

## Judicial Inconsistency and the Rule of Law: A Critical Analysis of Constitutional Court Decision on Presidential Age Requirements in Indonesia

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### Abstract

*The Constitutional Court (Mahkamah Konstitusi) of Indonesia plays a pivotal role as the guardian of the Constitution and the protector of constitutional rights. However, the Court's ruling in Decision No. 90/PUU-XXI/2023 concerning the age requirements for presidential and vice-presidential candidates has sparked public controversy due to its inconsistency with previous judgments on identical legal provisions. This study critically examines the inconsistency of the Constitutional Court's reasoning and evaluates the decision's conformity with the principles of the rule of law and judicial independence. Using a normative juridical method supported by a statute and case approach, the research analyzes primary legal materials, including Constitutional Court decisions, relevant legislation, and judicial ethics regulations. The findings reveal that Decision No. 90/PUU-XXI/2023 deviates from the Court's prior stance, effectively creating a new legal norm beyond its constitutional mandate, thus blurring the boundaries between judicial review and legislative authority. Furthermore, the proven ethical violations by the Chief Justice have weakened public trust in the integrity of constitutional adjudication. This article argues that such inconsistency undermines the predictability and legitimacy of the Court's jurisprudence, which are essential to the rule of law. The study contributes to the broader discourse on judicial accountability by emphasizing the need for a coherent interpretive framework and stronger ethical oversight mechanisms to preserve the integrity of Indonesia's constitutional justice system.*

**Keywords:** Constitutional Court; Judicial Inconsistency; Rule Of Law; Judicial Ethics; Constitutional Legitimacy; Presidential Age Requirements.



## Introduction

The guardian of the constitution is another name for the Constitutional Court (MK) in several countries. This means that the Constitutional Court must protect fundamental rights. Meanwhile, the explanation of the Constitutional Court Law states that the important substance of the amendment to the 1945 Constitution of the Republic of Indonesia is the existence of the Constitutional Court. Its existence as an institution that handles certain cases in the field of constitutional law ensures that the constitution is implemented responsibly in accordance with the will of the people and the democratic ideals of the Indonesian state. In addition, the MK can maintain stable state governance and ensure the correction, improvement, and examination of any double interpretations of the constitution in Indonesia.<sup>1</sup>

The constitutional context explains that the Constitutional Court was constructed to be the guardian of the constitution, functioning to uphold constitutionality in society. The Constitutional Court has the task of providing guarantees and encouraging the constitution to be respected and implemented consistently and responsibly by all elements of the state. In cases of constitutional issues, the Constitutional Court can act as an interpreter so that the constitution remains alive and continues to be implemented.<sup>2</sup> The Constitutional Court plays an important role in the implementation of the Indonesian constitution, so it must be able to carry out its principles as an independent and impartial state institution. The independence or autonomy of the Constitutional Court is related to the impartiality or non-partisanship of judges in examining or making decisions.

The Constitutional Court has the authority to review laws against the Constitution based on Article 2 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Law Review Cases. This regulation explains that requests for law review include formal and/or material reviews. In this regard, Law No. 7 of 2017 on General Elections has been reviewed by the Constitutional Court several times. In this case, there are decisions with the same object of review, but with different verdicts. The *final and binding* nature of Constitutional Court decisions is in accordance with the principle of *erga omnes*. This means that all legal remedies against Constitutional Court decisions are closed and must be obeyed by everyone in Indonesia, and can be

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<sup>1</sup> Maruarar Siahaan, *Constitutional Court Procedure of the Republic of Indonesia*, (Sinar Grafika, 2011).

<sup>2</sup>M Lutfi Chakim, "Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices," *International Journal for Court Administration* 12, no. 1 (2021): 1, <https://doi.org/10.36745/ijca.308>.

used to resolve protracted legal uncertainty.<sup>3</sup> Constitutional Court decisions are also used as material that must be regulated in the formation or amendment of laws. Constitutional Court judges have the basic authority to review laws, which is essentially only to invalidate or validate the validity of a law being reviewed. Therefore, the Constitutional Court acts as *a negative legislature* and is not actively involved in forming laws.<sup>4</sup>

In this regard, Law Number 7 of 2017 on General Elections has been reviewed several times by the Constitutional Court. In this case, there are decisions with the same object of judicial review, but with different verdicts. This paper discusses the decisions that review the articles on the age of presidential candidates (capres) and vice presidential candidates ( ) issued by the Constitutional Court on October 16, 2023, as follows: Decision Number 29/PUU-XXI/2023 (Status: Rejected in its entirety), Decision Number 51/PUU-XXI/2023 (Status: Rejected in its entirety), Decision Number 55/PUU-XXI/2023 (Status: Rejected in its entirety), Decision Number 90/PUU-XXI/2023 (Status: Granted in part), and Decision Number 91/PUU-XXI/2023 (Status: Not accepted). Based on the four cases reviewing Law Number 7 of 2017 concerning General Elections, the Constitutional Court only granted one case, namely Constitutional Court Decision Number 90/PUU-XXI/2023, while the other cases were rejected in their entirety. The difference in stance on the four cases indicates inconsistency in the Constitutional Court's attitude and legal construction in dealing with similar cases at the same time. Usually, differences in stance in a short period of time occur due to changes in context or extraordinary developments in science and philosophy, a condition termed disruption or what Kuhn calls revolution.

The inconsistency in this case occurred for several reasons, namely that the Constitutional Court had adjudicated a case that had been previously tested with the same discussion and under different circumstances. The previous case was filed by petitioners related to the 2024 election process, not just individuals. Meanwhile, in case number 90/PUU-XXI/2023, the *legal standing* was an individual. The Constitutional Court, which had previously rejected the petition, then accepted it even though the petitioner's statement in arguments 16-21 did not imply that the petitioner had suffered direct losses that could be proven logically. The Constitutional Court has changed the legislation with the issuance of Constitutional Court Decision Number 90/PUU-XXI/2023. This raises a number of issues. The proven misconduct of the Constitutional Court

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<sup>3</sup> Antoni Putra, "The Final and Binding Nature of Constitutional Court Decisions in Testing Laws," *Jurnal Yudisial* 14, no. 3 (2021): 291–311, <https://doi.org/10.29123/jy.v14i3.425>.

<sup>4</sup> Rangga Wijaya, "The Function of the Constitutional Court in Reviewing Laws Against the 1945 Constitution," *IJOLARES: Indonesian Journal of Law Research* 1, no. 1 (2023): 23–27, <https://doi.org/10.60153/ijolares.v1i1.5>.

judges and the ethical violations committed by the Chief Justice of the Constitutional Court also indicate that the Constitutional Court is an institution that is capable of making mistakes and therefore has the potential for abuse of authority. The internal oversight mechanism is considered suboptimal because it is not free from pressure from the Constitutional Court itself.

The ethical violations committed by the Chief Justice of the Constitutional Court were proven by MKMK Decision Number 02/MKMK/L/11/2023. In order to realize judicial power in accordance with the constitution, more supervision of Constitutional Court judges is needed.<sup>5</sup> Constitutional Court Decision Number 90/PUU-XXI/2023 contains a legal problem related to the inconsistency of the decision with other decisions on the same matter. However, the Constitutional Court's decision remains in effect for the 2024 elections, despite the problems and violations of the code of ethics. Based on the above background, the author is interested in conducting a comprehensive study on the Inconsistency of the Constitutional Court's Decision on the Age of Presidential and Vice Presidential Candidates (Study of Constitutional Court Decision Number 90/PUU-XXI/2023).

The study of Constitutional Court (MK) Decision Number 90/PUU-XXI/2023 has attracted the attention of many academics. First, research by Angie Angel Lina and Alan Bayu Aji (2024) highlights the legal consequences of the Constitutional Court's decision on the democratic system in Indonesia. This ruling is considered to open up room for intervention in the decision-making of constitutional judges, thereby causing a setback to democracy and the loss of the MK's dignity as the guardian of the constitution.<sup>6</sup> This study emphasizes the institutional impact and legitimacy of democracy as a result of this controversial ruling. Second, the research by Dian Permata Sari et al. (2025) focuses more on the issue of political dynasties. Decision Number 90/PUU-XXI/2023 is considered to be politically motivated because it is seen as paving the way for Gibran Rakabuming Raka to run as a vice presidential candidate in the 2024 elections. The author criticizes the lack of integrity of constitutional judges and assesses that this decision has the potential to strengthen the practice of nepotism and political dynasties in Indonesia.<sup>7</sup> The

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<sup>5</sup> Despan Heryansyah, "The Urgency of Expanding the Authority of the Judicial Commission in Overseeing Constitutional Court Judges," *Staatsrecht: Journal of Constitutional Law and Islamic Politics* 1, no. 2 (2022): 158–69, <https://doi.org/10.14421/staatsrecht.v1i2.2472>.

<sup>6</sup> Angie Angel Lina and Alan Bayu Aji, "The Legal Consequences of Constitutional Court Decision Number 90/PUU-XXI/2023 on the Democratic System in Indonesia," *Jurnal Hukum In Concreto* 3, no. 1 (February 2024): 57–71, <https://doi.org/10.35960/inconcreto.v3i1.1314>.

<sup>7</sup> Dian Permata Sari et al., "Constitutional Court Decision No. 90/PUU-XXI/2023: The Issue of Political Dynasties in Relation to Age Limits for Presidential and Vice Presidential

focus of this study adds perspective on the relationship between law and political practices that affect judicial independence. Third, a study by Rio Subandri (2024) reviews the legal authority of the Constitutional Court in deciding this case. According to him, Constitutional Court Decision Number 90/PUU-XXI/2023 contains irregularities because the Constitutional Court is considered to be acting as *a positive legislator* by adding new norms in its ruling, when in fact the Constitutional Court should only act as *a negative legislator*. This criticism emphasizes the existence of authority deviations and potential violations of the principles of independence and impartiality of constitutional judges.<sup>8</sup>

From these three studies, it can be concluded that Constitutional Court Decision Number 90/PUU-XXI/2023 not only raises legal problems but also affects the legitimacy of democracy and reinforces the political issue of dynastic practices. However, while these studies have provided important descriptive insights, they remain limited in theoretical depth and comparative scope. Most of them focus on political and institutional implications, leaving underexplored the normative and ethical dimensions of judicial inconsistency itself.

Although comparative studies on constitutional adjudication have widely examined the relationship between judicial consistency and the rule of law, most analyses tend to focus on structural or institutional dimensions rather than the normative consequences of inconsistent reasoning in constitutional courts. For instance, Castillo-Ortiz (2020) argues that Kelsenian constitutional courts often face a “legitimacy dilemma” when balancing interpretive flexibility with legal certainty, yet his framework lacks an examination of how ethical breaches by judges aggravate such inconsistency in transitional democracies.<sup>9</sup> Similarly, Holoubek and Wagrandl (2023) highlight Austria’s century-long experience with constitutional review as a model of institutional stability, but their study overlooks how normative inconsistency may arise even within well-established judicial systems when personal or

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Candidates in the 2024 Presidential Election,” *Research Student Scientific Journal Vol. 2, No. 1 March 2025* Vol. 2, no. 1 (2025): 1–13, <https://doi.org/https://doi.org/10.61722/jirs.v2i1.3570>.

<sup>8</sup> Rio Subandri, “A Judicial Review of Constitutional Court Decision Number 90/PUU-XXI/2023 Regarding Age Limits for Presidential and Vice Presidential Candidates,” *Jaksa: Journal of Legal and Political Studies* 2, no. 1 (2024): 135–53, <https://doi.org/https://doi.org/10.51903/jaksa.v2i1.1512>.

<sup>9</sup> Pablo Castillo-Ortiz, “The Dilemmas of Constitutional Courts and the Case for a New Design of Kelsenian Institutions,” *Law and Philosophy* 39 (2020): 617–655, <https://doi.org/10.1007/s10982-020-09378-3>.

political factors intervene.<sup>10</sup> In the Indonesian context, most comparative works, such as Butt (2023) and Wiratraman (2025), emphasize the tension between judicial independence and executive pressure, but they rarely address the internal dynamics of ethical accountability within the Constitutional Court.<sup>11</sup> Thus, a critical gap remains concerning how judicial inconsistency—rooted not merely in doctrinal divergence but also in ethical violation—affects the legitimacy of constitutional justice and the normative integrity of the rule of law in post-reform constitutional regimes.

This study seeks to fill the identified theoretical and normative gap by offering a critical analysis of judicial inconsistency within Indonesia's Constitutional Court through the lens of the rule of law and judicial ethics. Unlike previous studies that emphasize institutional design or political influence, this research foregrounds the interplay between judicial reasoning, ethical accountability, and normative legitimacy. By applying a normative juridical approach supported by comparative references from Kelsenian and post-reform judicial systems, this study contributes to expanding the theoretical understanding of how ethical violations and inconsistent reasoning can undermine constitutional justice. The novelty of this research lies in positioning judicial inconsistency not only as a procedural defect but as a substantive constitutional challenge that threatens the predictability, impartiality, and legitimacy of the rule of law in Indonesia's evolving democracy.

Based on the description of the problem and the previous study, the research questions are: What is the form of inconsistency in Constitutional Court Decision Number 90/PUU-XXI/2023? How does Constitutional Court Decision Number 90/PUU-XXI/2023 comply with applicable laws and regulations? With these *research questions*, the purpose of this study is to analyze the form of inconsistency contained in Constitutional Court Decision Number 90/PUU-XXI/2023 and assess its conformity with the applicable legal framework. Thus, this study is expected to contribute theoretically to the development of constitutional law studies and provide practical benefits in the form of a more comprehensive understanding of the role of the Constitutional Court as the guardian of the constitution and a pillar of democracy in Indonesia.

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<sup>10</sup> Michael Holoubek and Ulrich Wagrandl, "A Model for the World: The Austrian Constitutional Court Turns 100," *ICL Journal* 17, no. 3 (2023): 251–276, <https://doi.org/10.1515/icl-2023-0029>.

<sup>11</sup> Simon Butt, "Constitutional Court Decisions on the Judicial Independence of Other Indonesian Courts," *Constitutional Review* 9, no. 2 (2023): 213–240, <https://doi.org/10.31078/consrev922>; Herlambang P. Wiratraman, "Constitutional Struggles and the Court in Indonesia's Turn to Authoritarian Politics," *Federal Law Review* 50, no. 3 (2025): 314–330, <https://doi.org/10.1177/0067205X221107404>.



This research employs a normative juridical method (doctrinal legal research) that conceptualizes law as a system of norms, principles, and doctrines guiding judicial conduct in constitutional adjudication. The study applies both a statutory and case approach to examine the coherence and consistency of the Constitutional Court's reasoning in Decision No. 90/PUU-XXI/2023 compared with other relevant rulings (Decisions No. 29, 51, 55, and 91/PUU-XXI/2023). Legal materials consist of primary sources—constitutional provisions, legislation, and Constitutional Court judgments—and secondary sources<sup>12</sup> such as academic commentaries and journal articles published between 2020 and 2025. The analysis utilizes an interpretive and comparative content technique, focusing on three indicators: reasoning coherence, conformity with the principles of the rule of law, and compliance with judicial ethical norms codified in the *Sapta Karsa Hutama*. The theoretical framework integrates the *rule of law theory* (A.V. Dicey), *the theory of judicial independence* (Jimly Asshiddiqie), and *Kelsen's constitutional adjudication theory* to critically assess whether judicial inconsistency in this decision reflects a legitimate interpretive evolution or an instance of judicial activism that undermines constitutional predictability and legitimacy.

## Discussion

### Judicial Consistency in Constitutional Review: A Theoretical Perspective

The development of *judicial review* around the world is known to have two models, namely the United States model and the European (Austrian) model. These models of *judicial review* have fundamental differences, namely (a) *Judicial Review* in the United States, where the US model of *judicial review* is carried out by the Supreme Court as *the guardian of the constitution*, and can be carried out by all ordinary courts through a decentralized or distributed review process in cases examined by ordinary courts.<sup>13</sup> Constitutional review under the American model is a judicial activity that is not separate and originates from ordinary litigation proceedings in the courts. When a case is examined, if the judge finds that a law conflicts with the constitution, the judge also conducts a constitutional review of the relevant law.<sup>14</sup> According to Jimly Ashhidiqie, the objects of *judicial review* in the United States can consist of various regulations, *administrative acts*, state laws, and state constitutions. All of these objects can be

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<sup>12</sup> Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative justice in Indonesia corruption crime: a utopia," *Legality: Journal of Legal Studies* 31, no. 1 (April 2023): 72–90, <https://doi.org/10.22219/ljih.v31i1.24247>.

<sup>13</sup> Cholidin Nasir, "Judicial Review in the United States, Germany, and Indonesia," *Progressive Law Journal* Vol. 8, no. 1 (2020): 67–80, <https://doi.org/10.14710/hp.8.1.67-80>.

<sup>14</sup> I Gede Dewa Palguna, *Constitutional Complaint (Pengaduan Konstitusional) Legal Remedies for Violations of Citizens' Constitutional Rights* (Jakarta: Sinar Grafika, 2013).

reviewed if they are deemed to be in conflict with the Federal Constitution (US Constitution) as *the Supreme Law of the Land*.<sup>15</sup> Meanwhile, (b) *Judicial Review* in Austria, according to Martin Borrowski, *concrete review* is a mechanism for reviewing laws against the constitution submitted by judges from ordinary courts (courts other than the Constitutional Court) to the Constitutional Court. This request is submitted when there are doubts from ordinary court judges regarding the constitutionality of laws that will be applied in specific cases.<sup>16</sup>

The Indonesian Constitutional Court also has the authority to review the constitutionality of laws (*judicial review*). However, there are differences when compared to Austria and the United States. When compared to Austria, the Indonesian Constitutional Court does not have the authority *to conduct concrete-review*.<sup>17</sup> Austria was chosen because it has a history as the first country to establish a Constitutional Court that has practiced *concrete review* and *abstract review* since its inception.<sup>18</sup> The Austrian model, often referred to as *the Continental Model* (Europe), is administered by an independent constitutional court. According to Hans Kelsen, this authority was designed to include ordinary courts in upholding the supreme position of the constitution, which may not be obeyed by the executive branch. The authority of ordinary courts to submit laws for review to the Constitutional Court will expand the protection of the courts against the constitution and executive actions and strengthen the courts in the concrete review process.<sup>19</sup>

The institution that implements the mandate of the constitution is the Constitutional Court. Based on Law Number 24 of 2003, the formation of the Constitutional Court must be carried out immediately through the recruitment of constitutional judges by three state institutions, namely the House of Representatives (DPR), the President, and the Supreme Court. After a selection process in accordance with the mechanisms applicable to each institution, the three institutions then determine their constitutional judge candidates.<sup>20</sup> In accordance with the provisions of the Constitution, three constitutional judges are nominated by the DPR, three constitutional judges are nominated by the President, and three constitutional judges are nominated

<sup>15</sup> Leah Litman and Katherine Shaw, "Textualism, Judicial Supremacy, and the Independent State Legislature Theory," *Wisconsin Law Review*, no. 5 (2022), <https://repository.law.umich.edu/articles/2718>.

<sup>16</sup> Michael Holoubek and Ulrich Wagrand., (n 10).

<sup>17</sup> Fajrianto, Andriyansyah, and Zamzami, "Concrete Review: A Comparison of Austria, Germany, and Croatia and the Ideal Formulation of Regulations in Indonesia," *DINAMIKA* 30, no. 1 (2024), <https://jim.unisma.ac.id/index.php/jdh/article/view/23413>.

<sup>18</sup> Tanto Lailam, "Comparison of Constitutional Review Designs in the German Federal Constitutional Court and Indonesia," *Arena Hukum* 16, no. 02 (August 2023): 274–301, <https://doi.org/10.21776/ub.arenahukum.2023.01602.4>.

<sup>19</sup> Pablo Castillo-Ortiz, (n 9).

<sup>20</sup> Simon Butt, (n 11).



by the Supreme Court. After there were nine constitutional judges, the President was then appointed as a constitutional judge and was first appointed by Presidential Decree No. 147/M of 2003 on August 15, 2003.<sup>21</sup> The idea of establishing the Constitutional Court itself was a development of democratic principles based on the political rights of the people and human rights, as well as the basis of political thought on state administration. These fundamental rights are expected to be constitutionally guaranteed in the constitutional rights of citizens and institutionally realized through state institutions that protect the constitutional rights of every citizen.<sup>22</sup>

### **Constitutional Court Decision Number 90/PUU-XXI/2023 on Presidential Age Requirements**

Inconsistency in Constitutional Court decisions occurs when there is a change in stance without strong reasons or significant new facts, resulting in contradictory legal considerations.<sup>23</sup> This is evident, for example, in the change in the term of office of the Chief Justice and Deputy Chief Justice of the Constitutional Court, which has changed frequently in a short period of time, and in the decision regarding the position of the Corruption Eradication Commission (KPK), which was initially confirmed as an independent institution but was later deemed to be within the executive branch.<sup>24</sup> These differences in interpretation demonstrate the Constitutional Court's lack of consistency in upholding the constitution, which is influenced by factors such as the legitimacy of legislation, the independence of judges, and potential conflicts of interest, thereby impacting legal certainty and the credibility of the Constitutional Court as the guardian of the constitution.<sup>25</sup>

Petitioner and case MK Decision Number 90/PUU-XXI/2023 mentions a request for a judicial review of Article 169 letter q of Law Number 7 of 2017 concerning Elections submitted by a student with legal representation from an advocate. The petitioner considered that there was age

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<sup>21</sup>I Gede Pantja Astawa and Firdaus Arifin, *Sengketa Kewenangan Lembaga Negara di Mahkamah Konstitusi (Disputes over the Authority of State Institutions in the Constitutional Court)*, 1st edition (Bandung: PT Refika Aditama, 2021), p. 13.

<sup>22</sup>Astawa and Arifin.

<sup>23</sup>Noora Nuzulul Fithra and Trianah Sofiani, "Inconsistency in the Norms Determining the Terms of Office of the Chief Justice and Deputy Chief Justice of the Constitutional Court," *Manabisa: Journal of Constitutional Law* 03, no. 02 (2023): 203–21, <https://doi.org/https://doi.org/10.51622/njlo.v1i01.35>.

<sup>24</sup>Theresa Yolanda Sirait et al., "Inconsistencies in Constitutional Court Decisions Regarding the Existence of the Corruption Eradication Commission as an Independent State Institution," *NJLO: Nommensen Journal of Legal Opinion* 01, no. 1 (2020): 1–26, <https://doi.org/https://doi.org/10.51622/njlo.v1i01.35>.

<sup>25</sup>Fithra and Sofiani, "Inconsistencies in the Norms Determining the Terms of Office of the Chief Justice and Deputy Chief Justice of the Constitutional Court."

discrimination because the minimum age requirement for presidential and vice-presidential candidates was set at 40 years, which could potentially harm his constitutional right to be elected and to vote as guaranteed by Article 28D paragraph (3) of the 1945 Constitution. The petitioner emphasized that the age requirement should be substituted with experience in leading as a regional head, considering that many young figures have successfully become regional heads under the age of 40. The petition submitted was for Article 169 letter q to be interpreted as "at least 40 years of age or experienced as a regional head".

The legal considerations in Constitutional Court Decision Number 90/PUU-XXI/2023 are that the court considers the petitioner to have legal standing because there is actual and potential constitutional harm. The Constitutional Court then considered the relevance of the issue of equality in political positions resulting from elections and emphasized that the legislature does indeed have the authority to determine age requirements. However, in the case at hand, the Constitutional Court argued that it was necessary to provide an alternative requirement of experience as a regional head in order to avoid injustice. Nevertheless, this consideration ( ) differs from previous decisions (Decisions 29, 51, and 55/PUU-XXI/2023) that rejected similar petitions.

The verdict in Constitutional Court Decision Number 90/PUU-XXI/2023 is that the Constitutional Court grants the petition in part by declaring Article 169 letter q of the Election Law unconstitutional insofar as it is not interpreted as "at least 40 years of age or has held/is holding a position elected through general elections, including regional head." The decision was made with five judges in favor (majority), two judges with concurring opinions, and four judges with dissenting opinions. This indicates a shift in the Constitutional Court's interpretation in close proximity to its previous decision.

Concurring and Dissenting Opinions in Constitutional Court Decision Number 90/PUU-XXI/2023: Judge Enny Nurbaningsih argued that the age requirement is an open legal policy, but emphasized the importance of a regional head's track record as an indicator of experience. Judge Daniel Yusmic emphasized that a regional head at the governor level must have at least one full term of experience. Meanwhile, four judges (Wahiduddin, Saldi Isra, Arief Hidayat, and Suhartoyo) expressed a dissenting opinion, arguing that the case should have been rejected because the age requirement is the domain of the legislature, and the Constitutional Court's sudden change of position has the potential to cause inconsistency in jurisprudence.

Other Constitutional Court decisions related to the age of presidential and vice-presidential candidates, namely Decisions No. 29, 51, and 55/PUU-XXI/2023, rejected all petitions related to age requirements. Meanwhile, Decision No. 90/PUU-XXI/2023 granted part of the petition with an

alternative requirement of regional head experience. Decision Number 91/PUU-XXI/2023 stated that the petition was inadmissible because the object had lost its relevance after Decision 90. This situation reflects the Constitutional Court's inconsistent stance in interpreting Article 169 letter q of the Election Law in a relatively short period of time. This is because the provisions regarding age limits in the Election Law had actually been tested before, and at that time the Court explicitly rejected the petition. The rejection was based on the consideration that the issue raised was not a constitutional matter, but rather fell within the realm of *open legal policy*.<sup>26</sup>

### **Analysis of Decision No. 90/PUU-XXI/2023 on the Age of Presidential and Vice Presidential Candidates: Between Judicial Activism and Legal Certainty**

#### **1. Inconsistency of Constitutional Court Decision Number 90/PUU-XXI/2023 Reviewed from the Theory of the Rule of Law**

The ideal form of a Constitutional Court decision must fulfill the principles contained in the code of ethics and conduct of constitutional judges to complement and not diminish existing legal provisions and conduct. Constitutional judges must comply with the Sapta Karsa Utama, which contains the principles of the code of ethics and conduct for constitutional judges, namely the principles of independence, impartiality, integrity, propriety and decorum, equality, competence and accuracy, as well as wisdom and prudence. In addition, Constitutional Court decisions must comply with the provisions of Article 45 of Law Number 24 of 2003 concerning the Constitutional Court. The results are then pronounced and signed by the judges who examined, tried, and decided the case, as well as the court clerk.

In this regard, Law Number 7 of 2017 on General Elections has been reviewed by the Constitutional Court several times. In this case, there are decisions with the same object of review, but with different verdicts. This paper discusses the decisions that reviewed the articles on the age of presidential and vice-presidential candidates issued by the Constitutional Court on October 16, 2023, namely Decision Number 29/PUU-XXI/2023 (Status: Rejected in its entirety), Decision Number 51/PUU-XXI/2023 (Status: Rejected in its entirety), Decision Number 55/PUU-XXI/2023 (Status: Rejected in its entirety), Decision Number 90/PUU-XXI/2023 (Status: Granted in part), and Decision Number 91/PUU-XXI/2023 (Status: Not Acceptable). Based on the four cases reviewing Law Number 7 of 2017 concerning General Elections, there is inconsistency in the attitude and legal construction of the Constitutional Court in dealing with cases with the same substance.

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<sup>26</sup> Herlambang P Wiratraman, (n 11).

In Constitutional Court Decision Number 90/PUU-XXI/2023, there were different reasons given by the constitutional judges, namely (a) Constitutional Judge Enny Nurbaningsih was of the opinion that the minimum age requirement was 40 years old or experience as a governor, the requirements for which were determined by the lawmaker, (b) Constitutional Judge Daniel Yusmic P. FOEKH essentially argued that the minimum age requirement should be 40 years old or experience as a provincial head of region, (c) Constitutional Judge Nahiduddin Adams essentially argued that based on the above arguments regarding age, he believed that the court should reject the petitioners' request, (d) Constitutional Judge Saldi Isra essentially argues that the legislature has explicitly expressed and shares the same intent as the petitioners, so that changes or additions to the requirements for presidential and vice-presidential candidates should be made through a *legislative review* mechanism by revising the law requested by the petitioners, rather than throwing this 'hot potato' to the court. Unfortunately, this simple matter, which clearly has the nature of an *open legal* policy, has been taken over and made into a political burden for the court to decide. If this approach to deciding similar cases continues, I am very concerned that the court is trapping itself in a political vortex by deciding various *political questions*, which will ultimately undermine public trust and legitimacy in the court. (e) Constitutional Judge Arief Hidayat essentially argues that the legal considerations in *the dissenting opinion* in case No. 29/PUU-XXI/2023 and case No. 51/PUU-XXI/2023 are mutatis mutandis an integral part of the legal considerations in my *dissenting opinion* in the decision on the petition.

Meanwhile, the inconsistency in Constitutional Court Decision No. 90/PUU-XXI/2023 is said to be inconsistent because there are changes that have not been optimally implemented. In addition, there are motives that indicate the possible causes of the amendment to the Constitutional Court Law, which has resulted in inconsistency, including: (a) Legislation Factors, the constitutionality of Article 169 letter q of Law Number 7 of 2017 is part of *open legal policy* in determining the minimum age limit for candidates. In the view of the Constitutional Court, open legal policy is a policy regarding provisions in certain articles of a law that are the authority of the lawmaker. In several Constitutional Court decisions, it has been stated that the existence of provisions (norms) that constitute *open legal policy* means that when a legal norm falls into the category of open legal policy, according to the Constitutional Court, that norm is constitutional or in accordance with the 1945 Constitution.<sup>27</sup> Therefore, the Constitutional Court should not add new norms

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<sup>27</sup> Iwan Satriawan and Tanto Lailam, "Open Legal Policy in Constitutional Court Decisions and Lawmaking," *Jurnal Konstitusi* 16, no. 3 (2019): 559–84, <https://doi.org/https://doi.org/10.31078/jk1636>.

or rules to Article 169 letter q of Law Number 7 of 2017, but can delegate this to the legislative body. (b) Independence, The independence of judicial power is a very important prerequisite for judges in carrying out their judicial activities, namely receiving, examining, adjudicating, and deciding cases in court. The independence of the judiciary must be accompanied by the moral integrity, nobility, honor, dignity, and authority of judges.<sup>28</sup> In Constitutional Court Case Number 90/PUU- XXI/2023, there was intervention by the government and the House of Representatives in the judicial institution by leaving it entirely to the Court to decide on the article, which should remain the authority of the lawmaker. (c) Interest Factor, based on the evidence and testimony presented during the trial of Constitutional Court Case No. 90/PUU-XXI/2023, it was proven that one of the Constitutional Court Justices had violated the trial process, resulting in a judicial violation. The Chief Justice of the Constitutional Court, Anwar Usman, did not recuse himself from the case despite the potential conflict of interest and his lack of *judicial* leadership. This is evidenced by MKMK Decision Number 2/MKMK/L/11/2023, which ruled that the reported judge (Anwar Usman) was proven to have committed a serious violation of the code of ethics and conduct of constitutional judges.

The connection between the MKMK decision and Constitutional Court Decision Number 90 shows that the two are closely related and have important legal implications. Although the MKMK does not have the authority to overturn Constitutional Court decisions, it still plays a crucial role in enforcing the code of ethics and maintaining the integrity of the Constitutional Court. Therefore, further steps are needed to ensure that the decisions of the Constitutional Court and the MKMK are in line with and consistent with applicable legal principles.<sup>29</sup>

## **2. Violation of the Code of Ethics for Judges in Constitutional Court Decision Number 90/PUU-XXI/2023 Reviewed from the Theory of Judicial Power**

Constitutional judges have a code of ethics that they must adhere to in carrying out their duties. The word "ethics" refers to a set of principles or values related to morality or can be understood as values regarding right and

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<sup>28</sup> Nasution et al., "The Nature of Judicial Independence in the Constitutional System of the Republic of Indonesia," *Kertha Semaya Journal* 11, no. 6 (2023): 1277–96, <https://doi.org/10.24843/KS.2023.v11.i06.p05>.

<sup>29</sup> Mohammad Iqbal Alif Auliadi et al., "The Consequences of Violations of the Constitutional Court Judges' Code of Ethics on the Enforcement of Constitutional Court Decision Number 90/PUU-XXI/2023," *Sosio Yustisia: Journal of Law and Social Change* 4, no. 1 (May 2024): 1–16, <https://doi.org/10.15642/sosyus.v4i1.544>.

wrong that are embraced by a group or society.<sup>30</sup> According to Wildan Suyuthi Mustofa, ethics is a system of values and moral norms that guide an individual or group in regulating their behavior.<sup>31</sup> The Constitutional Court has a code of ethics as a moral foundation and behavioral guideline for all judges in the Constitutional Court, namely Sapta Karsa Utama. The code of ethics aims to maintain all aspects of the dignity, credibility, and integrity of the Constitutional Court, so that it can uphold moral ethical standards and the constitutional judges themselves. The contents of the Constitutional Court's code of ethics regulate several matters, namely the principles of independence, impartiality, integrity, propriety and decorum, equality, competence and accuracy, as well as wisdom and prudence.

The violation of the code of ethics by the constitutional judge related to Constitutional Court Decision Number 90/PUU-XXI/2023 was proven guilty by MKMK Decision Number 2/MKMK/L/11/2023. After conducting a trial and requesting information from the parties concerned through MKMK Decision Number 02/MKMK/L/11/2023, and the behavior of the Constitutional Judge named Sapta Karsa Utama, the Chief Justice of the Constitutional Court, Anwar Usman, was proven to have violated 5 (five) principles, as follows:<sup>32</sup>

- a. The Principle of Impartiality, in the application of point 5 letter b, which states that "the constitutional judge or his/her family members have a direct interest in the decision." This principle requires constitutional judges to recuse themselves from hearing a case if they are considered unable to remain neutral due to family relationships that have a direct interest. This is in accordance with Law Number 48 Article 17 paragraph (3) concerning Judicial Power. In this case, the Chief Justice did not have the good intention to recuse himself from case Number 90/PUU-XXI/2023, thus violating the code of conduct for judges.
- b. The principle of integrity in the application of point 2 states that "The actions and behavior of constitutional judges must strengthen public trust in the image and authority of the Court. Justice must not only be carried out but must also be seen to be carried out." In this case, the decision issued by the constitutional judge drew a lot of criticism from the media and public criticism on social media, reflecting the public's

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<sup>30</sup> Kamus Besar Bahasa Indonesia (KBBI), <https://kbbi.web.id/etik>, accessed on June 5, 2024.

<sup>31</sup> Wildan Sayuthi Mustofa, *Code of Ethics for Judges*, 2nd Edition (Jakarta: KENCANA Prenadamedia Group, 2013).

<sup>32</sup> Rasji Rasji et al., "Analysis of Violations of the Code of Ethics for Judges of the Constitutional Court in Constitutional Court Decision No. 90/PUU-XXI/2023 According to the Constitutional Court Law," *JALAKOTEK: Journal of Accounting Law Communication and Technology* 1, no. 2 (2024): 417–22, <https://doi.org/10.57235/jalakotek.v1i2.2423>.



skeptical attitude and doubts about the credibility of the Constitutional Court. This shows that Constitutional Court Chief Justice Anwar Usman failed to apply the principle of integrity, resulting in a decline in public trust in the Constitutional Court.

- c. In terms of the principles of competence and accuracy, constitutional judges should be able to perform their duties as constitutional judges professionally and accurately on a personal level. Based on the statement of one of the reporters at the preliminary hearing of the MKMK (31/10/23), Violla Reininda, a representative of CALS (*Constitutional and Administrative Law Society*), stated that Anwar Usman was deemed incompetent in carrying out his *judicial leadership function* when faced with a situation of *concurring opinions* by two judges, which were essentially *dissenting opinions*, thus causing the decision to be ambiguous. This contradicts the application of principle number 5, which states that "Constitutional judges must ensure the efficient, proper, and timely resolution of cases, including the pronouncement and delivery of decisions to the parties."
- d. The principle of independence is closely related to the dignity of the Constitutional Court as a judicial institution. Through the final ruling hearing, the MKMK stated that Anwar Usman deliberately allowed outside intervention in the process of making Decision Number 90/PUU-XXI/2023, which violated the application of points 1, 2, and 3 of this principle.
- e. The principle of propriety and decorum in application 9 states that constitutional judges are not permitted to use or disclose confidential information obtained in the course of their duties for other purposes unrelated to the duties of the Court. In this case, the MKMK is of the opinion that the nine judges reported were unable to maintain the confidentiality of the Judges' Deliberation Meeting (RPH), which was considered to have been leaked because it was published by the mass media, Tempo Magazine.

Integrity and compliance with the code of ethics in the decision-making process in law enforcement institutions are key to maintaining the credibility and public trust in the administration of the state. The existence of a code of ethics in the Constitutional Court is one of the pillars of upholding the principle of constitutionality, which is the moral foundation and behavioral guideline for law enforcement.<sup>33</sup>

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<sup>33</sup> Orin Sabrina Pane and Ida Bagus Mahayoga Raharja, "Ultra Petita Decision of the Constitutional Court Regarding Judicial Review of the Requirements for Presidential and Vice Presidential Candidacy (Analysis of Constitutional Court Decision Number 90/PUU-XXI/2023)," *Indonesian Legislation Journal* 21, no. 1 (July 2024): 1–14, <https://doi.org/10.54629/jli.v21i1.1376>.

The effectiveness of the role of the Constitutional Court Honorary Council (MKMK) can be said to be less than optimal. Based on Article 45 of PMK Number 1 of 2023 concerning the MKMK, it is stated that judges who are proven to have committed serious violations should be punished with dishonorable dismissal. However, in practice, as seen in the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023, even though the reported party was proven to have committed a serious ethical violation, the sanctions imposed were not commensurate with the violation, namely only removal from the position of chairperson without revocation of status as a constitutional judge. Therefore, the enforcement of the code of ethics should be carried out consistently and substantively, not merely as a form of " " of normative provisions without considering the meaning and purpose of the legal norms themselves.<sup>34</sup>

### **3. Compliance of Constitutional Court Decision Number 90/PUU-XXI/2023 with Applicable Laws and Regulations**

The principle of a democratic state based on the rule of law and guaranteeing the fulfillment of human rights states that all citizens are obliged to uphold the law without exception, that everyone is entitled to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law, and that everyone is entitled to be recognized as a person before the law. The 1945 Constitution of the Republic of Indonesia states that Indonesia is a democratic state based on the rule of law that recognizes, respects, protects, promotes, and guarantees the fulfillment of human rights. In order to realize this, Indonesia has an independent judiciary. Constitutional Court Decision Number 90/PUU-XXI/2023 has in fact changed the applicable law and declared the birth of a new law by stating that the old law as the substance of certain laws no longer has binding legal force. The reality is that with this decision, the judges of the Constitutional Court have been given the power to create laws to replace the old laws, which were made by the legislature and by the constitution specifically authorized to do so. The law clearly states that a petitioner who submits a petition to the Constitutional Court regarding the review of a law against the Constitution is someone who considers that their constitutional rights and/or powers have been harmed by the enactment of the law. Meanwhile, in Decision Number 90/PUU-XXI/2023, the petitioner stated that "Article 169 letter (q) of Law Number 7 of 2017 *a quo* has violated and contradicted the constitutional rights and interests of the Petitioner, namely the right to obtain treatment and guarantees of legal certainty." One of the petitioners felt aggrieved by Article 169 letter q of Law Number 7 of 2017

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<sup>34</sup> Diah Ayu Fernanda et al., "The Effectiveness of Constitutional Supervision Judges by the Constitutional Court Honorary Council," *Legal Reform* 28, no. 1 (April 2024): 57–69, <https://doi.org/10.46257/jrh.v28i1.899>.

concerning General Elections because the petitioner had aspirations to become President or Vice President.

The Constitutional Court's decision is considered to have exceeded its authority through the application of the *ultra petita* principle, because the determination of age requirements for presidential and vice presidential candidates falls within the realm of open legal policy. The provisions regarding the age limit for presidential and vice presidential candidates do not explicitly contradict the 1945 Constitution ( ), do not exceed the authority of the legislature (*detournement de pouvoir*), do not contain elements of abuse of authority (*willekeur*), and do not raise institutional issues. This is because the determination of age requirements is a legislative authority as stipulated in Article 6 paragraph (2) of the 1945 Constitution. In addition, the policy regarding the age limit for presidential and vice-presidential candidates is not contrary to the values of morality, rationality, or justice, because historically and theoretically, this provision is based on considerations of maturity, insight, wisdom, and efforts to prevent the emergence of political dynasties.<sup>35</sup>

Historically, the age requirements for presidential and vice-presidential candidates in Indonesia have varied, including a minimum age of 30, 35, and 40 years. The law is regulated and written as follows:

- a. In the 1949 Constitution of the Republic of Indonesia (RIS Constitution 1949), the minimum age requirement for presidential and vice-presidential candidates was 30 years old. This is stated in Article 69 paragraph (3) of the 1949 RIS Constitution, which states that "The President must be an Indonesian citizen who is at least 30 years old, he cannot be someone who is not allowed to vote or someone who has been deprived of his right to be elected."
- b. The age requirement of 30 years for presidential and vice-presidential candidates is regulated in the 1950 Provisional Constitution of the Republic of Indonesia (UUDS 1950). Based on Article 45 paragraph (5) of the 1950 UUDS, which states that "The President and Vice President must be Indonesian citizens who are at least 30 years of age and may not be persons who are not permitted to vote or exercise their voting rights, or persons who have been deprived of their right to be elected."
- c. Article 1 paragraph (1) letter b of MPR Decree Number II/MPR/1973 concerning the Procedures for Electing the President and Vice President of the Republic of Indonesia states that "Candidates for President and Vice President shall be native Indonesians and must meet the following requirements: b. be at least 40 years of age."

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<sup>35</sup> Pane and Raharja, "Ultra Petita Decision of the Constitutional Court Regarding Judicial Review of the Requirements for Presidential and Vice Presidential Candidacy (Analysis of Constitutional Court Decision Number 90/PUU-XXI/2023)."

- d. Article 1 paragraph (1) letter b of MPR Decree Number VI/MPR/1999 concerning Procedures for the Nomination and Election of the President and Vice President of the Republic of Indonesia states that "Presidential and Vice Presidential candidates must be native Indonesians and must meet the following requirements: b. be at least 40 years of age."
- e. After the reform, the requirements to become a presidential and vice presidential candidate were regulated in Law Number 23 of 2003 concerning the Election of the President and Vice President (State Gazette of the Republic of Indonesia of 2003 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4311), which was used as the basis for the 2004 presidential election. The provisions in Article 6 letter q of Law Number 3 of 2003 state that "Presidential and Vice Presidential candidates must meet the following requirements: q. be at least 35 (thirty-five) years of age."
- f. This law was then revoked and replaced by Law Number 42 of 2008 concerning the Election of the President and Vice President (State Gazette of the Republic of Indonesia of 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924), which was used as the basis for the 2009 and 2014 presidential elections. Article 5 letter o of Law Number 42 of 2008 states that "The requirements to become a presidential and vice presidential candidate are: o. at least 35 (thirty-five) years of age."
- g. Then Law Number 7 of 2017 came into effect, which was used as the basis for 2019. Article 169 letter q of Law Number 7 of 2017 stipulates that the requirements for presidential and vice presidential candidates are that they must be at least 40 years old.
- h. In the 2024 Presidential Election, the requirements for presidential and vice-presidential candidates changed due to Constitutional Court Decision Number 90/PUU-XXI/2023, which states that candidates must be "at least 40 (forty) years of age or have held/are currently holding a position elected through general elections, including regional head elections."

Constitutional Court Decision Number 90/PUU-XXI/2023 has a number of significant weaknesses, both from a juridical and procedural perspective. This is evident from the inconsistency of the Constitutional Court's stance compared to its handling of similar cases in the past. In practical terms, this decision has a negative impact on the electoral system in Indonesia, such as the emergence of regulatory disharmony, restrictions on citizens' political rights, increased political polarization, a decline in the legitimacy of the Constitutional Court, and an increased burden and pressure on the General Elections Commission (KPU) and the Elections Supervisory Agency

(Bawaslu) in conducting fair and transparent elections. In addition, this decision sets a bad precedent for the independence of the judiciary due to allegations of a conflict of interest involving the Chief Justice of the Constitutional Court when the decision was made. This situation constitutes a violation of the principle of *judicial impartiality* and has the potential to erode public trust and confidence ( ) in the Constitutional Court as the guardian of the constitution.<sup>36</sup> Despite the pros and cons of the case, Constitutional Court Decision Number 90/PUU-XXI/2023 remains valid based on Article 10 of Law Number 24 of 2003 concerning the Constitutional Court. In accordance with the final *and binding* nature of Constitutional Court decisions, no other measures can be taken. Furthermore, the 1945 Constitution of the Republic of Indonesia states that Indonesia is a democratic state based on the rule of law that recognizes, respects, protects, promotes, and guarantees the fulfillment of human rights. Based on Article 43 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, every citizen has the right to be elected and to vote in general elections.

The Constitutional Court's Decision No. 90/PUU-XXI/2023 represents a paradigmatic shift from its previous interpretation of Article 169 letter q of the Election Law. Unlike prior rulings (Decisions No. 29, 51, and 55/PUU-XXI/2023), which adhered to the principle of *open legal policy*, this decision introduced a new legal norm—allowing candidates under forty with prior electoral experience—thereby extending beyond its constitutional mandate as a *negative legislator*. According to Hans Kelsen's theory of constitutional adjudication, the Court's legitimacy depends on its ability to interpret law without engaging in legislative creation.<sup>37</sup> Such deviation illustrates the phenomenon of *judicial activism*, where the judiciary assumes a quasi-legislative role under the pretext of justice correction.

This dynamic reflects what Castillo-Ortiz (2020) terms the “legitimacy dilemma” of constitutional courts: balancing legal certainty with social and political responsiveness.<sup>38</sup> While adaptive interpretation may enhance democratic inclusivity, ungrounded activism risks undermining predictability—the core of Dicey's *rule of law* principle that mandates stability and equality before the law.<sup>39</sup> In the Indonesian context, as noted by Butt (2023), the Constitutional Court's expanding interpretive power exposes

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<sup>36</sup> Muhammad Khoirul Umam, “Legal Analysis of Constitutional Court Decision No. 90/PUU/XXI/2023 on the Age Limit for Vice Presidential Candidates in Indonesia,” *Law, Development and Justice Review* 8, no. 3 (September 2025): 236–53, <https://doi.org/https://doi.org/10.51903/jaksa.v2i1.1512>.

<sup>37</sup> Hans Kelsen, *Pure Theory of Law* (University of California Press, 1967).

<sup>38</sup> Pablo Castillo-Ortiz, (n 9).

<sup>39</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed., 1959).

systemic vulnerabilities, particularly when judicial reasoning is influenced by personal or political interests rather than consistent jurisprudential logic.<sup>40</sup>

Hence, Decision No. 90/PUU-XXI/2023 demonstrates how judicial inconsistency, compounded by ethical controversies, transforms the Court from a *guardian of the constitution* into a potential *political actor*. The challenge lies not merely in the Court's legal interpretation but in safeguarding its epistemic authority through coherent reasoning and ethical independence. As Holoubek and Wagrandl (2023) emphasize in their comparative study of the Austrian Constitutional Court, consistency of reasoning—not merely procedural compliance—is the true test of constitutional legitimacy.<sup>41</sup>

### **Ethical Accountability and the Legitimacy of the Rule of Law**

Ethical accountability is a cornerstone of judicial legitimacy and a defining test of the *rule of law* in constitutional systems. As Holoubek and Wagrandl (2023) observed in the Austrian context, consistent reasoning and ethical integrity are interdependent foundations of constitutional adjudication.<sup>42</sup> The ethical breach revealed in the MKMK Decision No. 2/MKMK/L/11/2023 not only discredits the personal integrity of the Chief Justice but also undermines institutional trust in the Constitutional Court as a guardian of constitutional morality. This confirms Castillo-Ortiz's (2020) argument that the legitimacy of Kelsenian courts depends not only on interpretive coherence but also on the moral credibility of their decision-makers.<sup>43</sup>

In Indonesia's case, the fusion of ethical failure and inconsistent reasoning reflects what Wiratraman (2025) calls the "authoritarian temptation" in post-reform constitutionalism—where judicial power, when unchecked by ethical standards, risks becoming a political instrument rather than a constitutional safeguard.<sup>44</sup> The Court's deviation from its ethical and constitutional boundaries erodes public confidence and weakens the normative authority of the *rule of law*. As Butt (2023) notes, judicial independence without moral discipline produces structural instability in the judicial system.<sup>45</sup> Therefore, judicial accountability must be institutionalized through transparent oversight mechanisms, such as a strengthened and autonomous *Judicial Ethics Commission*, capable of enforcing ethical compliance and restoring public trust. Such reinforcement is essential to ensure that

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<sup>40</sup> Simon Butt, (n 11).

<sup>41</sup> Michael Holoubek & Ulrich Wagrandl, (n 10)

<sup>42</sup> *Ibid.*

<sup>43</sup> Pablo Castillo-Ortiz, (n 9).

<sup>44</sup> Herlambang P. Wiratraman, (n 11).

<sup>45</sup> Simon Butt, (n 11).



judicial independence is exercised within the moral and constitutional limits that sustain democratic legitimacy.

## Conclusion

Constitutional Court Decision No. 90/PUU-XXI/2023 demonstrates a clear deviation from judicial consistency and the constitutional limits of judicial power. The Court's reasoning in creating a new legal norm indicates a form of *judicial activism* that undermines legal certainty and weakens the principle of the *rule of law*. This inconsistency, compounded by ethical violations revealed through the MKMK findings, diminishes public confidence in the integrity of constitutional adjudication.

The novelty of this study lies in integrating doctrinal and ethical perspectives to evaluate judicial consistency in Indonesia's Constitutional Court. By combining Kelsen's theory of adjudication, Dicey's *rule of law*, and Asshiddiqie's concept of judicial independence, this research establishes that consistency is not only a matter of legal reasoning but also of ethical accountability.

To restore legitimacy, the Constitutional Court must reinforce transparency and institutional ethics through continuous jurisprudential review and the empowerment of an independent *Judicial Ethics Commission*. Strengthening both normative coherence and moral integrity is essential to uphold public trust and realign Indonesia's constitutional justice with the foundational ideals of democracy and the *rule of law*.

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