, as well as to maintain the behavior of judges. Furthermore, Article 20 explains that in order to achieve the objectives of Article 13, the KY may supervise judges, which refers to Article 1 point 5, stating that the term "judge" in this law includes Supreme Court Justices and judges in other judicial bodies under the Supreme Court, as well as Constitutional Judges.¹³

The external supervision by the Judicial Commission, hereinafter referred to as KY, over the MK has become a subject of debate among practitioners and academics. In the UU KY, Article 1 point 5 employs a concept and formulation of the meaning of "judge" as inclusive. This interpretation aligns with the views expressed by Fajrul Falaakh, Jimly Asshiddiqie, and M. Laica Marzuki. Fajrul Falaakh argues that there is actually no specific interpretation of the meaning of "judge" at the constitutional level, but we can refer to the Minutes of the People's

¹¹ S. Aminah and Roikan, "Pengantar Metode Penelitian Kualitatif Ilmu Politik," *Edisi Pertama*, 2019.

¹² Ernawati Huroiroh and Wahidur Roychan, "Quo Vadis Eksistensi Komisi Yudisial Sebagai Majelis Kehormatan Mahkamah Kostitusi Pasca Putusan Mahkamah Konstitusi No. 56/PUU-XX/2022," *Sosio Yustisia Jurnal Hukum Dan Perubahan Sosial* 3, no. 2 (2023), <https://doi.org/10.15642/sosyus.v3i2.363>.

¹³ Wahyu Aji Ramadan, Irma Aulia Pertiwi Nusantara, and Tanti Mitasari, "REFORMULASI PENGAWASAN MAHKAMAH KONSTITUSI DEMI MENINGKATKAN EFEKTIVITAS PENEGAKAN KODE ETIK HAKIM KONSTITUSI," *Jurnal Studia Legalia* 3, no. 02 (2022), <https://doi.org/10.61084/jsl.v3i02.29>.

Consultative Assembly (hereinafter referred to as MPR) Sessions and the materials socializing the results of the amendments. Based on these two sources, through a semantic interpretation method, it can be understood that the meaning of the word "judge" encompasses all judges, so the interpretation of "judge" in Article 24B paragraph (1) of the UUD NRI 1945 includes all judges. Fajrul Falaakh's statement aligns with Jimly Asshiddiqie's opinion, who argues that based on literal interpretation, Constitutional Judges fall under the definition of judges supervised by the KY as per Article 24B paragraph (1).¹⁴ This opinion of the two experts is also supported by M. Laica Marzuki's statement, which asserts that the constitutional mandate to the KY to uphold and maintain the honor and dignity of judges includes Constitutional Judges.

In contrast to Fajrul Falaakh, Jimly Asshiddiqie, and M. Laica Marzuki, Natabaya argues that Constitutional Judges do not fall under the definition of judges supervised by the KY because Constitutional Judges are not permanent professional judges, unlike regular judges, but are appointed only for a term of five years. Natabaya's opinion aligns with the final decision made by the MK to limit external supervision by the KY through Decision No. 005/PUU-VI/2006 regarding the Judicial Review of Law No. 22 of 2004 and Law No. 4 of 2004 concerning Judicial Power on August 23, 2006. One of the rulings in this decision states that the inclusion of Constitutional Judges in the definition of judges under the UU KY is incorrect and contrary to the UUD NRI 1945, leading to the annulment of several articles and provisions almost entirely.¹⁵

With the limitation of the KY's external supervisory authority over the MK, the lawmakers, in this case, the DPR, amended Law No. 24 of 2003 concerning the MK with Law No. 8 of 2011. In this amendment, the DPR constructed internal supervision by the MK as a replacement for the external supervision that has been limited.¹⁶ This supervisory construction is

¹⁴ Disantara et al., "EKSTENTIFIKASI KEWENANGAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI DALAM MEMPERKUAT GAGASAN CONSTITUTIONAL ETHICS."

¹⁵ Muhammad Fuad Hassan and Anita Zulfiani, "Pelanggaran Kode Etik Dan Perilaku Hakim Konstitusi Dalam Tindakan Merubah Substansi Putusan Secara Tidak Sah (Studi Putusan Majelis Kehormatan Mahkamah Konstitusi No.01/HONORARY COUNCIL OF THE CONSTITUTIONAL COURT/T/02/2023)," *Ranah Research : Journal of Multidisciplinary Research and Development* 6, no. 1 (2023), <https://doi.org/10.38035/rj.v6i1.792>.

¹⁶ Sutan Sorik, Mirza Nasution, and Nazaruddin Nazaruddin, "Eksistensi Majelis Kehormatan Mahkamah Konstitusi (Studi Keputusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01/HONORARY COUNCIL OF THE CONSTITUTIONAL COURT/X/2013)," *Jurnal Konstitusi* 15, no. 3 (2018), <https://doi.org/10.31078/jk15310>.

regulated in Article 27A, stating that the MKMK is a body established by the MK to carry out supervisory functions over Constitutional Judges in monitoring, examining, and recommending actions regarding Constitutional Judges suspected of violating the Code of Ethics and Guidelines for Judges' Conduct (hereinafter referred to as KEPPH). Below is a comparison of the supervisory substance between Law No. 24 of 2003 and Law No. 8 of 2011.

a. Comparison of the substance of supervision of constitutional judges

1) Comparison of MKMK regulations in Law no. 24 of 2003 and Law no. 11 of 2011

Law No. 24 of 2003	Law No. 8 of 2011
It is not regulated in detail regarding MKMK. In this regulation, it is only stated in the section on dismissing a judge that a request for dishonorable dismissal is made after the judge concerned has been given the opportunity to defend himself before the MKMK.	The duties and authorities of the MKMK are to enforce the Constitutional KEPPH
	Membership: one constitutional judge, one member of the KY, one member of the DPR, one member of the government, who handles government affairs in the field of law and one supreme judge
	Sanctions: written warning, temporary suspension, dismissal.

Through Law No. 8 of 2011, the spirit of oversight over Constitutional Judges has developed well. However, amid this oversight spirit, the performance of the MKMK (the Internal Supervisory Board of the Constitutional Court) was called into question with the emergence of bribery and money laundering cases involving the Chief Justice of the Constitutional Court, Akil Mochtar. Akil Mochtar was found guilty of receiving bribes related to election disputes in various regions, amounting to Rp3 billion from the Gunung Mas regency, Rp3 billion from Central Kalimantan, Rp1 billion from Lebak Banten, Rp10 billion and 500,000 USD from Empat Lawang, and Rp3 billion from Palembang. With such a case implicating the Chief Justice, public trust in the state, particularly in the MK, turned into disappointment. According to the author, this situation arises because the provisions of Law No. 8 of 2011 limit the MKMK's duties to only enforcing actions as a repressive measure, without any preventive efforts to oversee Constitutional Judges, making it unable to prevent potential violations.

Therefore, as a preventive oversight effort, the MK established an Ethics Council through Regulation of the Constitutional Court No. 2 of 2013. This regulation directed the Ethics Council to uphold and maintain the honor, dignity, behavior, and the Code of Ethics for Constitutional Judges (KEPPH).¹⁷

The bribery case involving the Chief Justice indirectly prompted the government to issue new legal regulations. The government issued Government Regulation in Lieu of Law No. 1 of 2013, which later became Law No. 4 of 2014 on January 15, 2014. Several provisions within this law modified the regulations related to the MKMK. Below are the differences between the regulations governing the MKMK in Law No. 8 of 2011 and Law No. 4 of 2014.

2) Comparison of the Regulations on MKMK in Law No. 8 of 2011 and Law No. 4 of 2014

Indicator	Law No. 8 of 2011	Law No. 4 of 2014
Drafter of the Constitutional KEPPH	MK	MK together with KY and involving other competent parties
Forming MKMK	MK	MK with KY
The nature of MKMK	<i>Ad hoc</i>	Constantly
MKMK Membership	One Constitutional Justice; One KY member; One member of the DPR; One person from the government is organizing it affairs government in the field of buicam; One supreme judge	One former Constitutional Justice; One legal practitioner; Two academics, one or both of whom have a legal background; One Community Figure
MKMK requirement	Not mentioned	Have impeccable integrity and personality; aged at least fifty years; and not have been a

¹⁷ Ernawati Huroiroh and Roychan, "Quo Vadis Eksistensi Komisi Yudisial Sebagai Majelis Kehormatan Mahkamah Kostitusi Pasca Putusan Mahkamah Konstitusi No. 56/PUU-XX/2022."

QUO VADIS HONORARY COUNCIL OF ...

		member of a political party for a period of at least five years before being appointed as a member of the MKMK.
MKMK's term of office	Not Mentioned	5 years and cannot be re-elected.
Authority	Enforce the code of ethics and behavior of judges	<ul style="list-style-type: none"> - Summon the suspect's judge to provide an explanation and defense. - Summon the reporter, witness, and/or other related parties for questioning, including requesting documents or other evidence: and - Impose sanctions on Constitutional Judges who are proven to have violated the code of ethics
Punishment	Written warning; temporary dismissal; or termination	Not mentioned

From the oversight framework that Law No. 4 of 2014 attempts to establish, the author believes it demonstrates an effort to provide clearer legal certainty with several new and more detailed regulations related to the MKMK (Internal Supervisory Board of the Constitutional Court). For example, the involvement of the Judicial Commission (KY) in drafting the Code of Ethics for Constitutional Judges (KEPPH) and the formation of the MKMK. Here, the lawmakers try to accommodate what is mandated by Article 13 of the 1945 Constitution of the Republic of Indonesia. Furthermore, the change in the MKMK's status to a permanent entity addresses the issue of the lack of a mandate for the establishment of the Ethics Council by law. This can be asserted because having a permanent ethics oversight body with a clear legal basis in law can provide stronger legal certainty. Additionally, Law No. 4 of 2014 also introduces new provisions regarding the requirements for MKMK members, their terms of office, authority, and more detailed

sanctions. Therefore, due to these new and detailed provisions, the author believes that Law No. 4 of 2014 offers greater legal certainty than Law No. 8 of 2011.

The improvements in the oversight system for Constitutional Judges through Law No. 4 of 2014 did not immediately bring a breath of fresh air. In fact, this law was declared to have no binding legal force by the Constitutional Court Decision No. 1-2/PUU-IX/2014 because it contradicted the 1945 Constitution. This ruling reverted the oversight provisions for Constitutional Judges to refer back to Law No. 8 of 2011.¹⁸ However, as shown in Tables 1 and 2, the regulations concerning the MKMK were limited to general provisions. Therefore, the MK established Regulation of the Constitutional Court No. 2 of 2014 to replace Regulation No. 2 of 2013.¹⁹

Regulation No. 2 of 2014 included more detailed provisions regarding the MKMK and the Ethics Council. The reinstatement of Law No. 8 of 2011 concluded with the enactment of Law No. 7 of 2020. In this law, the author observes that the lawmakers predominantly removed most provisions related to the MKMK, leaving only the regulations for the establishment of the MKMK by the MK and its membership. Regarding organizational structure and other matters, these will be regulated in a PMK (Regulation of the Constitutional Court) as mandated by Article 27A paragraph 7 of the law. However, as of now, the MK has not issued a PMK to regulate this matter. Thus, until now, the regulations concerning the Ethics Council and MKMK refer primarily to Regulation No. 2 of 2014.

However, the debate map above shows that the absence of an agreement on who has the authority to supervise Constitutional Justices has created a structural vacuum of supervision. Moreover, after the Constitutional Court decision No. 005/PUU-VI/2006 which limited the external role of the KY, there is no permanent supervisory institution that has full legitimacy to supervise the ethics of Constitutional Justices. This indicates that the conceptual debate on the definition of "judge"

¹⁸ Baptista et al., "EFEKTIFITAS PENGAWASAN HAKIM KONSTITUSI OLEH DEWAN ETIK DAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI."

¹⁹ Dukatis Zulmi, "Mekanisme Pemberhentian Hakim Mahkamah Konstitusi (Analisis Keputusan Majelis Kehormatan Mahkamah Konstitusi Nomor: 01/HONORARY COUNCIL OF THE CONSTITUTIONAL COURT/X/2013)," *Universita Islam Negeri Syarif Hidayatullah Jakarta* (2020).

should have shifted towards institutional reform so that supervision can run effectively and not solely depend on semantic interpretation.

Therefore, it is important for the formation of an ethics supervision system in the Constitutional Court to no longer be fixated on the historical debate on the scope of the term "judge," but rather to focus on institutional needs that are in accordance with the principles of checks and balances and the accountability of judges in a democratic system.

Implementation of Ethics Council and MKMK Supervision of Constitutional Judges

The implementation of oversight by the Ethics Council and the MKMK (Internal Supervisory Board of the Constitutional Court) over Constitutional Judges has experienced complex dynamics in handling cases since its establishment. Additionally, the Ethics Council and the MKMK have faced various challenges that necessitate strengthening their roles through reformulation. The issues arising in the process of case handling by the Ethics Council, as outlined in Chart 1, will be examined more deeply by the author through a case study of ethical violations by Constitutional Judges that have occurred in Indonesia. A notable case of ethical violation involved the arrest of Constitutional Judge Patrialis Akbar in 2017. In this case, it was the Ethics Council and MKMK that played a role in enforcing the breached code of ethics.²⁰

Reflecting on the empirical facts surrounding this case and Chart 1, the author assesses that the lengthy case handling process from the investigation by the Ethics Council to the case transfer to the MKMK has proven to be time-ineffective. The ineffectiveness in handling ethical cases results from two factors.²¹ First, the authority of the Ethics Council in dealing with ethical violations is limited to issuing verbal or written reprimands to the suspected or reported judge if found guilty of minor ethical violations. If a serious ethical violation is proven, the case will be referred to the MKMK. This situation causes time inefficiency due to the relatively long process. According to Wiryanto, the Ethics Council should also be able to dismiss judges found guilty of serious ethical violations without first forming a

²⁰ Sri Pujianti, "MKMK Berhentikan Anwar Usman Dari Jabatan Ketua Mahkamah Konstitusi," Www.Mahkamahkonstitusi.Go.Id, 2023.

²¹ Ernawati Huroiroh and Roychan, "Quo Vadis Eksistensi Komisi Yudisial Sebagai Majelis Kehormatan Mahkamah Kostitusi Pasca Putusan Mahkamah Konstitusi No. 56/PUU-XX/2022."

Honorary Council, thereby shortening and making the case handling process more efficient. Second, the ad hoc nature of the MKMK creates limitations.²²

This situation results in the MKMK being unable to play a preventive role in combating judicial corruption. This aligns with Harjono's view that the enforcement of ethical standards and judges' behavior cannot be carried out by an ad hoc institution, as this function is a permanent one and must therefore be executed by a permanent institution.²³ Furthermore, given that the formation of the MKMK requires a plenary meeting of the Constitutional Judges beforehand, this creates potential obstacles to the effectiveness of the Constitutional Judges' duties in adjudicating cases. In reviewing the handling of ethical cases by ethical institutions, the author will conduct a comparative study with the Honorary Council of Election Organizers of the Republic of Indonesia (DKPP RI) and the ethical enforcement body in the Supreme Court (MA), as well as ethical enforcement bodies in several countries. Below is a comparison table of the ethical enforcement institutions of the MK, DKPP RI, and the MA.

Reformulation of Constitutional Judge Ethics Monitoring through the Honorary Council of Constitutional Judges in Enforcing Constitutional Ethics

a. Supremacy of the Constitution in Reformulating the Supervision of the Code of Ethics for Constitutional Judges

In order to uphold the supremacy of the Constitution, a new reformulation is needed for the oversight institutions responsible for the code of ethics and behavior of Constitutional Judges. The implementation of these changes can be carried out through the revision of Law No. 24 of 2003 concerning the Constitutional Court, which has been amended by Law No. 8 of 2011 and subsequently amended again by Law No. 7 of 2020 regarding the Third Amendment to Law No. 24 of 2003. This change aims to enhance and optimize the

²² Zuhad Aji Firmantoro, "Menimbang Kedudukan Majelis Kehormatan Mahkamah Konstitusi Setelah Terbitnya Undang-Undang Nomor 7 Tahun 2020," *Jurnal Konstitusi* 17, no. 4 (2021), <https://doi.org/10.31078/jk1749>.

²³ Mardiya, "PENGAWASAN PERILAKU HAKIM MAHKAMAH KONSTITUSI OLEH DEWAN ETIK / THE SUPERVISION BEHAVIOR JUDGE OF CONSTITUTIONAL COURT BY ETHICS COMMITTEE."

performance of the internal oversight institution of the Constitutional Court in the future.²⁴

In writing this academic article, the author finds that normatively, the internal oversight institution for Constitutional Judges currently consists of two oversight bodies: a permanent one (the Ethics Council) and an ad hoc one (the MKMK). The permanent body, or Ethics Council, has three members: Achmad Sodiki, Ahmad Syafii Maarif, and Sudjito. However, two of the three members' terms have expired, leaving only Sudjito as a member of the Ethics Council until 2023.

According to Fajar Laksono, the spokesperson for the Constitutional Court, the current Ethics Council is not functioning optimally or ideally due to the transition period in establishing the MKMK. He previously mentioned that the Ethics Council would transform into the MKMK in line with the latest revision of the Constitutional Court Law (Law No. 7 of 2020).²⁵

On the other hand, there are questions regarding the explanation above. If this is the case, who will act as the enforcing body for the code of ethics and behavior of Constitutional Judges when many media outlets discuss the marriage of Chief Justice Anwar Usman to the president's sibling while the Ethics Council has only one member left? The allegation of ethical violations by the Constitutional Judge raises concerns about a conflict of interest if issues arise related to the president's family.²⁶ As reported by Feri Amsari, the Director of the Center for Constitutional Studies (PUSaKO) at Andalas University, the marriage of Anwar Usman to President Jokowi's sister could have implications for governance, as Anwar, in his capacity as a Constitutional Judge, will adjudicate cases related to the political interests of the president.

The authors also found an official statement from the Constitutional Court's website (mkri.id) titled "Farewell to the Ethics Council of the Constitutional Judges," dated December 23, 2021. The

²⁴ Wiryanto et al., "Reconstruction of Ethics Supervision System Towards Constitutional Court Justice," *Constitutional Review* 3, no. 1 (2017), <https://doi.org/10.31078/consrev313>.

²⁵ NUZUL QUR'AINI MARDIYA, "The Supervision Behavior Judge of Constitutional Court By Ethics Committee," *Jurnal Hukum Dan Peradilan* 6, no. 1 (2017).

²⁶ Ulum and Sukarno, "Analisis Pengaruh Pelanggaran Kode Etik Hakim Mahkamah Konstitusi Terhadap Putusan Yang Di Tetapkan."

article confirms that the duties of the Ethics Council will be continued by the MKMK as mandated in Law No. 7 of 2020.²⁷

Therefore, with the vacancy in the Ethics Council, a question arises as to whether there will be a PMK (Regulation of the Constitutional Court) as the executor of the mandate in Article 27A of the Constitutional Court Law. The author argues that if it is true that, first, the Ethics Council has completed its term and said farewell; second, the existing law does not regulate the Ethics Council; and third, there has been no revocation of the PMK concerning the Ethics Council, then normatively, the Ethics Council can still be considered to exist, but there is a vacancy in its positions.²⁸ Consequently, the case involving the alleged ethical violations and behavior of Constitutional Judge Anwar Usman has yet to be addressed according to the normative authority available to the three members of the Ethics Council.²⁹

From this perspective, the author proposes the need to change the oversight institution for Constitutional Judges by establishing a Constitutional Judges' Honorary Court (MKMK) to reinforce the oversight role of Constitutional Judges in a noble and dignified manner.

The establishment of the MKMK will focus on changing the normative norms that include the abolition of the Ethics Council through a Constitutional Court decision and/or PMK, transferring the duties of the Ethics Council and MKMK to the MKMK with adjustments to make it more effective and not disrupt the performance of the judges being investigated or reported, while also providing broader authority for the MKMK's oversight functions. Thus, there will only be one internal oversight institution for the Constitutional Court to oversee the code of ethics of Constitutional Judges.

As an additional clarification, the establishment of the MKMK in this academic article does not mean reviving the Honorary Council of Constitutional Judges that was previously formed under Law No. 4 of

²⁷ Nala Syandhira Suzeeta and Kayus Kayowuan Lewoleba, "Pelanggaran Kode Etik Oleh Hakim Mahkamah Konstitusi Terkait Dengan Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023).

²⁸ "Pelaksanaan Sistem Pengawasan Hakim Konstitusi Di Indonesia," *Jurnal Konstitusi Dan Demokrasi* 2, no. 2 (2022), <https://doi.org/10.7454/jkd.v2i2.1209>.

²⁹ Suzeeta and Lewoleba, "Pelanggaran Kode Etik Oleh Hakim Mahkamah Konstitusi Terkait Dengan Putusan Mahkamah Konstitusi Nomor 90/Puu-Xxi/2023."

2014.³⁰ The MKMK in this writing only shares the same acronym, and the formation of the MKMK is necessary to emphasize the need for renewal in the internal oversight institution to enhance the code of ethics and behavior of Constitutional Judges whose decisions impact the life of the nation and state.

b. Efforts to Increase Supervision of Constitutional Judges By Reformulation of Supervision of the Code of Ethics for Constitutional Judges Through the Honorary Court of Constitutional Judges

First, for the composition of the membership of the MKMK in this academic article, the author suggests not including active Constitutional Judges. This is to avoid overlaps in authority since active Constitutional Judges also have roles in examining and adjudicating cases in the Constitutional Court. The author proposes that the membership composition of the MKMK consists of 2 (two) former Constitutional Judges, 2 (two) legal practitioners, 2 (two) law professors, and 1 (one) community leader.³¹

Second, the normative position of the MKMK should be permanent. If the MKMK is ad hoc, it will not be efficient or sustainable, leading to issues in handling daily reports due to a lack of permanent members, which could trigger judicial corruption. Furthermore, because of its permanent status, members of the Judicial Commission (KY) cannot be part of the MKMK, as KY's oversight does not cover Constitutional Judges as stipulated in the Constitutional Court Decision No. 005/PUU-IV/2006.³²

Third, regarding its establishment, the MKMK will be selected by a panel of experts who will conduct a rigorous and accountable selection process. This panel will consist of 1 (one) former Constitutional Judge, 1 (one) law professor, and 1 (one) community leader, each of whom is recognized and of impeccable character, and all of whom will be chosen by the Constitutional Court, maintaining an internal status. Furthermore, to address suspicions of lack of

³⁰ Muhtadi Muhtadi and Indra Perwira, "Redesign of Constitutional Ethics For State Administrator Based on The Value of Pancasila," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 12, no. 2 (2018), <https://doi.org/10.25041/fiatjustisia.v12no2.940>.

³¹ Wiryanto et al., "Reconstruction of Ethics Supervision System Towards Constitutional Court Justice."

³² Martitah, "Why Legitimacy Matters in Times of Uncertainty: A Critical Study of the Success Story of the Constitutional Court of Indonesia."

independence and concerns that Constitutional Judges are protected by their internal oversight body, both the panel of experts and the MKMK members must include individuals with a strong track record and public trust.

Fourth, the current status quo indicates a decreasing number of reports submitted to the Ethics Council.³³ The infrequency of these reports could be interpreted as a positive outcome, but it raises the question of whether this is due to the effective oversight performance of the Ethics Council and the compliance of Constitutional Judges with the code of ethics, or if it stems from a general lack of public awareness regarding the internal oversight of the Constitutional Court. Therefore, the author proposes that the MKMK should have the authority to promote its role, similar to the Indonesian Election Supervisory Board (hereinafter referred as to DKPP RI). For example, it could provide a handbook with detailed explanations of its functions, authorities, procedures for examination, complaint processes, and how to report suspected violations of the code of ethics, which could be downloaded by anyone through the official website of the Constitutional Court.³⁴

Fifth, the MKMK could impose stricter sanctions than those of the Ethics Council and be proactive in addressing allegations of ethical violations (rather than waiting for reports from the public). Previously, the Ethics Council only had the authority to issue sanctions for minor violations in the form of verbal warnings and to recommend the establishment of the MKMK for serious violations, which had to be formed no later than seven days after receiving the Ethics Council's recommendation. Therefore, to streamline the processing of cases, the author proposes that the MKMK should have the authority to issue written warnings (both regular and severe warnings), temporary suspension, and permanent dismissal, similar to the sanctions available at the DKPP RI, without needing to form an ad hoc body to adjudicate serious violations.

³³ Durant, "Constitutional Ethics, Human Rights and Responsible Leadership."

³⁴ Muhtadi Muhtadi, "POLITIK HUKUM PENGAWASAN HAKIM KONSTITUSI," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 3 (2016), <https://doi.org/10.25041/fiatjustisia.v9no3.602>.

Conclusion

Related to the above explanation, it can be concluded that the oversight function concerning the institution of the Constitutional Court is very important so that Constitutional Judges can maintain their independence in adjudicating cases, considering that the nature of the Constitutional Court's decisions is final and not subject to appeal, as stipulated in Article 24C of the 1945 Constitution. Constitutional Judges are required to embody the principles outlined in the Bangalore Principles of Judicial Conduct 2002 and Sapta Karsa Utama.

However, in its implementation, there are currently several imperfections. The practical issues regarding the oversight by the Ethics Council and MKMK are First, the ineffectiveness of the case handling mechanism, which is relatively lengthy, because the Ethics Council has limited authority to impose sanctions only in the form of verbal or written warnings for cases classified as minor violations. In contrast, cases involving serious violations are referred to MKMK. Second, the status and formation of the Ethics Council, established through a PMK, imply that the MK's ethics institution is used to protect the Constitutional Judges themselves and has the potential to trigger conflicts of interest. Third, the Ethics Council tends to be passive in addressing allegations of ethical violations by Constitutional Judges, as its authority is limited to waiting for reports from the public.

To realize this, the Constitutional Court has established an internal oversight institution, namely the MKMK, which is regulated regarding its position and functions in Law No. 7 of 2020, the third amendment to Law No. 24 of 2003 concerning the Constitutional Court, and further elaborated in Constitutional Court Regulation No. 1 of 2023. Therefore, to create effectiveness and efficiency in the oversight by the ethics institution for Constitutional Judges, it is essential to avoid disreputable practices that are prohibited as outlined in the code of ethics for Constitutional Judges. This way, public trust in the Constitutional Court as the guardian of the constitution and the final interpreter of the constitution can be strengthened.

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