

Justice, Expediency, and Legal Certainty In Constitutional Court Decision Number 90/PUU-XXI/2023

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Abstract

Ideally, every decision made by judges, including Constitutional Judges, should pay attention to the impact that will be caused considering that the decision is final. The Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the Examination of Law Number 7 of 2017 concerning General Elections regarding the age threshold for president and vice president candidates have give some experience for the election in Indonesia. In previous decisions with the same object, namely Decision Number 29/PUU-XXI/2023, Decision umber 51/PUU-XXI/2023, and Decision Number 55/PUU-XXI/2023, the Constitutional Court is of the view that the age threshold for president and vice president candidates is a matter of open legal policy that became the authority from House of Representatives and the President. However, in Decision Number 90/PUU-XXI/2023, the Constitutional Court changed the decision with the general election process was underway by allowing under the age of 40 (fourty) with a record of having or currently occupying positions elected through general elections including regional head elections. In the end, the polemic situation have get a attention by public for the justice, expediency, and legal certainty of the Constitutional Court Decision Number 90/PUU-XXI/2023 considering that this decision will be directly applied in the 2024 general election. This is different if the Constitutional Court declares Constitutional Court Decision Number 90/PUU-XXI/2023 to apply to the 2029 general election.

Keywords: Justice, Expediency, and Legal Certainty

I. Introduction

There are parties who will definitely dispute the court's ruling, no matter how good it is. Moreover, if the ruling contains legal defects and it is proven that the judges violated the code of ethics. This is what happened with the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the Examination of Law Number 7 of 2017 concerning General Elections regarding the age threshold for president and vice president candidates.

Article 169 letter (q) of Law Number 7 of 2017 states that: "The requirements to be a candidate for President and vice president candidate are: q. at least 40 (forty) years old". Through Decision Number 90/PUU-XXI/2023, the Constitutional Court stated that Article 169 letter (q) has no binding legal force, as long as it is not interpreted as "at least 40 (forty) years old or has been/is occupying an office elected through general elections including regional head elections". Thus, Article 169 letter q of Law Number 7 of 2017 changes to "at least 40 (forty) years old or have been/are occupying an office elected through general elections including regional head elections". Whereas in other decisions related to the examination of Article 169 letter (q) the Constitutional Court stated that it rejected and did not accept the applications of other Petitioners, namely in Decision Number 29/PUU-XXI/2023, Decision Number 51/PUU-XXI/2023, Decision Number 55/PUU-XXI/2023, Decision Number 91/PUU-XXI/2023, Decision Number 92/PUU-XXI/2023, Decision Number 93/PUU-XXI/2023, Decision Number 96/PUU-XXI/2023, Decision Number 102/PUU-XXI/2023, Decision Number 104/PUU-XXI/2023, Decision Number 105/PUU-XXI/2023, and Decision Number 107/PUU-XXI/2023.

Referring to the provisions of Article 24C paragraph (1) of the 1945 Constitution, that the nature of the decision of the Constitutional Court is final. This is reaffirmed in Article 10 of Law of the Republic of Indonesia Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court paragraph (1) with the explanation that: "The decision of the Constitutional Court is final, that is, the decision of the Constitutional Court immediately acquires permanent legal force from the moment it is pronounced and no legal remedy can be taken. The

final nature of the Constitutional Court's decision in this Law also includes the force of binding law (final and binding)".

The final decision of the Constitutional Court is intended to remember that the case submitted to the Constitutional Court is a case related to statehood and requires legal certainty in a short time to avoid disturbing the constitutional agenda, the final decision of the Constitutional Court is made with the aim of resolving problems and providing legal certainty with the principle of fast and simple trial. The authority of the constitutional judiciary will be threatened if it does not. On a broader level, even a fair verdict will become irrelevant if it is decided for too long and is not immediately accessible to the entitled public. In addition, the hallmark of binding rulings of the Constitutional Court is their erga omnes nature, which means that they are binding on all parties. This is because the norm in the form of the law being tested and the norm on which it is tested is also the constitution, where the norm is abstract and impersonal.¹

In fact, the existence of the Constitutional Court Decision Number 90/PUU-XXI/2023 has implications for all Constitutional judges being subject to ethical sanctions. The most severe ethical sanction was imposed on Constitutional Judge Anwar Usman because he was proven to have violated the severe category of ethics, so that he was sentenced to dismissal as Chief Justice of the Constitutional Court and could not involve himself or be involved in adjudicating election disputes that had the potential to cause conflicts of interest both in cases of disputes over the results of the Presidential and Vice Presidential Elections, Election of Members of the House of Representatives, Regional Representative Council, as well as Elections for Governors, Regents, and Mayors.

In fact, Bintan Saragih, who is a member of the Honorary Court of the Constitutional Court, submitted a different opinion. So fatal was the violation committed by Anwar Usman, he argued that Anwar Usman was

¹ Mohammad Agus Maulidi, Problematika Hukum Implementasi Putusan Final dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum, Jurnal Hukum IUS QUIA IUSTUM 24, No. 4 (2017): 536-557.

Majalah Tempo, Edisi 16-22 Oktober 2023.

not enough just to be dismissed as the head of the Constitutional Court, but Anwar Usman was dismissed as a constitutional judge.

Interestingly, what Anwar Usman has done, that he still feels there is nothing wrong with his behavior as a constitutional judge related to the birth of Constitutional Court Decision Number 90/PUU-XXI/2023. He rebutted both through his clarification publicly through the mass media and a lawsuit to the State Administrative Court. In fact, what he and other constitutional judges have done has damaged the spirit of the Constitutional Court, even dubbed the "Family Court".

In the author's observation, the Constitutional Court Decision Number 90/PUU-XXI/2023 is the decision that has received the most attention compared to other Constitutional Court decisions. However, in the only history in the world, all constitutional judges were sanctioned at the same time and the violations committed occurred openly. So, it is also not wrong if someone mentions that the Constitutional Court Decision Number 90/PUU-XXI/2023 is one of the defects in legal problems in Indonesia.²

Based on the above background, the main problem can be formulated as follows:

1. What are the implications of Constitutional Court Decision Number 90/PUU-XXI/2023 on the objectives of law, namely justice, expediency, and legal certainty?
2. Can the Constitutional Court Decision Number 90/PUU-XXI/2023 be categorized as a final decision so that it has binding legal force?

II. Legal Material dan Methods

This research is a normative/literature legal research using a statutory approach, concept approach, analytical approach, and a banding approach, and a philosophical approach.

² Hanif Hardianto, Sri Wahyu Krida Sakti, dan Meliza, Masalah Batas Usia Calon Presiden dan Calon Wakil Presiden: Studi Open Legal Policy dalam Putusan MK No. 90/PUU-XXI/2023, *Jurnal Supremasi*, Volume 14, No. 1 (2024): 15-27.

The legislative approach is used to explore various laws and regulations relating to the existence of the Constitutional Court, namely the 1945 Constitution, Law Number 48 of 2009 concerning Judicial Power, Law Number 24 of 2003 concerning the Constitutional Court which has been last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. The concept approach is used to see justice, expediency, and legal certainty of Constitutional Court Decision Number 90/PUU-XXI/2023. An analytical approach is used to determine the meaning of the final nature of the Constitutional Court Decision in Article 24C of the 1945 Constitution. This needs to be done by linking to other chapters. Because, basically each article does not stand alone. The comparative approach is used to compare the Constitutional Court Decision Number 90/PUU-XXI/2023 with various other Constitutional Court decisions. Meanwhile, the philosophical approach is used to explore the nature of the existence of a judicial decision. Because the decision of the judiciary is law, the decision should also contain justice.

III. Result and Discussion

1. Justice, Expediency, and Legal Certainty in Constitutional Court Decision Number 90/PUU-XXI/2023

Observing the difference in the treatment of constitutional judges in assessing Article 169 letter q of Law Number 7 of 2017, reminded the author that there is also truth in the view that the Constitutional Court is only limited to testing laws against the 1945 Constitution. If it is not proven to be contrary to the 1945 Constitution, then the verdict is rejected. If contradictory, then the judgment is granted with the consequence that the tested norm no longer has binding legal force. So the Constitutional Court plays its function as a mere negative legislature. Thus, there will be no Constitutional Court decision such as Constitutional Decision Number 90/PUU-XXI/2023.

However, if it is only limited to the Constitutional Court acting its function as a negative legislature, it could be that its decision is only limited to providing legal certainty by not touching aspects of justice and

expediency. Therefore, for certain conditions, there is also some truth if the Constitutional Court functions also as a positive legislature. For example, with one of the landmark Constitutional Court Decisions, namely Decision Number 102/PUU-VII/2009 concerning the Examination of Law Number 42 of 2008 concerning President and Vice President General Elections.

Through Decision Number 102/PUU-VII/2009, the Constitutional Court plays its function as a positive legislature. Where the Constitutional Court not only granted the petition of the Petitioners, namely Refli Harun and Maheswara so that the provisions of the article requiring an Indonesian citizen to be on the permanent voter list who can vote are contrary to the 1945 Constitution and no longer have binding legal power, but the Constitutional Court In the decision dated July 6, 2009, in the ammar added a new norm, namely please for Indonesian citizens registered on the Permanent Voter List to use to show a valid Identity Card or valid Passport for Indonesian citizens who are abroad.

The existence of this ruling did get attention from the public, but it was welcomed positively. Because in principle, this ruling provides justice, expediency, and also legal certainty. Then, what about the Constitutional Court Decision Number 90/PUU-XXI/2023?

When a verdict departs from a legal defect and is proven to stem from a gross ethical violation, of course, it has an impact on justice and expediency. Even the Constitutional Court Decision Number 90/PUU-XXI/2023, not only has an impact on justice and expediency, but also has an impact on legal certainty.

a. Justice

Radbruch taught us how to punish well. There is a priority scale in law. The top priority is justice, then expediency, and the last priority is legal authority.³ That is, the ultimate goal of law is justice.⁴ Constitutional Court Decision Number 90/PUU-XXI/2023, which is also a law, does not realize justice, but the opposite is true. Through Constitutional Court

³ Achmad Ali, *Menguak Tabir Hukum*. (Jakarta: Prenadamedia Group, 2015), 99.

⁴ See Abdul Ghafur Anshary, *Filsafat Hukum*. (Yogyakarta: Gajah Mada University Press, 2009), 53. See also Margono, *Asas Keadilan, Kemanfaatan dan Kepastian Hukum dalam Putusan*. (Jakarta: Sinar Grafika, 2023).

Decision Number 90/PUU-XXI/2023, the Constitutional Court has undermined justice, both justice based on "For Justice based on the One True God" and justice based on justice that lives in society.

Justice in the phrase "For Justice based on the One Godhead" is not a mere meaningless formality. This phrase is a form of stern warning to constitutional judges that the justice spoken should be justice in accordance with what is desired by God Almighty, namely Allah. When God establishes the law fairly, the constitutional judges are fair. Even justice is the main essence that must be produced in making a decision. Doesn't Allah through Sura An-Nisa (4) verse 58 say that:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Meaning: Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.

The neglect of justice "For Justice based on the One Godhead", of course, has an impact on the justice that lives in society. In the test of the law, it is basically intended for all Indonesian citizens without exception. Indonesian citizens who are physically and mentally healthy, certainly know that the Constitutional Court Decision Number 90/PUU-XXI/2023 is an unfair decision.

b. Benefits

The decision of the Constitutional Court in addition to providing justice, is also expected to provide benefits for the nation and state. Therefore, in Article 24C paragraph (5), the constitutional judge is a statesman. However, what occurred as a result of the Constitutional Court Decision Number 90/PUU-XXI/2023 was an uproar throughout the president and vice president election process.

As a statesman, constitutional judges should be able to read the future impact that will be caused by the verdict they will take. In the language of religion, the more mudhorat or more benefits. This verdict has more mudhorat/damage brought by him, especially related to the spirit of the judiciary, legal order, and democracy in Indonesia.

In terms of the dignity of the judiciary, the Constitutional Court is nicknamed the "Family Court". How can an institution that is obliged to include the phrase "For Justice based on the One True God" get such a despicable nickname for an institution that is often referred to as "God's Representative". So, it is not surprising, especially the decision of the Constitutional Court which has a high level of political tension, people are not so hopeful, including for the Constitutional Court's decision on the dispute over the results of the president and vice president elections that in the end the Constitutional Court rejected all the lawsuits of the Anis-Muhaimin and Ganjar-Mahfud couple, in fact it was predictable in advance. Because, for the issue of legal review alone, constitutional judges cannot be trusted. Especially in the dispute over the results of the president and vice president elections where there is a determination of the majority vote from the General Election Commission.

In addition, the Constitutional Court Decision Number 90/PUU-XXI/2023 also undermines the legal order, especially the constitution. It should be the Constitutional Court that was set up to uphold the constitution, instead it itself trampled on it to the point of humiliating it as an institution that he said was final. In the past, there were many achievements made by the Constitutional Court in building the face of the Indonesian rule of law, especially under the leadership of Jimly Asshiddiqie and Moh. Mahfud MD. Even so classy, it is also not uncommon to say that the decisions of the Constitutional Court are dissertation-class. But today the public questions the presence of the Constitutional Court in the Indonesian legal state. Even today, with that ruling, people then doubt the finality of the Constitutional Court's ruling.

The Constitutional Court Decision Number 90/PUU-XXI/2023 also has an impact on the damage to Indonesian democracy. The 2024 elections, especially for president and vice president, should be honest and fair, but what is happening is dishonesty and injustice. It is difficult to argue that the 2024 elections are not going well, even though in the presidential election dispute, the Constitutional Court declared it fine. In fact, Constitutional Court Decision Number 90/PUU-XXI/2023 also participates in perpetuating dynastic politics in the country.

This is different when the Constitutional Court stated that Identity Cards and Passports can be used in the 2009 president and vice president elections. Not only beneficial for applicants, Refly Harun and Maheswara, but also beneficial for other Indonesian Citizens. Even the Constitutional Court decision requested by Refly Harun and Maheswara is also used as a reference for Indonesian citizens who are not registered in the permanent voter list for regional elections.

Not only practical benefits, even the Decision on Identity Cards and Passports also uses in theory to study how in the future the development and way of living in Indonesia has changed from a textual way of law to a progressive way of law. Although both are studied, the Constitutional Court Decision Number 90/PUU-XXI/2023 that is studied is the problems or rottenness that exist in the Constitutional Court which can be seen from various dissenting opinions carried out by the judges themselves.

c. Legal Certainty

Not only does it not provide justice and expediency, but basically the Constitutional Court Decision Number 90/PUU-XXI/2023 is also questioned about its legal certainty. *First*, the emergence of various applications for reexamination of Article 169 letter q as has been changed in meaning by the Constitutional Court through Constitutional Court Decision Number 90/PUU-XXI/2023, although in the end it was also rejected by the Constitutional Court. This is inseparable from the Decision of the Honorary Court of the Constitutional Court which stated that there was a gross violation of the code of ethics which gave birth to Constitutional Court Decision Number 90/PUU-XXI/2023. Thus, the ideas that say that the Constitutional Court Decision Number 90/PUU-XXI/2023 cannot be used as a basis for registration and determination for president and vice president candidates under the age of 40 years old have a strong basis.

Second, the application of Anis-Muhaimin and Ganjar-Mahfud in the dispute over the results of the president and vice president elections which still questions the registration of Prabowo Subianto and Gibran Rukuming Raka as presidential and vice presidential candidates. It even asked for the Disqualification of Gibran Raka Bukuming Raka as a

candidate for President. Without Constitutional Court Decision Number 90/PUU-XXI/2023, Gibran Raka Buming Raka does not meet the requirements as a Vice President candidate because he is under 40 years old.

Third, the emergence of a lawsuit by the Indonesian Democratic Party of Struggle to the State Administrative Court. The Indonesian Democratic Party of Struggle sued the General Elections Commission over the appointment of Prabowo Subianto and Gibran Rakabuming Raka as candidates for President and Vice President even though the Constitutional Court had rejected Anis-Muhaimin and Ganjar-Mahfud's application in a dispute over the results of the president and vice president elections. This is also inseparable from the impact of Decision Number 90/PUU-XXI/2023. One of the bases for registering Prabowo Subianto and Gibran Rakabuming Raka is Decision Number 90/PUU-XXI/2023.

Fourth, violations committed by the General Elections Commission which accepted the registration of Prabowo Subianto and Gibran Rakabuming Raka as presidential candidates and vice presidential candidates without first amending General Election Commission Regulation Number 19 of 2023. The General Elections Commission accepted the registration of Prabowo Subianto and Gibran Rakabuming Raka on October 25, 2023, while General Elections Commission Regulation Number 23 of 2023 was only established on November 3, 2024. This will not happen if the Constitutional Court enforces Decision Number 90/PUU-XXI/2023 in the 2029 President and Vice President elections. Because the process was underway, suddenly in the middle of the road the Constitutional Court changed the rules of the game for the age requirements for President and Vice President candidates.

The absence of justice, expediency, and legal certainty in Constitutional Decision Number 90/PUU-XXI/2023, is inseparable from the arbitrariness of the Constitutional Court in examining laws against the 1945 Constitution. This can be seen from the following notes.

First, enforce the application and the legal standing of the hoohoan qualify. The application for testing Article 169 letter q should the

Constitutional Court declare it void. Because, the petitioner withdrew his application even though he later rescinded his withdrawal and delivered it back on Saturday 30 September 2024. This is clearly illustrated in the dissenting opinion of Constitutional judges Arief Hidayat and Saldi Isra. This indicates that the application is not serious and should not be processed further.

Regarding legal standing, usually the Constitutional Court gives strict requirements, especially what losses are suffered by the applicant related to the existence of the law he tested. For example, when Rizal Ramli tested the threshold for presidential candidacy. He felt deterred by the threshold provision from running as a presidential candidate. Rizal Ramli's legal standing was directed whether there was a political party that wanted to propose him as a presidential candidate. Compare with Almas Tsqabirru, what losses did he experience with the existence of Article 169 letter q. He is just an admirer of Rakabuming Raka. Even his father, Boyamin Saiman, said that the application submitted by his son was simply an exercise in him as a law school student.⁵

Second, conflicts of interest. In Constitutional Court Decision Number 90/PUU-XXI/2023, Anwar Usman, who is Gibran's uncle, is directly involved. Without Anwar Usman's involvement, it would not have been possible to grant a verdict with Amar granting part of it. It is evident that in other rulings, especially those read before the Constitutional Court Decision Number 90/PUU-XXI/2023, the Constitutional Court gave birth to a verdict rejecting.

Article 17 paragraph (3) of Law Number 48 of 2009 concerning Judicial Power states that: *"A judge must resign from the trial if he is related by blood or blood to the third degree, or a husband or wife relationship even though he has divorced, with the chairman, one of the member judges, prosecutors, advocates, or clerks"*.

Article 17 paragraph (4) of Law Number 48 of 2009 states that: *"The chairman of the assembly, member judges, prosecutors, or clerks must resign from the trial if they are related by blood or blood to the third degree, or husband or wife relationship even though they have divorced from the party on trial or advocate"*.

⁵ Majalah Tempo, October 16-22, 2023 issue, 32.

Article 17 paragraph (5) of Law Number 48 of 2009 states that: "*A judge or clerk must withdraw from the trial if he has a direct or indirect interest in the matter being examined, either by his own will or at the request of the litigant*".

The issue of conflict of interest in Constitutional Court Decision Number 90/PUU-XXI/2023, according to the author, is the culmination of the conflict of interest of Anwar Usman. In fact, long before, Anwar Usman had also been reminded by various parties to consciously resign as a constitutional judge when he married his younger brother Joko Widodo who is the President of the Republic of Indonesia. But the person concerned ignored the advice at all. Yet this is important because almost all the powers and obligations of the Constitutional Court involve Anwar Usman with Joko Widodo.

In terms of statutory testing, laws are the product of the House of Representatives and the President. Joko Widodo is the President involved in the formation of laws. This can be felt correctly, especially in testing the Job Creation law and changes to the Corruption Eradication Commission law.

In case of disputes over the authority of state institutions, the President is one of those state institutions. That is, the President has the potential to dispute with other institutions. Similarly, the authority of the Constitutional Court in dissolving political parties. In fact, the only party that has legal standing in the dissolution of political parties is the President. Such is the obligation of the Constitutional Court in the event of alleged violations of law or reprehensible acts committed by the President. Of course, Anwar Usman did not remain silent as happened with the Constitutional Court Decision Number 90/PUU-XXI/2023 based on the search results of Tempo Magazine. In fact Anwar Usman also influenced several other constitutional judges. It even insisted especially to constitutional judge Saldi Isra that the views of constitutional judges Enny Nurbaningsih and Daniel Yusmich were different reasons, not different opinions.

Third, legal smuggling that occurred with Constitutional Court Decision Number 90/PUU-XXI/2023. Where should the judgment issued

be to reject the petitioner's application. Regarding Article 169 letter q which states, "at least 40 (forty) years old" is contrary to the 1945 Constitution and has no binding legal force, as long as it is not interpreted as "at least 40 (forty) years old or has been/is occupying an office elected through general elections including regional head elections", is the view of 3 (three) constitutional judges only, namely Anwar Usman, Manahan MP Sitompul, and M. Guntur Hamzah. While Enny Nurbaningsih and Daniel Yusmich interpreted it only as governorship. Supposedly, the views of Enny Nurbaningsih and Daniel Yusmich belong to the group of Saldi Isra, Arief Hidayat, Suhartoyo, and Wahiduddin Adams.

Ideally, those in the Constitutional Court Decision Number 90/PUU-XXI/2023, who submitted different opinions were Anwar Usman, Manahan MP Sitompul, and M. Guntur Hamzah. So that the decision that appears in the Constitutional Court Decision Number 90/PUU-XXI/2023 is that the petitioner's application was rejected with 3 (three) judges submitting different opinions.

It is unfortunate that Enny Nurbaningsih and Daniel Yusmich did not dare to state that their views were not placed on different grounds. But it seems that the constitutional judges proposed by the President are resigned to agreeing with such a wide-ranging interpretation. This is because even members of the Regency/City Regional People's Representative Council who are not yet 40 years old, qualify as candidates for President and Vice President. But strangely, for the Governor of Yogyakarta, it does not fall into the category of the Verdict. This is because the filling of the position of Governor of Yogyakarta is not carried out through direct elections.

Seeing this reality, it is also difficult to argue that Constitutional Court Decision Number 90/PUU-XXI/2023 is the result of fraud or crime through legal smuggling in the judicial world. Crimes that happen everywhere are always never perfect.

B. Constitutional Court Decision Number 90/PUU-XXI/2023 is Not Final

It is generally understood that because the decision of the Constitutional Court is final, it must be accepted as "truth" for good or bad

and no legal remedy can be made against it and must be carried out. However, in this paper I give another view. Where if there is a decision born from a legal defect and proven to be born from ethical violations, including with Constitutional Court Decision Number 90/PUU-XXI/2023, then the decision is invalid and must be responded progressively by not implementing or ignoring it altogether. The argument is as follows:

First, reading the Constitution must be with a moral lens (ethical norms are the main content of a law, especially the Constitution). Ronald Dworkin also said that reading the constitution is not the same as reading other laws and reading the constitution as a moral message (*the moral reading of the constitution*).⁶ Dworkin's view is in line with the position or position of Constitutional norms in a country. Basically, the Constitution is the highest rule in a country. Because he is supreme, of course, the way to read it is not the same as other laws and regulations. Likewise, how to read and apply the word "final" contained in Article 24C paragraph (1) of the 1945 Constitution. This is as mentioned by Safri Abdullah, that the legal language of the legislation is abstract.⁷

Embedding the final word for Constitutional Court Decision Number 90/PUU-XXI/2023 so that it must be followed up, including by other state institutions, is a category of heretical piker. Because, the framer of the 1945 Constitution is certainly not a Constitutional Court Decision born from a legal defect and proven to be born of ethical violations, moreover the category of gross ethical violations referred to as final by Article 24C paragraph (1).

This is reinforced based on the findings in the original intent. The Constitutional Court is expected to be the institution that has the authority to oversee the constitution. Therefore, the Constitutional Court is designed as the only judiciary, not responsible for other courts or subordinate to other courts. The Constitutional Court is subject only to the provisions of the Constitution to maintain its integrity.⁸ In other words, the final Constitutional Court decision legally reflects its duty as protector and

⁶ Satjipto Rahardjo, *Penegakan Hukum Progresif*. (Jakarta: Kompas, 2010), 164.

⁷ Safri Abdullah, *Judicial Activism*. (Yogyakarta: Deepublish, 2022), 21.

⁸ Fajar Laksono, Aspek Keadilan dalam Sifat Final Putusan Mahkamah Konstitusi, *Jurnal Konstitusi*, 11, No. 1 (2014): 64-84.

interpreter of the constitution, and ensures that laws made by the House of Representatives and the President remain in line with constitutional principles.⁹

Second, the legal politics of judicial power. Article 24 paragraph (1) of the 1945 Constitution states that, "*The judicial power is an independent power to administer justice in order to uphold law and justice*". Likewise, Article 28D paragraph (1) affirms that "*everyone has the right to recognition, assurance, protection and just legal certainty*". Interestingly, this article is not only legal certainty or justice, but fair legal certainty.

In addition to these provisions, Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that *the Judiciary is carried out "FOR THE SAKE OF JUSTICE BASED ON THE ONE AND ONLY GOD"*. So this chapter is not only a formal requirement, but contains a deep spiritual meaning. Likewise, Article 5 paragraph (1) states, "*Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society*".

Thus, the word "final" in Article 24C paragraph (1) does not stand alone. That is, Constitutional Judges, even legal people in general, should understand the word "final" in unity with other articles. In this case, it should also be linked to Article 24 paragraph (1), Article 28D paragraph (1) of the 1945 Constitution. Likewise with Article 2 paragraph (1) and Article 5 paragraph (1) of Law Number 48 of 2009. Otherwise, why are these articles formed if they are only limited to filling in the existing rows of articles that are not useful.

So, the final nature is if the Constitutional Court Decision in order to uphold law and justice, fair legal certainty, reflect God's justice, and justice in society. Beyond that, the decision should not be categorized as a final decision.

Third, the process and the result are one. There can be no result without the process that precedes it. In fact, the process is more important than the result because the result is the accumulation of existing processes. When the process is problematic, there is a blatant violation of the law, it

⁹ Johansyah, Putusan Mahkamah Konstitusi Bersifat Final dan Mengikat (Binding), *Jurnal Unpal* 19, No. 2 (2021): 165-182.

is proven that the judge committed an ethical violation, even all the judges, then the decision is not worth running.

As happened with Constitutional Court Decision Number 90/PUU-XXI/2023, Anwar Usman as the head of the Constitutional Court at that time should not have participated in the trial because there was a conflict of interest. Likewise with other constitutional judges, they should have been firm at that time not just limited to expressing different opinions that did not have a direct impact on the verdict. The consequence of it all is that this ruling has tarnished the prestige and damaged public trust in the Constitutional Court as one of the actors of judicial power in Indonesia.

Seeing this reality, there is also some truth in criticism of the doctrine of *judicial activism* due to the interference of the judiciary which is considered degrading and damaging to the democratic system. In addition, *judicial activism* can also degrade and undermine the principle of separation of powers.¹⁰

IV. Conclusion and Suggestion

Based on the discussion above, the following conclusions can be concluded. *First*, the Constitutional Court Decision Number 90/PUU-XXI/2023, not only does not provide justice and expediency, but also does not provide legal certainty. This is inseparable from the misuse carried out by constitutional judges in using their authority in examining laws. Starting from incoming requests to judges' consultative meetings. Therefore, it is only natural that all constitutional judges are subject to ethical sanctions. In fact, according to the author, ideally all Constitutional Judges involved in Constitutional Court Decision Number 90/PUU-XXI/2023 should be dismissed as constitutional judges.

Second, Constitutional Court Decision Number 90/PUU-XXI/2023 is an invalid decision. So it cannot be characterized that the decision is final and has binding legal force. This view is based on the main argument that reading the 1945 Constitution should read it with a moral lens, the legal

¹⁰ Iwan Satriawan dan Tanto Lailam, Open Legal Policy dalam Putusan Mahkamah Konstitusi dan Pembentukan Undang-Undang, *Jurnal Konstitusi* 16, No. 3 (2019): 559-584.

politics of judicial power control that the judiciary exists to uphold law and justice, fair legal certainty, reflects God's justice, and justice in society, and the process and results are an agreement, so that if the process is problematic, then the results are also problematic let alone strengthened by the Court's decision Honorary Constitutional Court.

The things that can be suggested in the article are as follows. *First*, constitutional judges should prioritize justice in law. The judiciary is a place to seek justice, not a place to undermine justice. Thus, it is also expected to provide lessons to students, especially in law faculties, that law is synonymous with justice, open a row of articles.

Second, there needs to be a reconstruction of the meaning of the final nature of the Constitutional Court decision. This means that only decisions that are not proven to violate morals either in terms of the decision-making process can be called final. Likewise with the content of the ruling, it also cannot violate morals, especially religion. Suppose the Constitutional Court declares that lesbian, gay, bisexual, and transgender is a constitutional right of citizens or the prohibition of interfaith marriage is unconstitutional. This cannot be called final and has no binding legal force so it must be denied existence.

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