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Legal and Ethical Issues in the Constitutional Court Decision Concerning Minimum Age Limits for Presidential and Vice Presidential Candidates

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Abstract

This article aims to explain the basic considerations of Constitutional Court Judges in deciding case Number.90/PUU-XXI/2023 and analyze the existence of controversial issues in this decision. The background to this writing is a decision by the Constitutional Court which is considered unusual. There are new things out of the ordinary in deciding cases and the momentum approaching the 2024 general election has become a sensitive and interesting study. The research method used in this writing is a normative juridical method with a legal philosophy approach. This is in accordance with the main problem of analyzing the judge's decision from a philosophical perspective. Material in the form of library data in the form of statutory regulations and scientific works related to the research theme. The results of the research show that there are several basic reasons for judges in deciding this case, such as political rights and the time for the general election which is getting closer. Apart from that, the decision of the Constitutional Court contains ethical issues in it, because in the formation process it was carried out by judges who had been legally declared to have committed ethical violations.

1. Introduction

Applications submitted to the Constitutional Court by parties who feel their constitutional rights have been violated or threatened to request protection or enforcement of these rights. This application can be submitted by individuals, community groups, organizations, or even the government against a legal regulation that is considered to be contrary to the constitution as explained above. The application was submitted by an individual, namely Almas Tsaqibbirru, requesting a judicial review of Article 169 letter q. The application in question was numbered 90/PUU-XXI/2023 in the case file for the application for judicial review submitted to the Constitutional Court and the application was partially granted. In fact, previously three lawsuits, namely Case Numbers 29//PUU-XXI/2023, 51/PUU-XXI/2023 and 55/PUU-XXI/2023, were rejected by the Constitutional Court. Several judges' opinions, both in dissenting opinions and concurring opinions, expressed different opinions written in the case files. Because the approval of the application which is now stipulated in Article 169 letter q raises many pros and cons for the community. This can lead to a poor assessment of the judge's professional ethics, because the judge's behavior is a reflection of his morals and ethics.[1]

1 Aisyah Putri Syam, Melza Mutiara Putri Mahrus, Teti Marlina Tarigan, "Peran Etika Profesi Hukum sebagai Upaya Penegakan Hukum," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*, Vol.5, No.3 (2023): 465-478, https://doi.org/10.47467/as.v5i2.2697

This decision stems from the judge's considerations in determining age and work experience requirements. Saldi Isra in his book entitled "Saldi Isra's Legal Notes: Power and Corrupt Behavior" states that the age requirement is not explained and confirmed directly in the 1945 Constitution. Saldi Isra gives the example of the United States which has a minimum age limit of 35 years which is strictly regulated in the constitution. This is as stated in Chapter II, Article I Paragraph 5 of the United States Constitution which explains the three main requirements for being able to hold the office of president, namely: Must be a native-born citizen of the United States; Be at least 35 years old at the time of nomination; Have lived in the United States for at least 14 years. The constitution has an important role in determining various interests, especially the age and experience requirements for a position. However, it cannot be denied that the determination of age requirements is contained in law, not the 1945 Constitution, so there continues to be debate from many parties regarding the most suitable age for candidates for state leadership in Indonesia as a requirement. The decision to determine the appropriate age for a presidential candidate must reflect the aspirations and values of the community concerned, which can involve open discussion, community participation, and possible changes to presidential election regulations or laws, especially the provisions of the 1945 Constitution. Just as judges through their decisions can make If a law has legal validity like other legal products, the law must be fair to everyone.[2]

The age limit stated in Article 169 letter q of Law Number 7 of 2023 concerning General Elections is that presidential and vice presidential candidates must be at least 40 years old or have/are still holding positions determined by the general election and are registered as regional heads. However, this decision exceeds the demands put forward by the applicant, namely that he must be at least 35 years old or have worked for a regional administrator as a regional head at the provincial level, including district and city areas, as stated in the case petition Number 90/PUU-XXI/2023, and the petition granted. The decision that was supposed to be regarding the age requirements for the nomination of president and vice president, has shifted to additional requirements for work experience. This decision even received concurring opinions and dissenting opinions from Constitutional Court judges. There are not many legal studies that specifically examine the ages of presidential and vice presidential candidates and the additional requirements in Article 169 letter q. Thus, this research is the latest material in analyzing constitutional law cases with a focus on the considerations of Constitutional Court judges in handling judges' considerations regarding age requirements and the requirements added to Article 169 letter q. It is hoped that this research can be used as learning material in analyzing Constitutional Court cases and finding appropriate solutions to the judge's considerations in granting the case.

There are several studies that are similar to this research, such as research on "judges' professional ethics for upholding legal justice". This research discusses the profession of judge as a noble profession like a representative of God, so judges must give fair decisions.[3] Research on "professional ethics of judges in court" which discusses the importance of the judge's professional code of ethics to form good morals in carrying out their duties giving a decision.[4] Research on "judge professional ethics from an Islamic perspective" discusses the ethical values of the judge profession according to Islamic law.[5] Research on "legal professional ethics plays a role in the moral integrity of law enforcement officers," discusses the moral integrity of law enforcers which is formed from the role of legal professional ethics, so that law enforcement officers behave well in their law enforcement duties.[6] Research on "judge professional ethics important in enforcing Indonesian law" discusses the importance of professional ethics for judges in enforcing law and ethics as a guide for judges in carrying out their duties.[7] Research on "judicial integrity as public trust through the role of judges," discusses a judiciary with integrity to

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2 Moh. Eka Kartika EM, "Hukum Yang Berkeadilan: Pembentukan Hukum Oleh Hakim," *Jurnal IUS Kajian Hukum dan Keadilan*, Vol.IV, No.3 (2002): 384-395, https://doi.org/10.29303/ius.v4i3.410

3 Faiqah Nur Azizah. Nur Kholifah. Athari Farhani, "Penguatan Etika Profesi Hakim Dalam Mewujudkan Penegakan Hukum Yang Berkeadilan," *Salam: Jurnal Sosial dan Budaya Syar-i*, Vol.10, No.2 (2023): 661-674, DOI: 10.15408/sjsbs.v10i2.32137

4 Meida Anggi Fahira. Syawaludin Nur A. Fahmi, "Professional Ethics Of Judges In Court," *Jurnal Milrev*, Vol. 1, No. 2 (2022): 176-188, https://doi.org/10.32332/milrev.v1i2.6207

5 Ach. Khoiri, "Analisis Etika Profesi Hakim di Indonesia Dalam Perspektif Hukum Islam," *Voice Yustisia*, Vol.4, No.1 (2020): 26-43, https://journal.uim.ac.id/index.php/justisia/article/view/988.

6 Rizky Dwie Afrizal, "Peranan Etika Profesi Hukum Terhadap Integritas Moral Penegak Hukum," *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humanioral* (2023) 1:1, 1-12, https://journal.forikami.com/index.php/nusantara/article/view/164

7 Salma, "Urgensi Etika Profesi Hakim dalam Penegakan Hukum di Indonesia," *Jurnal Pendidikan Islam: Pendekatan Interdisipliner*, Vol 1, No 1 (2016): 45-56, https://jppi.ddipolman.ac.id/index.php/jppi/article/view/7/30

fulfill social justice. carried out by the role of judges who have ethics in their work.[8]

This research regarding legal and ethical issues in the Constitutional Court decision Number.90/PUU-XXI/2023 is different from previous research, as mentioned above. The novelty of this research is very clear from the theme raised in this research, which is a phenomenon that has just occurred before the 2024 general election, so this clearly did not exist and was written about by previous researchers. Apart from that, outstanding novelty can be felt in the subject matter which is fundamentally related to legal and ethical issues which are actually related to political elites at the top level, such as; chairman of the Constitutional Court Anwar Usman, President Joko Widodo, and 2024 vice presidential candidate Gibran Rakabumi Raka. The problem with the Constitutional Court's decision occurred before the general election period and the public seemed unexpected that this would happen, but in reality the political interests of power at the time of the decision used the Constitutional Court's decision to expedite the candidacy of Gibran Rakabumi Raka (Son of President Joko Widodo) as a candidate. vice president even though he is not yet 40 years old.

This research is important to carry out, because the Constitutional Court decision Number 90/PUU-XXI/2023 has become a legal problem phenomenon that has attracted the greatest public attention. This decision was made with the involvement of the chairman of the Constitutional Court, Anwar Usman, who is also the uncle of Gibran Rakabumi Raka as a presidential candidate in 2024. This decision was colored by serious ethical violations by the chief judge and was deemed to have a political interest in launching Gibran Rakabumi Raka as vice presidential candidate in the 2024 general election. Apart from that, the impact of the Constitutional Court's decision has an influence on power politics in Indonesia. The existence of an assessment of dynastic politics from the family of Indonesian President Joko Widodo is a perception that is widely discussed by the public.

From the description above, the main problem in the following research can be identified, namely the problem of analysis from a legal perspective which is the basis for the issuance of the Constitutional Court decision Number 90/PUU-XXI/2023. Apart from that, there are also controversial issues arising from the Constitutional Court decision Number 90/PUU-XXI/2023. Therefore, in this research the problem formulation is:

1. What is the basis for the Constitutional Court decision Number 90/PUU-XXI/2023?
2. How is the controversy over the Constitutional Court decision Number 90/PUU-XXI/2023?

In the discussion of this research, two main issues which are the focus of the study will be presented, namely the legal basis for the issuance of the Constitutional Court decision Number 90/PUU-XXI/2023 concerning the minimum age limit for presidential and vice presidential candidates in the 2024 general election. discussed the legal issues resulting from the controversy over the Constitutional Court's decision which was considered by many parties to contain several problems, such as; ethical issues of judges, political tendencies, family relationships, and irregularities in decisions made.

2. Method

The research method used in this writing is a normative legal method which understands law as a positive legal system in statutory regulations.[9] Legal philosophy is the approach used. The legal philosophy approach examines problems in depth so that fundamental legal understanding can be found.[10] In research, the main materials used are data in the form of statutory regulations and also other data contained in books, journals and various scientific works related to the theme. The analytical method in research is carried out deductively as contained in statutory regulations. Apart from that, it is also carried out descriptively to obtain a general explanatory picture related to the legal issues being studied.[11]

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8 Dadah Holidah, "Peran Hakim Dalam Memperkokoh Integritas Peradilan sebagai Pemenuhan Kepercayaan PubIik," *Salam: Jurnal Sosial dan Budaya Syar-i*, Vol.10, No.2 (2023): 627-646, https://journal.uinjkt.ac.id/index.php/salam/article/view/32134

9 Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode dan Masalah* (Jakarta: ELSAM & HUMA, 2002); Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif* (Malang: Bayu Media Publishing, 2005).

10 Busro Muqadas, *Nilai dan Berbagai Aspek dalam Hukum Suatu Pengantar Studi Filsafat Hukum* (Jakarta: Bhratara Niaga Media, 1989).

11 Yogi Prasetyo, "Legal Truth (Menakar Kebenaran Hukum)," *Jurnal Legal Standing*, Vol. 1, No. 1 (2017): 1-21, https://journal.umpo.ac.id/index.php/LS/article/view/588.

3. Findings and Discussion

In this research, things were found that were related to the main theme of the problem, such as the legal basis for the issuance of the Constitutional Court decision Number 90/PUU-XXI/2023 and the issue of controversy over the Constitutional Court's decision which was examined from various points of view. These findings will be discussed in more detail and explained accompanied by further explanations in accordance with the direction of the research to create a more comprehensive research result and discussion, such as the legal basis for the consideration of the panel of judges in deciding the decision of the Constitutional Court and the legal analysis study which was identified as the basis for the decision of the Constitutional Court. Apart from that, it will also discuss findings regarding problems with the Constitutional Court decision, such as violations of judge ethics, dynastic political tendencies, familial relationships, and irregularities that do not usually occur in legal decisions at the Constitutional Court. There is also an important critical dialectic in research discussions to add material to legal analysis considerations. More details will be explained in the chapters below.

3.1 Basic Considerations For Constitutional Court Decision Number 90/PUU-XXI/2023

Age is used as a requirement to see someone's maturity. 40 years of age is included in the productive age, so if there is an age requirement for candidates who are not yet at that age, then the candidate can wait until they are 40 years old or more while gaining experience both in parliament and as a member. Government officials. In fact, the 1945 Constitution as the Indonesian state constitution does not regulate any age limits. The Constitutional Court judge's decision Number 90/PUU-XXI/2023 which granted the applicant's demands had a broad impact on the Constitutional Court institution, society, law and state policy. Constitutional Court Decision Number 90/PUU-XXI/2023 has provided changes to the presidential system adopted by Indonesia. The opportunity for young people to run for president and vice president is increasingly wide open, because those aged under 40 can participate. In this way, elections as a form of democracy can be implemented.[12]

The legal considerations in case Number 90/PUU-XXI/2023 relate to the sudden withdrawal of the petition case which had previously been held twice in court. Then, within a period of one day, the application is canceled to be withdrawn, the series starts from receiving the case files from withdrawing the case, withdrawing the withdrawal of the case to continuing the case. The sudden withdrawal of the case by the applicant's attorney reflects that the petition sent to the Constitutional Court was not serious and played with the constitutional institution. Based on the morality of law theory, there are eight things that cause failure in legislation and eight solutions to avoid this failure, one of which is that the law cannot be changed at any time, so the law must be firm. The current decision in question contradicts this theory because the law was changed suddenly in a short time.[13] A time period that is decided quickly gives the impression that the product only benefits one individual.

The petition states that article 169 letter q is an article that discriminates regarding age limits, but the Constitutional Court in its legal considerations is of the opinion that this article is not discrimination but is a mandatory requirement for presidential and vice presidential candidates. In fact, the constitution does not directly contain specific policy regulations regarding the ages of presidential and vice presidential candidates. However, it is only limited to explaining the basics and principles of the benchmark requirements for prospective leaders of the Indonesian state. In accordance with the above policies which are not directly regulated in the constitution, if they are explicitly regulated in the constitution then the policy is called a legal policy norm. Legal policy is a policy line to establish or revoke legal provisions to achieve a goal for the state. Every law is a political product and every law has its legal politics to achieve its goals, but this does not mean that this can put aside ethics in its implementation.[14]

The minimum age for presidential and vice presidential candidates of 40 years is not only applied in Indonesia, but also applies in several countries such as Albania, Afghanistan, Algeria, the Czech Republic, Estonia, North Macedonia, the Philippines, South Korea, Germany, Turkey and Armenia. As you move up in position, your age increases, for example the minimum age of a village head is 25 years as regulated in Village Law Number

12 Rizki Bagus Prasetio Febri Sianipar, "The Relevance of The Application of The Presidential Threshold," *Jurnal Penelitian Hukum De Jure*, Vol.21, No.2 (2021): 267-284, http://dx.doi.org/10.30641/dejure.2021.V21.267-284.

13 Takdir Yakindo; Astri Evarianti; Nova Rahayu Rohadatul Aisy; Rahma Nursyifa; Amanda Amalia Sapriwa, "Moralitas dan Hukum dalam Pandangan Immanuel Kant," *Praxis: Jurnal Filsafat Terapan*, Vol.1, No.1 (2023): 1-16, https://journal.forikami.com/index.php/praxis/article/view/116/63.

14 Sri Pujiningsih, "Hubungan Antara Hukum dan Etika dalam Politik Hukum di Indonesia," *Pena Justisia: Media Komunikasi dan Kajian Hukum*, Vol.17, No.1 (2017): 28-36, https://jurnal.unikal.ac.id/index.php/hk/article/view/645/532

6 of 2014. Regional heads such as regents, mayors and governors must be at least 35 years old according to Law Number 32 of 2004 concerning Local government. Meanwhile, Election Law Number 7 of 2017 states that presidential and vice presidential candidates must be at least 40 years old. In this case, the Constitutional Court judges are being tested for their professionalism in making decisions that reflect the highest institution in handling political problems. In this process, the role of legal professional ethics becomes important to strengthen the role of judges in law enforcement.[15]

To add to the phrase of reasons put forward by the Constitutional Court in the judge's considerations, it is important for the Constitutional Court to provide a qualitative definition, not just a quantitative one, so that age is added to Article 169 letter q to ensure that there are alternative norms that explain work experience requirements. This decision is also a change to the law which should be the authority of the DPR, but the representative council asked the Constitutional Court to resolve various requests submitted to this institution. The final result of legal considerations submitted by constitutional institutions. The Constitutional Court only granted part of it, but did not grant it in its entirety, in fact the decision went beyond the petitum requested by the applicant in case Number 90/PUU-XXI/2023. Differences in judges' decisions are actually not uncommon in various legal cases.[16] Because each judge has different considerations. Moreover, the differences in the decisions have a tendency of interest in them.

Two judges, namely, Prof Enny Nurbaningsih and Prof Daniel Yusmic PF, granted the request for different reasons (*concurring opinions*). Prof. Enny believes that in order to adapt to the current changes, it is necessary to determine the ages of presidential and vice presidential candidates. He also stated that determining age requirements is the domain of the legislative and executive institutions. A similar opinion was conveyed by Prof. Daniel Yusmic PF, adding the sentence that he has experience as a regional head at the provincial level as a Governor who was elected through elections. Prof. Wahiduddin also said that if the petition was granted, the Constitutional Court would have carried out a practice without supporting constitutional reasons and would have entered the realm of legislative power. So he rejected the application submitted. Prof. Saldi Isra expressed his confusion because he experienced a strange incident, namely a change in decision in an instant. Prof. Saldi Isra also stated that this change was within the legislative authority. Apart from that, he also asked why the previous case was rejected, why this was granted. The judge's attitude is a form of professionalism in carrying out his duties in accordance with the law, without adding or reducing the subject matter of the case being submitted.[17]

There is still a dissenting opinion expressed by Prof. Saldi Isra in case Number 90/PUU-XXI/2023. Judge Saldi Isra questioned the presence of the chief judge and the chief judge's decision in giving considerations and decisions, but also granted the same request as the previous request which was included in the open law policy. Judge Saldi read out case Number 90/PUU-XXI/2023 and stated that the petition indirectly referred to the success of one of the main points of the case outlined in the petition petitum. The applicant explicitly supports Gibran Rakabuming Raka, Mayor of Surakarta and son of Joko Widodo, President of Indonesia. A dissenting opinion in a judge's decision can actually be an alternative for making corrections, because it cannot ensure that a judge's decision is absolutely correct.[18]

Judge Saldi Isra quoted Louis Henkin's book entitled "Is There a Political Question Doctrine". In this book, Henkin argued that the age issue falls into the political question doctrine, which is a government policy that must be resolved by the decision of the DPR and the President as the institutions that make laws. He also felt very anxious and worried if the Constitutional Court was deliberately trapped in a political vortex so that Judge Saldi Isra completely rejected the request. The dissenting opinion expressed by Saldi Isra shows many of his expressions expressed in writing, showing his anger, confusion, anxiety and individual concerns to the public in dealing with

15 Adityadarma Bagus, Dona Sri Sunardi, Irene, Fransisca, Qonrezti Shebilla, Andika Cahyo Bintoro, "Pandangan Filsafat Hukum Terkait Dengan Etika Profesi," *Jurnal Hukum Lex Generalis*, Vol.1, No.7 (2020): 1-19, https://doi.org/10.56370/jhlg.v1i7.228.

16 Henry Donald Lbn Toruan. Djamilus. Nicken Sarwo Rini. Ahmad Fathony, "Analisis Juridis Terhadap Disparitas Putusan Hakim dalam Tindak Pidana Transaksi Elektronik dan Pencucian Uang," *Jurnal Penelitian Hukum De Jure,* Vol.23, No.4 (2023): 507-522, DOI: http://dx.doi.org/10.30641/dejure.2023.V23.507-522.

17 Ria Maulina Almadika, Pamungkas Satya Putra, "Kajian Yuridis Mengenai Etika Profesi Hakim", *Jurnal Hukum Positum* Vol.6, No.1 (2021): 113-124, DOI: https://doi.org/10.35706/positum.v6i1.5613.

18 Sunny Ummul Firdaus. Putri Anjelina Nataly Panjaitan. Rizky Kurniyanto Widyasasmito, "Peran Dissenting Opinion Hakim Konstitusi Dalam Pembaharuan Hukum Nasional," *Jurnal Penelitian Hukum De Jure*, Vol.20, No.1 (2020): 1-10, DOI: http://dx.doi.org/10.30641/dejure.2020.V20.1-10.

the decision in granting petition Number 90/PUU-XXI/2023. Saldi's attitude as a judge seems to give the message that being a judge is a noble and high job who is like God's representative in the world, so he must be able to give good legal decisions without any particular interest tendencies. Judges must be neutral and impartial in giving decisions, so as not to hurt people's legal feelings.[19] Judge Arief also expressed the strangeness and anomaly in the withdrawal of the application report carried out by the attorney in case Number 90/PUU-XXI/2023.

The final dissenting opinion was delivered by Judge Suhartoyo who stated that he did not grant legal standing to the applicants in case Number 90/PUU-XXI/2023 because the applicants had no direct interest in the application relating to the age of the presidential and vice presidential candidates. Judge Suhartoyo was of the opinion that the Constitutional Court should not grant legal standing to the applicant and Judge Suhartoyo rejected the application with a complete rejection. So, in the judge's consideration in accepting or rejecting the case, five judges granted or accepted part of the petition petitum and four judges rejected the case. Judges should be neutral and independent under any circumstances. The role of legal professional ethics is very important to strengthen the judge's stance in dealing with any problem.[20] The reason for granting the request for application Number 90/PUU-XXI/2023 is to open up opportunities for the younger generation to be able to run for office in the general election to become presidential and vice presidential candidates. Consideration of case Number 90/PUU-XXI/2023 has the potential for the millennial generation who become idols or figures of the younger generation to advance in the election of candidates for President and deputy.

3.2 Ethical Issues in Constitutional Court Decision Number 90/PUU-XXI/2023

The rejection of the previous request by the Constitutional Court was in fact at the daily deliberation meeting regarding the discussion and case decision forum which should have been attended by nine judges but the chief judge of the Constitutional Court, Anwar Usman, was unable to attend for health reasons. Although the statement given by the deputy chairman of the Constitutional Court, Saldi Isra, himself stated that the absence of the chairman of the Constitutional Court was to avoid a conflict of interest initially. This incident was explained in the dissenting opinion page by Judge Arief Hidayat in the section on the oddities and strangeness that he felt while processing the case petition, but the presiding judge was present at the daily deliberation meeting and granted half of the petition submitted by the applicant for case Number 90/PUU-XXI /2023. This shows that there is a bad game strategy from the judge. Under any circumstances, judges should uphold their professional code of ethics as law enforcement officers who have a big responsibility in realizing the good of the law.[21]

This controversial decision shows that there is one subject that is the focus of the applicant in challenging the article at issue. The subject of concern in the general election was the success of running for President and Vice President in 2024. So this petition really became a sensitive issue after the decision was read by the Constitutional Court, with the fact that the Chief Justice of the Constitutional Court, Anwar Usman, is the uncle of Gibran Rakabuming Raka, son of Indonesian president Joko Widodo. This family relationship is what makes people wonder whether agreeing and deciding on this request is Anwar Usman's step so that his nephew can run for the presidential and vice presidential candidates in 2024. This decision also gave rise to the existence of a monarchical government or currently known as the family political dynasty Joko Widodo who reduced his position of power through his descendants and family. In this case, the law is only used as a tool to gain or maintain power.[22]

The principle of appropriateness and decency is a reflection of a person or an official in carrying out their authority which can be proven from the way they appear, adapt, position themselves well, and the principle of politeness in the form of respectful behavior towards fellow judges, society and fellow humans. The reported judge was unable to avoid behavior and an image that was seen as inappropriate in his behavior in terms of selecting applications, thus violating the application of judges' principles in maintaining the dignity of the Constitutional Court. The existence of taking sides in only one application being granted because it supports one of the subjects who have the potential to run for election, who is the family of the chief judge, violates the application of the judge's principles. Taking advantage of the authority of Constitutional Court judges for the benefit of his own

19 Zuhrah, "Urgensi Independensi Hakim Dalam Berbagai Disparitas Putusan Perkara," *Sangaji: Jurnal Pemikiran Syariah dan Hukum*, Vol.7, No.1 (2023): 16-37, DOI: https://doi.org/10.52266/sangaji.v6i2.1259.

20 Serlika Aprita, "Peranan Etika Profesi Hukum Terhadap Upaya Penegakan Hukum Di Indonesia," *Justicia Sains: Jurnal Ilmu Hukum*, Vol.07, No.01 (2022): 21-40, DOI: https://doi.org/10.24967/jcs.v7i1.1646

21 Niru Anita Sinaga, "Kode Etik Sebagai Pedoman Pelaksanaan Profesi Hukum Yang Baik," *Jurnal Ilmiah Hukum Dirgantara*, Vol.10, No.2 (2020): 1-33, DOI: https://doi.org/10.35968/jh.v10i2.460.

22 Yunanto, "Menerjemahkan Keadilan Dalam Putusan Hakim," *Jurnal Hukum Progresif*, Vol.7, No.2 (2019): 193-200, https://doi.org/10.14710/hp.7.2.192-205.

family, the reported judge violates the application of the principle. Furthermore, there is a leak of information in deliberative meetings that can be leaked to outside parties so that not only the reported judge but all judges can be subject to violations for implementing the principles of judge ethics. Judges who have been declared to have committed ethical violations in the process of making decisions must be subject to heavy sanctions.[23]

Many lawsuit reports were addressed to the Constitutional Court judges who gave considerations and decided on case Number 90/PUU-2023. The consequence or impact that occurred was a violation of the code of ethics, one of which was sanctions against the chief judge, Anwar Usman. The final decision read by the judge will have an impact on the 2024 elections. The impact that will arise if it is not resolved immediately is the lack of legal certainty because the judge's considerations are not clear or firm, another impact of the judge's decision is violating legal norms because it violates the principle of erga omnes which should apply to all person. Apart from that, the public's view and trust in the constitutional justice institution, the Constitutional Court, may decline. Constitutional Court judges should have high moral responsibility in carrying out their profession, so that the values of constitutionalism as judges can still be maintained in order to carry out law enforcement.[24]

Many reports have been submitted to the Honorary Court of the Constitutional Court regarding ethical violations committed by Anwar Usman. One example is Denny Indrayana. Deny is of the opinion that the Reported Judge should resign according to the concept of judicial disqualification. Deny assessed that decision Number 90/PUU-XXI/2023 was the result of planned and organized crime. When the accused judge is sentenced to sanctions, it is not enough to just have a code of ethics because the consequences have complex impacts and extraordinary crimes so that legal handling requires extraordinary legal action, even though the decision issued by the Constitutional Court is an extraordinary legal action final and binding, there needs to be exceptions and there needs to be temporary decisions. A temporary decision or interlocutory decision is a decision handed down by a judge based on an application submitted by the applicant in dispute, decided before determining the final decision relating to the case being examined. Ethical issues that are violated by a judge cannot necessarily be used as a reason or legal basis for canceling a judge's decision. According to Jimly Asshiddiqie, ethical violations and legal violations have different legal areas.[25]

In relation to a judge who is prohibited from handling cases because he is felt to have his own interests in accordance with the principle of nemo judex in causa sua and the principle of nemo judex idoneus in propria, which means that a judge who handles cases for himself or his family is considered not objective. The reporter also explained the principle of impartiality in Constitutional Court regulation Number 9 of 2006 point 5 letter (b) which states that constitutional judges who have the authority to handle cases related to family members must resign and violate the principle of impartiality. If it has clearly shown that there is interference with the law to achieve power. In fact, when carrying out their duties, judges must be free from any interests. The independence of judges in making decisions is an important responsibility to carry out.[26]

There were irregularities in the hearing for the revision of the petition for case Number 90/PUU-XXI/2023, the plenary period was too long, and no evidence was found to carry out cross-examination. to decide cases in a sudden period of time. However, the Honorary Court of the Constitutional Court could not consider this fact because it was based on procedural law in trials which was not within its jurisdiction. The next fact is that the reported judge did not feel that there was a possibility that the decision would cause a conflict of interest, but in the above case the reported judge was quite interested in this matter because administrative matters should be delegated to the clerk or a panel of judges who are capable of handling the case. So the impact of this decision is in the form of a decline in the image of the judiciary which focuses on an independent constitution. The Constitutional Court as the highest institution in giving legal decisions should be able to act fairly and wisely while still prioritizing the principles of the rule of law. Legal certainty is important and the main guideline for the Constitutional Court in providing legal decisions.[27]

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23 Miftachul Mujadi. Sri Astutik, "Sanksi Hukum Bagi Hakim Yang Melanggar Kode Etik Profesi," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora*, Vol.6, No.2 (2023): 500-507, DOI: http://dx.doi.org/10.31604/justitia.v6i2.500-507.

24 Tanto Lailam, "Membangun Constitutional Morality Hakim Konstitusi Di Indonesia," *Jurnal Penelitian Hukum De Jure*, Vol.20, No.4 (2020): 511-530, DOI: http://dx.doi.org/10.30641/dejure.2020.V20.511-530.

25 Raines Wadi. Muhammad Aljabbar Putra. Tarmizi Kabalmay. Muh Aunur Rafiq Mukhlis, "Tindakan Faktual Hasil Putusan Etik DKPP sebagai Objek Pengujian Pengadilan Tata Usaha Negara," *Jurnal Penelitian Hukum De Jure*, Vol.23, No.1 (2023): 071-086, DOI:10.30641/dejure.2023.V23.71-86

26 Firman Floranta Adonara, "Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi," *Jurnal Konstitusi*, Vol.12, No.2 (2015): 217-236, https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1222/61.

27 Bagus Hermanto. Nyoman Mas Aryani, "Quo Vadis Pengadilan Khusus di Indonesia dalam Batasan Putusan Mahkamah

The Constitutional Court, which should act according to its authority, actually committed irregularities by issuing decisions outside the limits determined by the 1945 Constitution. If the Constitutional Court actively expands its authority or is involved in judicial activism that is not in accordance with constitutional principles, this can be considered as a deviation from authority. The Constitutional Court should only exercise the authority granted by the constitution, thereby causing a widening of authority (judicial activism). If the chief judge uses his authority to provide unfair treatment or discriminate against certain parties, or if he is involved in nepotistic practices in decision making, this can be considered a deviation from his authority. Law is often used as a tool by those in power to legalize their interests, so it is difficult to differentiate between what is law and what is the interests of power.[28]

The significant impact of the Constitutional Court's decision on the 2024 Election, especially in expanding the meaning of certain articles in the election law and its implications for the participation of young candidates in general elections. Even though there is controversy surrounding this decision, it is emphasized that this decision is final and binding and its validity cannot be revoked. In the decision of the Constitutional Court for case Number 90/PUU-XXI/2023, it is important to carry out socialization regarding the 2024 Election mechanism after the publication of the Constitutional Court Decision. It is necessary to explain the substance and essence of the Decision from the various controversies that accompany it and ensure that the parties involved in the 2024 Election have a neutral position and have no conflict of interest. However, in its implementation there is interference in political conflicts and interests in the decisions given. Moral and ethical issues in Indonesia have always been in the spotlight and will not stop soon, because many state officials are involved in them.[29]

A decision that is final and binding means that the decision of the Constitutional Court can be implemented if the decision has permanent legal force (*inkracht*) and cannot be changed in accordance with Article 28 paragraphs 5 & 6 and Article 47 of the Constitutional Court Law.[30] This final and binding decision shows the great authority of the Constitutional Court in giving legal decisions. So it becomes difficult to change the decision that has been issued by the Constitutional Court again if there is already a decision. If the additional phrase requiring work experience is removed or retested, this will be done by revising the Election Law because the decision is final and binding in accordance with the 1945 Constitution, Article 24.

The Constitutional Court's decision regarding work experience requirements based on facts will not affect the 2024 elections and will not cancel Gibran Rakabuming Raka from being a vice presidential candidate because the law does not apply retroactively. The non-retroactive principle is a derivative of the legality principle which applies rules that do not apply retroactively or cannot apply to events that have occurred before a law comes into force. However, there are several exceptions to this principle, especially in certain situations where the law expressly states that the law applies retroactively or in the context of an emergency where the application of retroactive law is deemed necessary. Apart from that, the timing of general elections which cannot be postponed is one of the problems contained in general election regulations. The process of the mechanism for changing power through general elections that has been determined must be implemented, even though there are problems in it.[31] This is part of the periodic principle in general elections in Indonesia. The periodic principle is a technical process for holding elections that must be carried out, because it has been arranged according to the specified time.[32] So, as Jimly Asshiddiqie said, the Constitutional Court decision Number 90/PUU-XXI/2023 will still apply in the 2024 general election. If there are changes to it, it will only apply to the following year's election (2029).

Konstitusi," *Jurnal Penelitian Hukum De Jure*, Vol.23, No.4 (2023): 403-418, DOI: http://dx.doi.org/10.30641/dejure.2023.V23.403-418

28 Fithriatus Shalihah, Oksep Adhayanto, "Hukum, Moral, Dan Kekuasaan Dalam Telaah Hukum adalah Alat Teknis Sosial," *Fiat Justisia Jurnal Ilmu Hukum*, Vol.10 No.4 (2016): 671-680, DOI: https://doi.org/10.25041/fiatjustisia.v10no4.735.

29 Imam Makmun, Supardin, Hamsir, "Profil Etika Profesi Penegak Hukum Di Indonesia," *Ulil Albab: Jurnal Ilmiah Multidisiplin*, Vol.1, No.8 (2022): 2399-2410, https://journal-nusantara.com/index.php/JIM/article/view/528

30 Farid Wajdi. Andryan, "Sifat Putusan Impeachment Mahkamah Konstitusi Terhadap Status Hukum Presiden Dan/Atau Wakil Presiden," *Jurnal Penelitian Hukum De Jure*, Vol.20, No.3 (2020): 301-314, DOI: http://dx.doi.org/10.30641/dejure.2020.V20.301-314

31 Gaza Carumna Iskadrenda. Edward Omar Sharif Hiariej, "Problems With Time Limitation Regulation In The Settlement Of General Election Offenses," *Jurnal Penelitian Hukum De Jure*, Vol.22, No.4 (2022): 499-512, DOI: http://dx.doi.org/10.30641/dejure.2022.V22.499-512.

32 Muhammad Mutawalli. Zulhilmi Paidi, "Prinsip Periodik Dalam Pemilihan Umum: Orientasi dan Implikasinya di Indonesia," *Jurnal Penelitian Hukum De Jure*, Vol.23, No.3 (2023): 357-374, DOI: http://dx.doi.org/10.30641/dejure.2023.V23.357-374.

The Constitutional Court Decision Number 90/PUU-XXI/2023 does not violate the constitution, the judge who decided the case had committed a serious violation of ethics. The Honorary Court of the Constitutional Court can actually impose sanctions on Judge Anwar Usman for committing this serious ethical violation. As regulated in Constitutional Court Regulation Number 4 of 2012 concerning Dismissal of Constitutional Court Judges, Judge Anwar can be dishonorably dismissed in accordance with Article 8 letter b letter d because he is deemed to have committed a disgraceful act. The Constitutional Court as a superpower institution in law enforcement must be filled with judges who have high morals, because the role of ethics in the law enforcement profession is very important.[33]

4. Conclusion

Constitutional Court Decision Number 90/PUU-XXI/2023 is an important legal issue that needs to be addressed. The process of changing political power which occurs every five years is the trigger for the issuance of the Constitutional Court decision. The Constitutional Court's decision is not only the legal basis for holding presidential and vice-presidential elections in accordance with the political mechanisms regulated in statutory regulations, but it also contains ethical issues carried out by the judges in the process of forming the decision. The strong conflict of interest involving judges in making decisions that could benefit one of the presidential and vice presidential candidates makes this violation of the judge's ethics occur. This ethical violation by the judge is clearly proven because it has been decided by the Honorary Court of the Constitutional Court whose main task is to uphold the code of ethics for judges at the Constitutional Court.

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